



March 17, 2014

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Victor Staffieri, Chief Executive Officer and President  
Louisville Gas & Electric Company  
P.O. Box 32010  
Louisville, KY 40232

**RE: 60-Day Notice of Intent to File Citizen Suit Under Clean Water Act Section 505(a)(1) for Louisville Gas & Electric Company's Violations of Terms and Conditions of Kentucky National Pollutant Discharge Elimination System Permit KY0003221 Issued to the Mill Creek Generating Station in Louisville, Kentucky**

Dear Mr. Staffieri:

In accordance with Section 505 of the Clean Water Act (the "Act" or the "CWA"), 33 U.S.C. § 1365, and 40 C.F.R. Part 135, the Sierra Club hereby notifies you that Louisville Gas & Electric Company ("LG&E") has violated and continues to violate an "effluent standard or limitation" under Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), by failing to comply with the terms and conditions of Kentucky Pollutant Discharge Elimination System ("KPDES") Permit KY0003221. KPDES permit KY0003221 permits Outfall 002 of the Mill Creek Generating Station only an "occasional discharge" directly to the Ohio River. However, LG&E has discharged from Outfall 002 directly into the Ohio River on an almost daily basis, in violation of this frequency limitation in Permit KY0003221. If, within sixty days of the postmark of this letter, you do not bring your discharges into full compliance with the Act by complying with your KPDES permit, we intend to file a citizen suit seeking civil penalties for your ongoing violation and an injunction compelling you to comply with the Act.

## **I. Background**

The Mill Creek Generating Station ("Mill Creek" or "Mill Creek Station") contains a large coal ash impoundment that borders the Ohio River and abuts two creeks, Mill Creek and Pond Creek. The ash pond is unlined, and is 42.8 acres in size with an average depth of 27 feet.<sup>1</sup> The ash pond contains, among other substances, ash sluice water, boiler chemical cleaning waste

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<sup>1</sup> See KPDES Permit No. 0003221 Renewal Application, Outfall Synopsis (May 2007) [hereinafter "Permit Renewal Application"].

waters, cooling water, reverse osmosis treatment waste, sump flows, natural gas system wastewaters, plant feedwater make-up treatment wastes, and storm water runoff from process, coal pile, limestone pile, and ash treatment basin areas.<sup>2</sup>

On May 6, 2002, the Kentucky Department of Environmental Protection (“KDEP”) issued KPDES Permit KY0003221 to LG&E for discharges from Mill Creek Generating Station. Upon information and belief, LG&E applied for renewal of the permit in 2007 but KDEP has not acted on this renewal application, so that LG&E’s 2002 KPDES permit has been administratively extended and remains in effect. Permit KY0003221 regulates discharges from the Mill Creek Station, including discharges associated with the coal ash impoundment.<sup>3</sup> The permit states that the combined wastewaters of the ash pond pass through Outfall 002, which is an internal outfall that eventually discharges through Outfall 001.<sup>4</sup> The permit allows Outfall 002 an “occasional direct discharge to the Ohio River at mile point 356.0.”<sup>5</sup>

## II. Clean Water Act Violations

Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person, except in compliance with a permit. 40 C.F.R. 122.41; KRS 224.70-110; 401 KAR 5:065. Noncompliance with a KPDES permit constitutes a violation of the CWA. 33 U.S.C. § 1365(a)(1). Citizens may sue any person who violates a term or condition of a KPDES permit. 33 U.S.C. § 1365(a)(1).

LG&E’s KPDES permit for Mill Creek Station only allows Outfall 002 to directly discharge to the Ohio River on an “occasional” basis. Since the plain meaning of “occasional” is “occurring from time to time” or “irregular; infrequent,”<sup>6</sup> Outfall 002’s direct discharges to the Ohio River on an almost daily basis are a violation of the frequency limitation contained in Permit KY0003221. Upon information and belief, Outfall 002 has discharged directly to the Ohio River almost daily since March 17, 2009, and in the absence of any corrective measures by LG&E to date, continues to discharge directly to the Ohio River on an almost daily basis. Consequently, LG&E has violated and continues to violate Section 301(a) of the CWA on each day since March 17, 2009, for discharging directly to the Ohio River from Outfall 002 on a more than “occasional” basis, in violation of the KPDES permit for Mill Creek Station.

