

FEB 21 2007

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**UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING**

**SIERRA CLUB and WYOMING
OUTDOOR COUNCIL,**)
)
)
 Plaintiffs,)
)
 v.)
)
 PACIFICORP)
)
 Defendant.)

07 CV 042-J
Case No. _____

COMPLAINT

I. STATEMENT OF THE CASE, JURISDICTION AND VENUE

1. This is a federal Clean Air Act citizen suit enforcement action brought by plaintiffs Sierra Club and Wyoming Outdoor Council (“plaintiffs”) against defendant PacifiCorp to address significant and ongoing violations of air pollution permit emission limits at PacifiCorp’s Jim Bridger Power Plant (“Jim Bridger”) located in Sweetwater County, Wyoming. This complaint seeks declaratory and injunctive relief and the imposition of civil penalties

(payable to the federal Treasury) under the federal Clean Air Act, 42 U.S.C. §§ 7401 through 7671q.

2. This court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 42 U.S.C. § 7604(a) (citizen suit provision of Clean Air Act) and 28 U.S.C. § 1331 (federal question statute). Jurisdiction also exists under 28 U.S.C. § 1331 because this action is brought to address defendant's violations of its federally enforceable Title V Operating Permit issued pursuant to 42 U.S.C. §§ 7661-61f, and Wyoming's EPA-approved Title V permit program. 64 Fed. Reg. 8523 (Feb. 22, 1999). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. §§ 7413 and 7604.

3. Pursuant to 42 U.S.C. § 7604(c) and 28 U.S.C. §§ 1391(b) and (c), venue lies in the District of Wyoming because Sweetwater County is located in Wyoming.

4. To the extent required by 42 U.S.C. § 7604(b)(1)(A), on November 15, 2006, plaintiffs notified in writing the Administrator of the EPA, the Wyoming Department of Environmental Quality ("WDEQ"), and the defendant of the alleged violations set forth in this complaint and plaintiffs' intent to sue. A true and accurate copy of plaintiffs' notice letter to PacifiCorp is attached hereto as **Exhibit A**.

5. More than sixty days have passed since notice was served by U.S. Mail. Defendant has violated, and remains in violation of, its operating permit and the Clean Air Act.

6. Neither the State of Wyoming or EPA has commenced or diligently prosecuted a court action to require compliance with all of the emission limits that PacifiCorp is alleged to have violated, and to be in violation of, in this complaint.

II. PARTIES

7. The Sierra Club, a national citizens organization, is dedicated to protecting natural resources, including clean air and water. On behalf of its members, including its members in Wyoming, Sierra Club works to protect and enhance the quality of air in the Wyoming, including the air in southern Wyoming that is impacted by the excessive emissions from Jim Bridger. The Sierra Club brings this action on behalf of its adversely affected members. The educational, scientific, aesthetic, and conservation interests of Sierra Club and its members have been, are being and, unless this Court grants the requested relief, will continue to be adversely affected by PacifiCorp's ongoing violations of the Clean Air Act.

8. The Wyoming Outdoor Council ("WOC") is a nonprofit membership organization founded by Wyoming residents in 1967 to conserve the state's wildlife and protect its air, water and land by promoting sound natural resources policies. WOC is based in Lander, Wyoming, and has members throughout the state of Wyoming. WOC brings this action on behalf of its adversely affected members. WOC members regularly engage in wildlife viewing, outdoor recreation, scientific study, and other activities in southern Wyoming, including Sweetwater County. Protection of clean air, clean water, healthy vegetation, and productive soils are of

paramount concern to WOC and its members as they all support healthy populations of wildlife, fish, and plants. Clean air allows WOC and its members to enjoy viewing, studying, and otherwise appreciating the natural resources of Wyoming. The educational, scientific, aesthetic, and conservation interests of WOC and its members have been, are being and, unless this Court grants the requested relief, will continue to be adversely affected by PacifiCorp's ongoing violations of the Clean Air Act.

9. Members of Sierra Club and WOC reside in, work in, or regularly visit and use the resources of the Red Desert, the airshed most immediately impacted by PacifiCorp's violations of the Clean Air Act at Jim Bridger. The aesthetic, recreational, environmental, spiritual, economic and health-related interests of plaintiffs' members have been injured by PacifiCorp's illegal and excessive emissions of pollutants into the airshed of the Red Desert and Southern Wyoming. The interests of plaintiffs' members that are directly injured by defendant's excessive and illegal discharge of pollutants from the Jim Bridger include, but are not limited to: (1) breathing air in the Red Desert and surrounding areas free from PacifiCorp's excessive pollutant discharges, (2) viewing the sky, natural scenery and wildlife unimpaired by ugly pollution plumes and haze caused, in whole or in part, by PacifiCorp, and (3) protecting the natural ecology of the region from air pollution related impacts. The interests of plaintiffs' members have been, and unless the relief requested herein is granted, will continue to be, adversely affected by PacifiCorp's violations of the Clean Air Act.

