

November 6, 2008

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Ron Wilkosz
Plant Manager
Indian River Generating Station
Indian River Power, LLC
Power Plant Road
Millsboro, DE 19966

Re: Notice of Intent to Sue under the Federal Clean Air Act and
Delaware State Implementation Plan

Dear Mr. Wilkosz:

This letter provides notice that Citizens for Clean Power (“CCP”), on behalf of itself and its members, intends to file a citizen suit against Indian River Power, LLC, for violations of Delaware’s federally enforceable State Implementation Plan (“SIP”) standards and limitations under the Federal Clean Air Act (“CAA” or “the Act”) (42 U.S.C. §7401 *et seq.*) at the NRG Indian River Generating Station (“IRGS”), located at 332 Power Plant Road, Millsboro, Delaware. Specifically, the IRGS has violated provisions of the Clean Air Act, its Title V Operating Permit, and the emission limitations in various federal and state rules and permits. This notice is provided pursuant to 42 U.S.C. § 7604(b).

The Mid-Atlantic Environmental Law Center (“MAELC”) represents Citizens for Clean Power, and submits this notice on CCP’s behalf. The CAA allows any person to bring a civil action against any person who has violated or is violating any emission standard or limitation under the Act. 42 U.S.C. § 7604(a)(1).

I. Identification of Parties and Counsel

CCP is an unincorporated association of concerned citizens, primarily residing in Sussex County, Delaware, the members of which share common apprehension and

concern over public health and environmental impacts attributable to pollution caused by the NRG IRGS. The address for CCP is:

Citizens for Clean Power
7 Deerfield Dr.
Lewes, DE 19958

MAELC is Counsel to CCP in this matter. MAELC is a not-for-profit environmental law firm that provides legal services to individuals, associations, and public interest organizations in environmental matters. MAELC works to ensure that environmental requirements are met, and that legislation and regulations are adequately implemented by responsible federal, state and local agencies. MAELC is located at Widener University School of Law and works in tandem with students in Widener's Environmental and Natural Resources Law Clinic. Please direct all correspondence to:

Michael D. Fiorentino, Esq.
Mid-Atlantic Environmental Law Center
4601 Concord Pike, P.O. Box 7474
Wilmington, DE 19803-0474
(302) 477-2167
(302) 477-2032 (fax)

II. Background

In 1970, Congress enacted amendments to the Act which included provisions for citizen enforcement. The Act's primary purpose is to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;" 42 U.S.C. §7401(b)(1). The Act provided for the development of New Source Performance Standards for various industries by the U.S. Environmental Protection Agency ("EPA"). 42 U.S.C. §7411. EPA, pursuant to this authority, promulgated standards for fossil fuel fired steam generating units that commenced construction after October 17, 1971 (40 CFR Part 60, Subpart D), and another standard for Electric Utility Steam Generating units whose construction commenced after September 18, 1978. (40 CFR Part 60, Subpart Da).

The 1990 Clean Air Act Amendments established the Title V permit program (42 U.S.C. §7661-§7661f), requiring all major stationary sources to obtain an operating permit setting forth the emission limitations, operating conditions, monitoring, reporting, recordkeeping and other requirements to which the source is obligated by the permit and underlying legal authorities. Pursuant to Section 110 of the Act, 42 U.S.C. §7410, states are required to submit a State Implementation Plan ("SIP"), which *inter alia*, must include regulations that will provide for the implementation, maintenance and enforcement of national ambient air quality standards. A SIP shall include enforceable emission limitations and other control measures necessary to meet the applicable

requirements of the Act. Delaware’s SIP includes Delaware air quality regulations such as Regulation No. 4 Fuel Burning Equipment, and Regulation No. 14 Visible Emissions.

Pursuant to 42 U.S.C. §7413(b), the U.S. District Courts are authorized by the Act to impose a civil penalty of up to \$32,500 per day for each violation committed by Indian River Power, LLC of its permits and federally enforceable law.

