



February 13, 2012

Homer City OL1-OL8 LLC  
1750 Power Plant Road  
Homer City, PA 15748-8009

EME Homer City Generation L.P.  
1750 Power Plant Road  
Homer City, PA 15748-8009  
Attention: Alfred A. Slowik, Director, Generating Station

Re: Notice of Intent to Sue under the Federal Clean Air Act and  
Pennsylvania Air Pollution Control Act

To Whom It May Concern:

This letter provides notice that the Sierra Club, 85 Second St., 2d Floor, San Francisco, California 94105, on behalf of itself and its members, intends to file a citizen suit against Homer City OL1-OL8 LLC ("Homer City OLS") and EME Homer City Generation L.P. ("EME Homer City") for violations of emission standards and limitations under the federal Clean Air Act ("CAA") and the Pennsylvania Air Pollution Control Act ("APCA"). Specifically, emissions from the EME Homer City Generating Station ("Homer City Station") have violated and continue to violate limitations on sulfur dioxide ("SO<sub>2</sub>") emissions under federal and state law. Homer City OLS owns the Homer City Station, which is operated by EME Homer City. This notice is provided pursuant to 42 U.S.C. § 7604(b) and 35 P.S. § 4013.6(d).

I. The Homer City Station is Subject to a Title V Permit.

Title V of the CAA requires specified sources of air pollution to obtain an operating permit from a permitting authority. 42 U.S.C. § 7661a(a). Pennsylvania's state operating permit and Title V permit programs have been approved by EPA. 25 Pa. Code Chapter 127, Subchapters F and G; 61 Fed. Reg. 39,597 (July 30, 1996).

The Homer City Station is subject to Title V/State Operating Permit No. 32-00055, issued by the Pennsylvania Department of Environmental Protection ("Pennsylvania DEP") on January 30, 2004 and revised on December 1, 2004 ("Homer City Title V Permit"). Following a permit renewal application in July 31, 2008, the terms of the

Homer City Title V Permit remain in effect pending DEP action on the application. 25 Pa. Code § 127.446(c).

II. The Homer City Title V Permit Prohibits Violations of the NAAQS for Sulfur Dioxide.

Under the APCA and Pennsylvania rules, permits issued by the Pennsylvania DEP to sources subject to acid rain program requirements shall prohibit exceedances of applicable emission rates or standards, including ambient air quality standards. 35 P.S. § 4006.5(e)(2); 25 Pa. Code 127.531(f)(2); Homer City Title V Permit, Section C, Condition #008(f)(2), p. 18. Homer City Plant Units 1, 2 and 3 are subject to acid rain requirements. *See, e.g.*, Homer City Title V Permit, Section E, Conditions #013-#015, p. 40. Therefore, the Homer City Title V Permit prohibits emissions from the Homer City Station that exceed ambient air quality standards.

The United States Environmental Protection Agency ("EPA") has issued national ambient air quality standards ("NAAQS") for SO<sub>2</sub>, including the following 1-hour standard:

(a) The level of the national primary 1-hour annual ambient air quality standard for oxides of sulfur is 75 parts per billion (ppb, which is 1 part in 1,000,000,000), measured in the ambient air as sulfur dioxide (SO<sub>2</sub>).

(b) The 1-hour primary standard is met at an ambient air quality monitoring site when the three-year average of the annual (99th percentile) of the daily maximum 1-hour average concentrations is less than or equal to 75 ppb, as determined in accordance with Appendix T of this part.

40 C.F.R. § 50.17(a, b) (SO<sub>2</sub> 1-hour NAAQS). Therefore, applicable standards and permit provisions prohibit emissions from the Homer City Station in violation of the SO<sub>2</sub> 1-hour NAAQS.

III. Citizens May Sue to Enforce Title V Permits.

The CAA provides for citizen suits to redress violations of an "emission standard or limitation." 42 U.S.C. § 7604(a)(1). As a standard or limitation under a Title V permit, the SO<sub>2</sub> emission limitation in the Homer City Title V Permit constitutes an "emission standard or limitation." 42 U.S.C. § 7604(f)(4). Further, the APCA also provides that citizens may commence civil actions to compel compliance with permits issued under the APCA. 35 P.S. § 4013.6(c).

Both the CAA and the APCA require prior notice of citizen suits. 42 U.S.C. § 7604(b); 35 P.S. § 4013.6(d). This notice of intent to sue is provided pursuant to these requirements.

IV. The Homer City Station Has Emitted Sulfur Dioxide in Violation of its Title V Permit.

The Sierra Club has modeled sulfur dioxide emissions from the Homer City Station for their impact on levels of sulfur dioxide in the ambient air. This modeling applied EPA's AERMOD air dispersion model and local meteorological data to 2008-2010 time-series plant emission data from EPA's Clean Air Markets database. This modeling found widespread SO<sub>2</sub> concentrations violating the SO<sub>2</sub> 1-hour NAAQS,<sup>1</sup> including a concentration of 420.6 µg/m<sup>3</sup> at Homer City High School and a maximum concentration of 422.2 µg/m<sup>3</sup>.<sup>2</sup> Therefore, the Homer City Station is in violation of Section C, Condition #008(f)(2) of the Homer City Title V Permit. This permit violation constitutes a violation of the CAA and APCA and is subject to citizen suit under 42 U.S.C. § 7604(a), (f)(4) and 35 P.S. § 4013.6(c).

V. The Sierra Club Intends to File a Citizen Suit.

The continuing violations described in this letter are based on the most recent information available to the Sierra Club. In response to these violations, the Sierra Club intends to file a citizen suit under the CAA, 42 U.S.C. § 7604, and the APCA, 35 P.S. § 4013.6(c). This suit will seek to enjoin violations, ensure future compliance, impose penalties for violations, recover attorney fees and costs of litigation, and obtain other appropriate relief.

Please direct all communications regarding this matter to me. If you would like to discuss the matters identified in this letter or offer a proposal for resolving these issues, please contact me at [cmcphe dran@earthjustice.org](mailto:cmcphe dran@earthjustice.org) or (215) 206-0352.

Sincerely,

**s/ Charles McPhedran**

Charles McPhedran, Esq.  
Earthjustice

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<sup>1</sup> The concentrations described in this sentence were calculated by applying the averaging provisions of 40 C.F.R. § 50.17(b), or the "form" of the NAAQS.

<sup>2</sup> For the purposes of evaluating compliance with the SO<sub>2</sub> 1-hour NAAQS, 75 ppb is equivalent to 196.2 µg/m<sup>3</sup>. See, e.g., U.S. EPA "Final Response to Petition From New Jersey Regarding SO<sub>2</sub> Emissions From the Portland Generating Station," 76 Fed. Reg. 69,058 n.8 (Nov. 11, 2011).

cc: Lisa Jackson, Administrator  
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