Coal ash impoundment wastewater such as the wastewater that passes through Outfall 002 contains many toxic pollutants, including but not limited to arsenic (a carcinogenic pollutant that also causes heart problems, nervous system disorders, and, when present in drinking water, is also linked to miscarriages, stillbirths, and infants with low birth weights), mercury (a bio-accumulating poison that impairs brain development in children and causes nervous system and kidney damage in adults), selenium (long-term exposure to which can damage the kidney, liver, and nervous and circulatory systems), lead (a potent neurotoxicant that is highly damaging to the

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<sup>2</sup> *Id.*

<sup>3</sup> See KPDES Permit No. 0003221, Part I at I-1 – I-12 (May 2002) [hereinafter “Permit”].

<sup>4</sup> Permit, Part I at I-2.

<sup>5</sup> Permit at 1; see also Kentucky Dept. of Env., Fact Sheet for KPDES Permit to Discharge Treated Wastewater into Waters of the Commonwealth at 4 (Feb. 2002).

<sup>6</sup> *The Am. Heritage Dictionary of the English Language* (5th ed. 2011).

nervous system), and cadmium (a potential carcinogenic and potent neurotoxicant pollutant that is highly damaging to the nervous system). According to LG&E's 2007 permit renewal application for Mill Creek Generating Station, the discharges from the coal ash impoundment that pass through Outfall 002 contain significant levels of each of these toxic pollutants, as well as other pollutants.<sup>7</sup> LG&E's illegal discharges of these pollutants from Outfall 002 to the Ohio River harm the river and the people who use and enjoy it, including members of the Sierra Club who live, work, and/or recreate in areas near the Mill Creek Generating Station. These harms will continue until LG&E comes into compliance with the Clean Water Act at Mill Creek Generating Station.

Sierra Club provides this notice for the violations outlined above, as well as all ongoing and continuing violations, including those committed subsequent to the date of this notice. This notice is given pursuant to 33 U.S.C. § 1365 and 40 C.F.R. § 135.3(a). If LG&E does not cease those violations within 60 days, we intend to bring a citizen suit against LG&E under Section 505 of the CWA, 33 U.S.C. § 1365.

Under the CWA, 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4, each of the violations described herein occurring on or after January 13, 2009 is subject to a penalty of up to \$37,500 per day per violation. Thus, LG&E is subject to over \$68 million in civil penalties. LG&E is also potentially subject to injunctive relief, for example, restoring or mitigating the impacts associated with discharging coal ash wastewater directly into the Ohio River since March 10, 2009. Moreover, under 33 U.S.C. § 1365, prevailing parties may recover costs of litigation, including attorneys' fees.

### **III. Identification of Party Giving Notice and Counsel**

The address of the Sierra Club, the party giving notice, is as follows:

Sierra Club  
85 Second Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94105  
415-977-5500

The Sierra Club is represented by legal counsel, identified below, as well as by the other undersigned counsel:

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### **IV. Conclusion**

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<sup>7</sup> See Permit Renewal Application, KPDES Form C, Part V (Intake and Effluent Characteristics).

As discussed above, if LG&E fails to come into compliance with the Act and the terms of KPDES Permit KY000311 within 60 days, the Sierra Club intends to file a citizen suit under Section 505(a)(1) of the CWA seeking civil penalties and injunctive relief. The Sierra Club, through this notice letter, further reserves the right to seek civil penalties for any further violations of the CWA stemming from the issues identified herein that may have occurred since the last available DMRs were submitted or do occur after today. *Pub. Interest Research Grp. of New Jersey, Inc. v. Hercules, Inc.*, 50 F.3d 1239 (3d Cir. 1995).

If LG&E has taken any steps to eradicate the underlying cause of the violations described above, or if LG&E believes that anything in this letter is inaccurate, please let us know. If LG&E does not advise us of any remedial steps or inaccuracies during the 60-day period, we will assume that no such steps have been taken, that the information in this letter is accurate, and that violations are likely to continue. We would be happy to meet with LG&E or its representatives to attempt to resolve these issues within the 60-day notice period.

Respectfully submitted,



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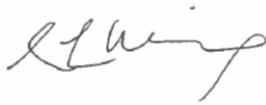


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