10. Plaintiffs' members could bring this action in their individual capacity. None of the claims asserted or relief requested, however, requires that plaintiffs' members bring such an action in their individual capacity.

11. PacifiCorp is a multi-state electric utility, based in Portland, Oregon. PacifiCorp is a wholly-owned subsidiary of MidAmerican Energy Holdings Company ("MidAmerican"). MidAmerican, a self-described "global leader in the production of energy," owns energy companies in the United States and Britain and is based in Des Moines, Iowa.

12. PacifiCorp is authorized to do business in Wyoming. PacifiCorp is the operator and majority owner of Jim Bridger. Jim Bridger generates electricity. PacifiCorp is the named permittee in WDEQ Operating Permits dated October 29, 2001 (No. 30-120-2), June 15, 2004 (No. 31-120-1), and September 6, 2005 (No. 3-1-120-2). PacifiCorp has overall responsibility for ensuring that pollutant emissions from Jim Bridger do not exceed permit limits, and PacifiCorp has the authority to correct violations of air pollution permit limits at Jim Bridger.

III. STATEMENT OF FACTS

The Jim Bridger Plant

13. PacifiCorp's Jim Bridger power plant is located at Point of Rocks, Wyoming, approximately twenty-six miles east of Rock Springs, Wyoming.

14. Jim Bridger consists of four coal-fired electrical generating units. Units 1-3 have nameplate capacities of 578 megawatts ("MW") each and Unit 4 has a nameplate capacity of 561

MW. The four tangentially-fired boilers all have the same size firing rate of 5,610 mmBTU/hr. Coal for Jim Bridger comes by conveyor and truck from the nearby Bridger mine. Cooling water for Jim Bridger comes via a 40-mile pipeline from the Green River.

15. Jim Bridger generates electricity by burning coal to create steam, and then passing that steam through a turbine to drive a generator that ultimately produces electricity.

16. According to PacifiCorp's November 1995 Title V Permit application for Jim Bridger, Units 1-3 commenced construction in 1970 and Unit 4 commenced construction in 1975. Unit 1 was placed in service in November of 1974. Unit 2 was placed in service in December of 1975, Unit 3 was in service by September, 1976, and Unit 4 by November, 1979.

17. When coal is burned to generate electricity, pollution is also generated. Pollution from the boilers at the four units at Jim Bridger is discharged into the air of southern Wyoming through four separate smokestacks.

18. According to PacifiCorp's September 6, 2005 Operating Permit No. 3-1-120-2, all four units at Jim Bridger cumulatively emit on an annual basis into the air of Wyoming approximately 14,000 tons of respirable particulate matter (PM_{10}), 41,000 tons of nitrogen oxides (NO_x), and 27,000 tons of sulfur dioxide (SO_2).

19. Jim Bridger's annual NO_x emissions are equivalent to the emissions of more than two million cars each driven 12,500 miles per year. (According to EPA, an average passenger

vehicle emits 38 pounds of NO_x per year. Jim Bridger emits approximately 82,000,000 pounds of NO_x per year. Thus $82,000,000 \div 38 = 2.1$ million.)

20. In 2004 PacifiCorp reported that Jim Bridger emitted over 280,000 pounds of hazardous air pollutants, including 120,000 pounds of hydrogen fluoride, 68,000 pounds of hydrochloric acid, and 100,000 pounds of sulfuric acid. PacifiCorp Toxic Release Inventory Report, 2004. Air pollutants identified by EPA as hazardous pursuant to Section 112 of the Clean Air Act, 42 U.S.C. § 7412, include those that are associated with carcinogenic, respiratory, nervous system, dermal, developmental, and/or reproductive health effects.

21. Every year Jim Bridger also discharges into Wyoming's air 440 pounds of mercury, another hazardous air pollutant. This amount of mercury is equivalent to the mercury in approximately 285,000 household thermometers. The amount of mercury in one household thermometer (0.7 g) is enough to contaminate all of the fish in a lake with a surface area of 20 acres.

22. Particulate matter of the size and type emitted from Jim Bridger's smokestacks is visible as a plume when it leaves the smokestacks, and contributes to a haze or loss of visibility in the atmosphere. Particulate matter of the size and type emitted from Jim Bridger's smokestacks is transported by winds for many miles. If breathed, fine particulate matter may be lodged deep in the lungs and has been linked to increased human illness and mortality. Particulate matter emitted from Jim Bridger includes hazardous air pollutants.

