



LAW SCHOOL

Environmental Law Clinic

April 1, 2008

Via Certified Mail No. 7005 0390 0003 2164 2075

T. Michael Twomey, Esq. (as Registered Agent)
Entergy Louisiana, LLC
4809 Jefferson HWY
Jefferson, LA 70121

Via Certified Mail No. 7005 0390 0003 2164 2136

Administrator Stephen L. Johnson
U.S. EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Via Certified Mail No. 7005 0390 0003 2164 2129

Harold Leggett, Ph.D.
Secretary
Louisiana Department of Environmental Quality
602 N. Fifth Street
Baton Rouge, LA 70802

Re: Notice of Intent to File Clean Air Act Citizen Suit against Entergy Louisiana, LLC

Dear Mr. Twomey, Administrator Johnson, and Dr. Leggett:

This letter provides Notice of Intent to file a citizen-enforcement suit against Entergy Louisiana, LLC, under Clean Air Act § 304(a)(1), 42 U.S.C. § 7604(a). The Alliance for Affordable Energy, Louisiana Environmental Action Network, Sierra Club, Gulf Restoration Network, and Sal J. Giardina, Jr. (collectively, “the Alliance”) provide this Notice pursuant to Clean Air Act § 304(b), 42 U.S.C. § 7604(b), and 40 C.F.R. pt. 54. The Alliance intends to file this citizen enforcement suit to abate Entergy’s construction of the Little Gypsy Unit 3 repowering project in violation of Clean Air Act § 112(g)(2)(B), 42 U.S.C. § 7412(g)(2)(B).

The Clean Air Act authorizes the court to issue injunctions to enforce § 112 and to apply appropriate civil penalties. 42 U.S.C. §7604(a). Entergy is liable for up to thirty two thousand, five hundred dollars (\$32,500) for **each day** that **each violation** continues. *See* 40 C.F.R. § 19.4 (adjustment of civil monetary penalties for inflation).

Clean Air Act § 112(g)(2)(B) commands: “no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology [“MACT”] emission limitation under this section

achievable control technology “*shall be made on a case-by-case basis* where no applicable emission limitations have been established” (emphasis added).

Little Gypsy Unit 3 is a “major source” under §112(a)(1) and is therefore subject to the requirements of §112(g)(2)(B). Further, Entergy has not obtained a determination from EPA or the state that MACT emission limits will be met for all hazardous air pollutants that Little Gypsy Unit 3 will emit. Accordingly, it is illegal for Entergy to construct this project unless and until LDEQ reissues Entergy a permit—after appropriate notice and comment—that contains the requisite MACT determinations.

Clean Air Act § 112 forbids construction of Little Gypsy Unit 3 unless and until Entergy obtains an EPA or state MACT determination for *every* hazardous air pollutant that Little Gypsy Unit 3 will emit. *See Nat’l Lime Ass’n v. EPA*, 233 F.3d 625, 634 (D.C. Cir. 2000) (noting the “clear statutory obligation to set emission standards for each listed HAP”). EPA has noted that coal fired power plants “emit a significant number of the 188 HAP [hazardous air pollutants] on the section 112(b) list” 65 Fed. Reg. 79825, 79827-28 (Dec. 20, 2000). EPA has identified “a total of 67 of the 188 HAPs . . . as potentially being emitted by utilities.” EPA, Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units-Final Report to Congress, Executive Summary at ES-4 (Feb. 25, 1998) (<http://www.epa.gov/ttn/caaa/t3/reports/utilexec.pdf>). These hazardous air pollutants include “arsenic, beryllium, cadmium, chromium, manganese, nickel, hydrogen chloride [HCl], hydrogen fluoride [HF], acrolein, dioxins, formaldehyde, and radionuclides” as well as “mercury and lead.” *Id.* at ES-6.

The Alliance recognizes that EPA “purported to remove” coal-fired power plants from the list of sources subject to Clean Air Act § 112. *New Jersey v. EPA*, No. 05-1097, 2008 WL 341338 (D.C. Cir. Feb. 8, 2008). The D.C. Circuit, however, has vacated that effort because “EPA had no authority to delist [that source category] without taking the steps required under section 112(c)(9).” *Id.* Power plants, therefore, “remain listed under section 112.” *Id.*

On March 19, 2008, the Louisiana Public Service Commission issued Entergy a certificate of public convenience and necessity for construction of Little Gypsy Unit 3. Entergy Louisiana, LLC is responsible for violations of the Clean Air Act § 112(g)(2)(B) beginning on or about that date and continuing into the future. The violations are located at Little Gypsy Unit 3, in Montz, Louisiana.

The full names and addresses of the parties giving this Notice are:

Alliance for Affordable Energy
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New Orleans, LA 70125

Louisiana Environmental Action Network
P.O. Box 66323
Baton Rouge, LA 70896

Sierra Club
5534 Canal Blvd
New Orleans, LA 70124

Notice of Intent to File Clean Air Act Citizen Suit (April 1, 2008)
T. Michael Twomey, Esq. (as Registered Agent for Entergy Louisiana, LLC),
EPA Administrator Stephen L. Johnson, Ph.D., and
LDEQ Secretary Harold Leggett, Ph.D.
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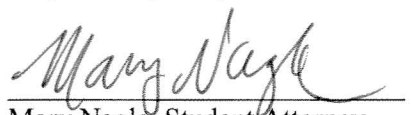
Sal J. Giardina, Jr.
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LaPlace, Louisiana 70068-4182

The Alliance is represented in this matter by:

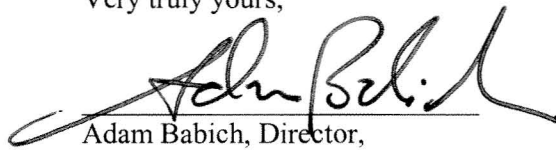
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If you believe that any portion of this Notice is in error or if you wish to discuss any portion of this Notice, please contact Adam Babich at the address and phone number listed below. The Alliance would be pleased to discuss alternatives for a cooperative resolution of the violations listed in this Notice.

Prepared in part by:


Mary Nagle, Student Attorney,
Tulane Environmental Law Clinic

Very truly yours,


Adam Babich, Director,
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cc:

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