Indian River Power, LLC’s IRGS has demonstrated over many years an ongoing pattern of violations of certain of its obligations under its Title V permit and federally enforceable law and regulation. CCP intends to file suit against Indian River Power, LLC and NRG pursuant to the federal citizen suit provisions for the following violations of federal and/or state law:

III. Violations of the Delaware SIP and Indian River’s Title V Permit

The applicable implementation plan for the State of Delaware (“Delaware SIP”), as adopted pursuant to Section 110 of the Act, is codified at 40 C.F.R., Part 52, Subpart I (§52.420 *et seq.*) In addition, Delaware’s Title V Operating Permit program, Regulation No. 30, has received final approval by EPA. 40 C.F.R. Part 70 Appendix A. Federal regulations governing the Title V permit program are found at 40 C.F.R. Part 70. As standards or limitations established under a Title V permit which is in effect under the CAA or under the Delaware SIP, the Facility’s Title V permit obligations are “emission standards or limitation” under 42 U.S.C. §7604(f)(4) subject to citizen suit under 42 U.S.C. §7604(a).

Title V Operating Permit **AQM-005/00001** became effective July 16, 2004. The following incidents constitute violations of Indian River Power’s IRGS Title V Operating Permit, and/or of the applicable requirements incorporated into that permit:

1. Opacity Standards:

Delaware Air Quality Regulation No. 14 Visible Emissions, has been incorporated into the Delaware SIP, which has been approved by U.S. EPA and codified at 40 CFR 52.420(c). The regulation is therefore federally enforceable.

Regulation No. 14 sets forth the following limitation which is applicable to the IRGS: “Visible Emissions shall not exceed 20% opacity for an aggregate of more than 3 minutes in any one hour period.” IRGS has violated this standard extensively in all recent years to the present:

Year and Quarter	Unit	No. of Violations (3 min.)
2 nd Qtr. 2008	1	133

2 nd Qtr. 2008	3	148
1st Qtr. 2008	3	255
1st Qtr. 2008	4	57
4th Qtr. 2007	2	61
4th Qtr. 2007	3	142
3rd Qtr. 2007	2	245
2 nd Qtr. 2007	2	164
4th Qtr. 2006	1	48
3rd Qtr. 2006	1	106
3rd Qtr. 2006	2	95
2nd Qtr. 2006	1	100
2nd Qtr. 2006	3	39
1st Qtr. 2006	1	147
1st Qtr. 2006	2	186
1st Qtr. 2006	3	405
1st Qtr. 2006	4	223
4th Qtr. 2005	1	59
4th Qtr. 2005	2	76
4th Qtr. 2005	3	356
3 rd Qtr. 2005	2	167
2nd Qtr. 2005	2	89
1st Qtr. 2005	2	74
1st Qtr. 2005	3	223
4 th Qtr. 2004	3	147
4 th Qtr. 2004	2	37
3 rd Qtr. 2004	2	132
2nd Qtr. 2004	2	59
1st Qtr. 2004	2	131
1st Qtr. 2004	3	104

Regulation 14 also sets forth the following limitation which is applicable to the IRGS: “Visible Emissions shall not exceed 20% opacity for an aggregate of more than fifteen (15) minutes in any twenty-four (24) hour period.” IRGS has violated this standard extensively in all recent years to the present:

Year and Quarter	Unit	No. of Violations (15 min.)
2 nd Qtr. 2008	1	17
2 nd Qtr. 2008	3	20
1st Qtr. 2008	4	6
1st Qtr. 2008	3	26
4th Qtr. 2007	2	11
4th Qtr. 2007	3	12
3rd Qtr. 2007	2	36
2 nd Qtr. 2007	2	25

4th Qtr. 2006	1	5
3rd Qtr. 2006	1	17
3rd Qtr. 2006	2	15
2nd Qtr. 2006	1	18
2nd Qtr. 2006	3	6
1st Qtr. 2006	1	20
1st Qtr. 2006	2	24
1st Qtr. 2006	3	51
1st Qtr. 2006	4	32
4th Qtr. 2005	1	9
4th Qtr. 2005	2	11
4th Qtr. 2005	3	44
3 rd Qtr. 2005	2	30
2nd Qtr. 2005	2	20
1st Qtr. 2005	2	12
1st Qtr. 2005	3	24
4 th Qtr. 2004	3	15
4 th Qtr. 2004	2	8
3 rd Qtr. 2004	2	20
2 nd Qtr. 2004	2	8
1st Qtr. 2004	2	16
1st Qtr. 2004	3	12