23. SO₂ and sulfate (SO₄) emissions also contribute to visual haze in the atmosphere. Sulfur dioxide emitted from coal combustion is chemically transformed into sulfate particles that are damaging to lungs, visibility, forests and property.

Clean Air Act Title V Operating Permit Requirements

24. The objective of the federal Clean Air Act 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.” Section 101(b), 42 U.S.C. § 7401(b).

25. Section 502(b) of the Clean Air Act, 42 U.S.C. § 7661a(b), required EPA to promulgate regulations establishing an operating permit program for stationary sources of air pollution. The regulations EPA promulgated, found at 40 C.F.R. Part 70, presently govern the establishment of federal operating permit programs.

26. Pursuant to EPA’s Part 70 regulations, the State of Wyoming created a Title V operating permit program to which EPA gave final approval on February 22, 1999. 64 Fed. Reg. 8523.

27. Each Title V permit issued pursuant to this program must contain “enforceable emission limitations and standards” necessary to assure compliance with applicable requirements of the Clean Air Act. Furthermore, the Clean Air Act specifically prohibits any permittee from violating any requirement of a Title V permit. 42 U.S.C. § 7661a(a).

28. Section 304(a) of the Clean Air Act, 42 U.S.C § 7604(a), authorizes any person to commence a civil action on his own behalf against any person “who is alleged to have violated (if there is evidence that alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter. . .” The Clean Air Act’s citizen suit provision was passed by Congress in 1970 to afford citizens “very broad opportunities to participate in the effort to prevent and abate air pollution.” 1 Legislative History of the Clean Air Act Amendments of 1970, Ser. No. 93-18, p. 138.

29. The Clean Air Act at 42 U.S.C §§ 7604(f)(1),(3), and (4) defines “Emission standard or limitation under this Act” to mean:

(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard . . . or (3) any condition or requirement under an applicable implementation plan relating to transportation control measures, air quality maintenance plans, vehicle inspection and maintenance programs or vapor recovery requirements, or any requirement under section 7411 or 7412 of this title (without regard to whether such requirement is expressed as an emission standard or otherwise); or (4) any other standard, limitation, or schedule established under any permit issued pursuant to subchapter V of this chapter or under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations which is in effect under this chapter or under an applicable implementation plan.

30. A permit condition in a Title V permit issued by WDEQ is an enforceable “Emission standard or limitation” as defined by 42 U.S.C §7604(f)(1), (3), and (4), and therefore violations of permit conditions are the proper subject of a citizen enforcement under 42 U.S.C. § 7604(a)(1).

PacifiCorp's Title V Operating Permits for Jim Bridger

31. On October 29, 2001, the Wyoming Department of Environmental Quality (WDEQ) issued Operating Permit No. 30-120-2 to PacifiCorp to limit the emission of air pollutants from the Jim Bridger power plant. Operating Permits in Wyoming are issued for a period of no more than five years. 42 U.S.C. § 7661a(b)(5)(B). WDEQ re-issued operating permits for Jim Bridger on June 15, 2004 (No. 31-120-1) and September 6, 2005 (No. 3-1-120-2). Each operating permit regulates the emission of air pollutants from Jim Bridger.

32. PacifiCorp did not object to, or otherwise appeal any provision of, Operating Permit Nos. 30-120-2, 31-120-1, and 3-1-120-2 (collectively, "Operating Permits").

33. Pursuant to each of the Operating Permits for Jim Bridger, "[a]ll terms and conditions of the permit[s], except those designated as not federally enforceable, are enforceable by EPA and citizens under the Act."

34. Pursuant to condition (F6)(a)(iii) in PacifiCorp's Operating Permits, the opacity of emissions from the stacks of Jim Bridger Units 1-3 is limited to 20 percent on a six-minute average, except for one two-minute period per hour in which opacity may not exceed 40 percent.

35. Pursuant to condition (F6)(b)(iv) in PacifiCorp's Operating Permits, the opacity of emissions from the stack of Jim Bridger Unit 4 is limited to 20 percent on a six-minute average except for one six-minute period per hour in which opacity may not exceed 27 percent.

36. In the air pollution context, percentage opacity is the degree to which the transmittance of light is reduced by air pollutants. A pollution plume of 20 percent opacity, for example, means that light passing through the plume is reduced by 20 percent. A pollution plume of 100 percent opacity is so dense that light is unable to pass through it.

37. The 20 percent opacity limit applicable to Jim Bridger Units 1-4 is an “emission standard or limitation” within the meaning of 42 U.S.C. § 7604(a)(1) and (f).

38. The 20 percent opacity limit applicable to Jim Bridger Units 1-4 in PacifiCorp’s Operating Permits is federally enforceable.

39. PacifiCorp’s Operating Permits do not describe an exception to the 20 percent opacity limit at Jim Bridger Units 1-3 for each of the following conditions: (1) chemical composition of the flyash producing high resistivity in the ash, (2) one precipitator gas path out of service for maintenance, (3) temporary boiler draft excursion caused by unit load change, (4) boiler draft excursions caused by adjusting pulverizers, fans, sootblowers, and air horns, (5) flue gas SO₃ conditioning system out of service, (6) operating precipitator rappers continuously to remove ash deposits, (7) gas path field or fields out of service for maintenance, (8) opacity spikes, cause unknown, (9) draft excursion caused by ash collecting system, (10) air frozen causing poor atomization in fuel oil burners, (11) boiler chemical clean, turbine off-line, ignitors on for temperature control during boiler clean, (12) unit in startup mode, boiler draft system on, oil fuel firing, (13) unit in shutdown mode, draft system on for boiler cool down, no fuel firing,

precipitator offline, (14) temporary boiler draft excursion caused by gas path being put in, or taken out of service, (15) loss of power to precipitator controls, (16) low stack temperature, suspect moisture interference probable cause, (17) suspect oil coating of precipitator internals from boiler startup, rapping precipitator to remove coating and buildup and (18) any other reason for which no exception to the limit exists.

40. PacifiCorp's Operating Permits do not describe an exception to the 20 percent opacity limit at Jim Bridger Unit 4 for each of the following conditions: (1) chemical composition of the flyash producing high resistivity in the ash, (2) one precipitator gas path out of service for maintenance, (3) temporary boiler draft excursion caused by unit load change, (4) boiler draft excursions caused by adjusting pulverizers, fans, sootblowers, and air horns, (5) flue gas SO₃ conditioning system out of service, (6) operating precipitator rappers continuously to remove ash deposits, (7) gas path field or fields out of service for maintenance, (8) opacity spikes, cause unknown, (9) draft excursion caused by ash collecting system, (10) air frozen causing poor atomization in fuel oil burners, (11) boiler chemical clean, turbine off-line, ignitors on for temperature control during boiler clean, (12) unit in startup mode, boiler draft system on, oil fuel firing, (13) unit in shutdown mode, draft system on for boiler cool down, no fuel firing, precipitator offline, (14) temporary boiler draft excursion caused by gas path being put in, or taken out of service, (15) loss of power to precipitator controls, (16) low stack temperature, suspect moisture interference probable cause, (17) suspect oil coating of precipitator internals

from boiler startup, rapping precipitator to remove coating and buildup and (18) any other reason for which no exception to the limit exists.

41. Pursuant to condition (F6)(c) in PacifiCorp's Operating Permits the opacity of emissions from the outlet of the electrostatic precipitator at Jim Bridger Unit 4 is limited to 30 percent on an hourly average.

42. The 30 percent opacity limit applicable to Jim Bridger Unit 4 in PacifiCorp's Operating Permits is an "emission standard or limitation" within the meaning of 42 U.S.C. § 7604(a)(1) and (f).

43. The 30 percent opacity limit applicable to Jim Bridger Unit 4 in PacifiCorp's Operating Permits is federally enforceable.

44. PacifiCorp's Operating Permits do not describe an exception to the 30 percent opacity limit applicable to Unit 4 for each of the following conditions: (1) chemical composition of the flyash producing high resistivity in the ash, (2) one precipitator gas path out of service for maintenance, (3) temporary boiler draft excursion caused by unit load change, (4) boiler draft excursions caused by adjusting pulverizers, fans, sootblowers, and air horns, (5) flue gas SO₃ conditioning system out of service, (6) operating precipitator rappers continuously to remove ash deposits, (7) gas path field or fields out of service for maintenance, (8) opacity spikes, cause unknown, (9) draft excursion caused by ash collecting system, (10) air frozen causing poor atomization in fuel oil burners, (11) boiler chemical clean, turbine off-line, ignitors on for

temperature control during boiler clean, (12) unit in startup mode, boiler draft system on, oil fuel firing, (13) unit in shutdown mode, draft system on for boiler cool down, no fuel firing, precipitator offline, (14) temporary boiler draft excursion caused by gas path being put in, or taken out of service, (15) loss of power to precipitator controls, (16) low stack temperature, suspect moisture interference probable cause, (17) suspect oil coating of precipitator internals from boiler startup, rapping precipitator to remove coating and buildup and (18) any other reason for which no exception to the limit exists.

Continuous Monitoring of Pollutants Discharged From Jim Bridger

45. Pursuant to condition (F16)(d) in PacifiCorp's Operating Permit No. 30-120-2, after October 1, 2001, PacifiCorp was required to monitor the opacity of emissions discharged from the stacks of Units 1-3 on a continuous basis. The requirement to monitor the opacity of emissions from the stacks of Units 1-3 was carried forward in operating permits 31-120-1 and 3-1-120-2 in condition (F19)(d)(i).