Unit 4 of the IRGS, is also bound to observe additional particulate matter and opacity standards pursuant to applicable regulations. Specifically, an owner or operator shall not discharge gases “exhibiting greater than 20% opacity except for one six-minute period per hour of not more than 27% opacity.” [DE Air Quality Reg. 1120 New Source Performance Standards, Section 9.12.2; and DE Permit AQM-005/00001 Condition 3 – Table 1(c)(5)(i)(A).] Unit 4 of the IRGS has violated this standard regularly, and most extensively during the following time periods:

Year and Quarter	Unit	No. of Violations (>6 min./ hr above 20%)
1st Qtr. 2007	4	8
1 st Qtr. 2006	4	14
2 nd Qtr. 2005	4	13
2 nd Qtr. 2004	4	14

The total number of opacity violations represented in these tables during the time period is 4,405. Substantial additional opacity violations from IRGS units have occurred during the 2004-2008 time period but are not reflected in these tables.

2. Nitrogen Oxides:

Delaware Air Quality Regulation No. 12, Control of Nitrogen Oxide Emissions, has been incorporated into the Delaware SIP, which has been approved by U.S. EPA and codified at 40 CFR 52.420(c). The regulation is therefore federally enforceable.

Regulation No. 12 sets forth a case-by-case Reasonably Available Control Technology standard for the limitation of Nitrogen Oxides (NOx) from coal-fired major emitting sources. DNREC established an emission limitation for Unit 3 of the IRGS which has been placed into the IRGS Title V permit as follows: NOx emissions from Unit 3 shall not exceed 0.57 lbs./MMBtu heat input as a 24-hour rolling average. (Permit AQM-005/00001 Condition 3 – Table 1(b)(4)(i)(A)) As stated previously, the terms of Title V permits are federally enforceable as “emissions standards and limitations” under the Act.

Unit 3 of the IRGS exceeded this permitted NOx limitation repeatedly on numerous days in 2005:

Date:	Number of Violations of rolling average
4/08/05	6
4/21/05	1
5/11/05	16
5/30/05	4
5/31/05	24
6/01/05	24
6/02/05	24
6/03/05	24
6/04/05	24
6/05/05	24
6/06/05	24
6/07/05	24
6/08/05	24
6/09/05	24
6/10/05	24
6/11/05	24
6/12/05	24
6/13/05	24
6/14/05	24
6/15/05	24
6/16/05	24
6/17/05	24
6/18/05	24
6/19/05	24
6/20/05	24
6/21/05	24

6/22/05	24
6/23/05	24
6/24/05	24
6/25/05	24
6/26/05	24
6/27/05	24
6/28/05	24
6/29/05	24
6/30/05	24

Thus, the total number of NOx violations we have documented is 771.

V. Conclusion

In response to these violations, Citizens for Clean Power intends to file a citizen suit under the CAA, 42 U.S.C. § 7604. This suit will seek to enjoin violations, ensure future compliance, obtain penalties for past noncompliance, recover attorney fees and costs of litigation, and obtain other appropriate relief.

Please direct all communications regarding this matter to the undersigned. If you would like to discuss the matters identified in this letter or offer a proposal for resolving these issues, please call me at 302-477-2167.

Sincerely,

Michael D. Fiorentino, Esq.
Mary A. Jacobson, Esq.
Counsel for CCP

cc: Steven L. Johnson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Donald S. Welsh, Regional Administrator
United States Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Hon. Ruth Ann Minner, Governor of Delaware
Dover, DE 19901

Tatnall Building
William Penn Street, 2nd Fl.
Dover, DE 19901

John Hughes, Secretary
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901