46. Pursuant to conditions (F6)(c) and (F16)(e) in PacifiCorp's operating permits 30-120-2 and 31-120-1, PacifiCorp is required to monitor the opacity of emissions discharged from the outlet of the electrostatic precipitator at Jim Bridger Unit 4 on a continuous basis. The requirement to monitor the opacity of emissions discharged from the outlet of the electrostatic precipitator at Jim Bridger Unit 4 was carried forward in Operating Permit 3-1-120-2 in conditions (F6)(c) and (F19)(d)(ii).

47. The opacity of emissions from Jim Bridger Units 1-4 is monitored and recorded on a continuous basis by continuous opacity monitors (COMs). The opacity data from the COMs in the stacks at Jim Bridger Units 1-3 is reported in six-minute averages; the opacity data from the COM at the outlet of the electrostatic precipitator at Jim Bridger Unit 4 is reported in one-hour averages.

48. The COMs at Jim Bridger consist of transmissometers that continuously measure, except for periods of downtime, the amount of light that can pass through the exhaust before such exhaust is emitted into the atmosphere. The less light that is able to pass through the exhaust gas due to the density of pollution, the greater the opacity.

49. The COMs that measure the opacity of emissions from Jim Bridger are located and certified consistent with the requirements found at 40 C.F.R. § 60, App. B, Performance Specification 1.

50. The opacity data collected by the COMs is retained in a computer at Jim Bridger.

51. The data from PacifiCorp's COMs at Jim Bridger show that emissions have exceeded 20 percent, PacifiCorp's permit limit, every calendar quarter over the last five years. In fact, the opacity of emissions from Jim Bridger has exceeded 20 percent thousands of times in the last five years. During these times, PacifiCorp's COMs recorded opacity readings that exceeded 80 percent opacity – over four times the 20 percent limit.

52. The COMs at Jim Bridger monitor visible pollutants that can be seen by the naked eye after the pollutants exit the stack. The pollutants identified by the COMs at Jim Bridger can contribute to a visible plume emanating from the smokestacks, and these pollutants can also contribute to a reduction in visibility in the area.

The Reporting of Excess Emissions from Jim Bridger

53. Pursuant to PacifiCorp's Operating Permits, conditions (F29) and (NSPS-D4), PacifiCorp is required to submit on a quarterly basis a written report to WDEQ that discloses each period of time in which emissions of pollutants from Jim Bridger Units 1-4 exceeded the applicable opacity standard ("excess emission reports").

54. PacifiCorp has certified as true, accurate, and complete its excess emission reports regarding Jim Bridger.

55. The opacity data in each of PacifiCorp's excess emission reports for Jim Bridger from the fourth quarter of 2001 through the third quarter of 2006, as set forth in the electronic files attached to plaintiffs' November 15, 2006 notice letter, is true, accurate, and complete.

Excess Emissions Impacts and Remedies

56. The COM readings in excess of 20 percent from Jim Bridger Units 1-3, and the COM readings in excess of 20 and 30 percent from Jim Bridger Unit 4, represent an increase in the amount of pollution discharged into the air compared to what the discharge would have been if the emissions had been less than 20 and 30 percent opacity.

57. The amount of pollution represented by opacity readings greater than the 20 and 30 percent limits could have been significantly reduced or eliminated altogether through the use of fabric filter dust collectors or “baghouses” at Jim Bridger. The use of appropriately sized, operated and maintained baghouses at Jim Bridger would ensure PacifiCorp’s future compliance with its opacity limits. The opacity of emissions could also have been reduced by using natural gas as a fuel rather than, or in combination with, coal, and by lowering coal-firing rates.

IV. CAUSES OF ACTION

58. Plaintiffs incorporate by reference and reallege the allegations contained in paragraphs 1 through 57 for all causes of action stated below.

FIRST CAUSE OF ACTION

Emissions From Jim Bridger Units 1-3 in Violation of 20 Percent Opacity Limit in Operating Permits No. 30-120-2, No. 31-120-1, and No. 3-1-120-2 (From October 2001 to the present)

59. Condition (F6)(a)(iii) in PacifiCorp Operating Permits No. 30-120-2, No. 31-120-1, and No. 3-1-120-2, prohibits the emission of visible pollutants from Jim Bridger Units 1-3 that exhibit greater than 20 percent opacity on a six-minute average basis, except that one two-minute reading per hour may be no more than 40 percent opacity.

60. A 20 percent opacity limit applicable to Jim Bridger Units 1-3 has applied at all times between October 1, 2001 and the date of this complaint.

61. Between October 1, 2001 and the date of this complaint, PacifiCorp has repeatedly violated condition (F6)(a)(iii) in Operating Permits No. 30-120-2, No. 31-120-1, and No. 3-1-120-2 by emitting from Jim Bridger Units 1-3 visible emissions in excess of 20 percent opacity on a six-minute average basis. Such violations are demonstrated by PacifiCorp's continuous opacity monitor data.

62. PacifiCorp continues to violate condition (F6)(a)(iii) in Operating Permit No. 3-1-120-2, and the Clean Air Act, by emitting from Jim Bridger Units 1-3 visible emissions in excess of 20 percent opacity on a six-minute average basis.

SECOND CAUSE OF ACTION

Emissions From Jim Bridger Unit 4 in Violation of 30 Percent Opacity Limit in Operating Permits No. 30-120-2, No. 31-120-1, and No. 3-1-120-2 (From October 2001 to the present)

63. Condition (F6)(c) in PacifiCorp Operating Permits No. 30-120-2, No. 31-120-1, and No. 3-1-120-2, prohibit the emission of visible pollutants from the outlet of the electrostatic precipitator at Jim Bridger Unit 4 in excess of 30 percent opacity on an hourly average basis.

64. A 30 percent opacity limit applicable to Jim Bridger Unit 4 has applied at all times between October 1, 2001 and the date of this complaint.

65. Between October 1, 2001 and the date of this complaint, PacifiCorp has repeatedly violated condition (F6)(c) in Operating Permits No. 30-120-2, No. 31-120-1, and No. 3-1-120-2, by emitting from the outlet of the electrostatic precipitator at Jim Bridger Unit 4

visible emissions in excess of 30 percent opacity on an hourly average basis. Such violations are demonstrated by PacifiCorp's continuous opacity monitor data.

66. PacifiCorp continues to violate condition (F6)(c) in Operating Permit No. 3-1-120-2, and the Clean Air Act, by emitting from the outlet of the electrostatic precipitator at Jim Bridger Unit 4 visible emissions in excess of 30 percent opacity on an hourly average basis.

THIRD CAUSE OF ACTION

Emissions From Jim Bridger Unit 4 in Violation of 20 Percent Opacity Limit in Operating Permits No. 30-120-2, No. 31-120-1, and No. 3-1-120-2 (From October 2001 to the present)

67. Condition (F6)(b)(iv) in PacifiCorp Operating Permits No. 30-120-2, No. 31-120-1, and No. 3-1-120-2, prohibits the emission of visible pollutants from the stack at Jim Bridger Unit 4 in excess of 20 percent opacity on an six-minute average basis, except that one six-minute reading per hour may be no more than 27 percent opacity.

68. A 20 percent opacity limit applicable to Jim Bridger Unit 4 has applied at all times between October 1, 2001 and the date of this complaint.

69. Between October 1, 2001 and the date of this complaint, PacifiCorp has repeatedly violated condition (F6)(b)(iv) in Operating Permits No. 30-120-2, No. 31-120-1, and No. 3-1-120-2, by emitting from the stack at Jim Bridger Unit 4 visible emissions in excess of 20 percent opacity on a six-minute average basis. Such violations are demonstrated by PacifiCorp's continuous opacity monitor data recorded at the outlet of the electrostatic precipitator at Jim

Bridger Unit 4. Readings recorded by PacifiCorp's continuous opacity monitors in excess of 30 percent opacity at the outlet of the electrostatic precipitator indicate that the opacity of emissions from the stack would be in excess of 20 percent opacity.

70. PacifiCorp continues to violate condition (F6)(b)(iv) in Operating Permit No. 3-1-120-2, and the Clean Air Act, by emitting from the stack of Jim Bridger Unit 4 visible emissions in excess of 20 percent opacity on a six-minute average basis.

V. RELIEF REQUESTED

WHEREFORE, plaintiffs respectfully request that this Court grant the following relief to correct defendant's significant and ongoing violations of law:

- A. DECLARE that defendant has violated and continues to violate Operating Permits No. 30-120-2, No. 31-120-1, and No. 3-1-120-2, and the Clean Air Act, by allowing emissions from Jim Bridger to exceed the applicable opacity limits;
- B. ISSUE A PERMANENT INJUNCTION enjoining defendant to achieve full and continuing compliance with the opacity limits in Operating Permit No. 3-1-120-2;
- C. ORDER defendant to pay to the federal Treasury a civil penalty of \$32,500 per day for each of defendant's violations of the Clean Air Act, as provided for by law. 40 U.S.C. § 7413(b); 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; 40 C.F.R. § 19.2. The penalties should be directed to finance EPA air compliance and enforcement activities, as provided for by 42 U.S.C. § 7604(a) and 42 U.S.C. § 7604(g)(1);

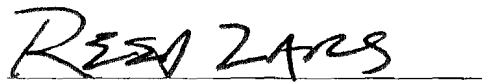
- D. ORDER defendant to pay up to \$100,000 for beneficial mitigation projects, as provided for by 42 U.S.C. § 7604(g)(2), consistent with the purposes of the Clean Air Act;
- E. ORDER defendant to pay plaintiffs their costs of litigation, including but not limited to reasonable attorney and expert witness fees, as authorized in Section 304 of the Clean Air Act, 42 U.S.C. § 7604(d); and
- F. GRANT such other relief as the Court deems necessary and proper.

VI. JURY DEMAND

Plaintiffs request a jury trial for all issues triable to a jury to the extent such issues are not resolved as a matter of law on motions for summary judgment.

DATED this 21ST day of February, 2007.

SIERRA CLUB and
WYOMING OUTDOOR COUNCIL,
Plaintiffs



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EXHIBIT TO PLAINTIFFS' COMPLAINT

Exhibit A: November 15, 2006 notice letter from Sierra Club and WOC to PacifiCorp, with compact disk.

Reed Zars
Attorney at Law
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Office: 307-745-7979 Fax: 307-745-7999

November 15, 2006

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Robert Arambel, Plant Managing Director
PacifiCorp
P.O. Box 158
Point of Rocks, WY 82942

Gregory E. Abel, Chairman
PacifiCorp
825 NE Multnomah
Portland, OR 97232

RE: Sierra Club and Wyoming Outdoor Council Notice of Intent to Sue PacifiCorp for Violations of the Clean Air Act at the Jim Bridger Power Plant in Sweetwater County, Wyoming.

Dear PacifiCorp:

I am writing on behalf of Sierra Club and the Wyoming Outdoor Council (WOC) to notify you of their intent to file suit to address significant and ongoing violations of the Clean Air Act at the Jim Bridger Power Plant (Jim Bridger) in Sweetwater County, Wyoming.

Jim Bridger, a four unit, 2,300 megawatt (MW) coal-fired electricity generating power plant located approximately 28 miles east of Rock Springs, Wyoming, is owned by PacifiCorp (2/3) and Idaho Power Company (1/3) and is operated by PacifiCorp. MidAmerican Energy Holdings Company, a self-described "global energy provider" based in Iowa, owns PacifiCorp. IDACORP, another energy holdings company based in Idaho, owns Idaho Power. Each of the four tangentially-fired boilers burns over 500,000 pounds of coal per hour. Coal for Jim Bridger comes by conveyor and truck from the nearby Bridger mine. Cooling water for Jim Bridger (34,300 acre-feet per year) is delivered to the plant via a 40-mile pipeline from the Green River.

Pursuant to the Clean Air Act, 42 U.S.C. § 7604(a)(1), and the operating permit for Jim Bridger, citizens are entitled to bring suit to enjoin violations of an emission standard or limitation, and to seek civil penalties for such violations. The Clean Air Act provides for civil penalties of up to \$32,500 for each violation per day. 42 U.S.C. § 7413(e); 40 C.F.R. § 19.2; 40 U.S.C. § 7413(b); 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; 69 Fed.Reg. 7121 (Feb. 13, 2004). To the extent required by § 7604(a)(1) of the Clean Air Act, and Wyo. Stat. § 35-11-904, I am therefore writing to notify you that Sierra Club and WOC intend to file suit in the applicable federal district court anytime 60 days after the postmark date of this letter to enjoin and penalize the violations described below.

PacifiCorp is responsible for the violations alleged in this letter as both operator and co-owner of Jim Bridger.

I. Background

According to PacifiCorp's June 15, 2004 Operating Permit, all four units at Jim Bridger cumulatively emit on an annual basis into the air of Wyoming approximately 14,000 tons of particulate matter, 41,000 tons of nitrogen oxides (NO_x), and 27,000 tons of sulfur dioxide (SO₂).

Jim Bridger also emits approximately 18,000,000 tons of carbon dioxide (CO₂) every year, accelerating the warming of the Earth's atmosphere and causing profound environmental and economic impacts worldwide. It would take over 418,000,000 tree seedlings grown for *ten years* to off-set Jim Bridger's *annual* discharge of CO₂.¹

Jim Bridger's annual NO_x emissions are equivalent to the emissions of two million cars each driven 12,500 miles per year. (According to EPA, an average vehicle emits 41 pounds of NO_x per year. Jim Bridger emits approximately 82,00,000 pounds of NO_x per year. Thus $82,000,000 \div 41 = 2.0$ million.)²

According to its 2004 Toxic Release Inventory reports, all four Jim Bridger units cumulatively emit on an annual basis over 280,000 pounds of hazardous air pollutants, including 120,000 pounds of hydrogen fluoride, 68,000 pounds of hydrochloric acid, and 100,000 pounds of sulfuric acid. Jim Bridger also emits at least 440 pounds of mercury into the air every year.

The amount of mercury that Jim Bridger discharges into the air every year is equivalent to the mercury in approximately 285,000 household thermometers. The amount of mercury in one household thermometer (0.1 g) is enough to contaminate all of the fish in a lake with a surface area of 20 acres.³

II. The Violations

Jim Bridger has violated, and continues to violate: **(1)** the 20 percent opacity limit on a six-minute average in permit condition (F6)(a)(iii) applicable to Units 1-3, and in permit condition (F6)(b)(iv) applicable to Unit 4, in Jim Bridger's Operating Permits including but not limited to those issued by the Wyoming Department of Environmental Quality (DEQ) on October 29, 2001 (No. 30-120-2), June 15, 2004 (No. 31-120-1), and September 6, 2005 (No. 3-1-120-2); and **(2)** and the 30 percent opacity limit on an hourly average in condition (F6)(c) in

¹ See, <http://www.usctegateway.net/tool/>

² See, <http://www.epa.gov/otaq/consumer/f00013.pdf>

³ See, http://www.noharm.org/library/docs/Going_Green_The_Mercury_Problem_-_Fast_Facts.pdf

Jim Bridger's Operating Permits including but not limited to those issued by DEQ on October 29, 2001 (No. 30-120-2), June 15, 2004 (No. 31-120-1), and September 6, 2005 (No. 3-1-120-2).

Violations of the 20 and 30 Percent Opacity Limits at Jim Bridger.

PacifiCorp has regularly violated the 20 percent opacity limit applicable to Units 1-3 in condition (F6)(a)(iii) in the permits listed above. The evidence of each 20 percent opacity limit violation is set forth in PacifiCorp's Continuous Emissions Monitoring Reports that have been filed with DEQ on a quarterly basis. Each 6-minute average continuous opacity monitor reading in excess of 20 percent as described in each of Jim Bridger's quarterly reports that contain the opacity data from Jim Bridger's continuous stack opacity monitors between November 15, 2001 to the date of this letter, constitutes a violation of the 20 percent limit for which you are liable to pay a civil penalty. Such readings are set forth in the electronic files on compact disk included with this letter. Each opacity reading in excess of this limit after the date of this letter constitutes an additional violation for which you are also liable to pay a civil penalty.

PacifiCorp also has regularly violated the 20 percent stack opacity limit applicable to Unit 4 in condition (F6)(b)(iv) in the permits listed above. The evidence of each 20 percent opacity limit violation is set forth in Jim Bridger's Continuous Emissions Monitoring Reports that have been filed with DEQ on a quarterly basis. Each hourly average continuous opacity monitor reading in excess of 30 percent as described in each of Jim Bridger's quarterly reports that contain the opacity data from Jim Bridger's Unit 4 duct opacity monitor between November 15, 2001 to the date of this letter, constitutes ten separate violations of the 20 percent, six-minute average stack opacity limit for which you are liable to pay a civil penalty. Such readings are set forth in the electronic files on compact disk included with this letter. Each hourly duct opacity reading in excess of 30 percent after the date of this letter constitutes ten additional violations of the 20 percent, six-minute stack opacity limit applicable to Unit 4 for which you are also liable to pay a civil penalty.

In addition, PacifiCorp has regularly violated the 30 percent hourly opacity limit applicable to Unit 4 in condition (F6)(c) in the permits listed above. The evidence of each 30 percent hourly opacity limit violation is set forth in Jim Bridger's Continuous Emissions Monitoring Reports that have been filed with DEQ on a quarterly basis. Each hourly average continuous duct opacity monitor reading in excess of 30 percent as described in each of Jim Bridger's quarterly reports that contain the opacity data from Jim Bridger's Unit 4 continuous duct opacity monitor between November 15, 2001 to the date of this letter, constitutes a violation of the 30 percent limit for which you are liable to pay a civil penalty. Such readings are set forth in the electronic files on compact disk included with this letter. Each opacity reading in excess of this limit after the date of this letter constitutes an additional violation for which you are also liable to pay a civil penalty.

A penalty may be excused for an opacity violation caused by an “abnormal condition” or “equipment malfunction” pursuant to permit condition (G21), but only if PacifiCorp establishes that it followed the procedural prerequisites and meets the substantive elements of this excuse. Without limitation, continuous opacity monitor readings in excess of the 20 and 30 percent opacity limits that PacifiCorp stated in its quarterly reports were caused by the following events are not valid defenses: (1) chemical composition of the flyash producing high resistivity in the ash, (2) one precipitator gas path out of service for maintenance, (3) temporary boiler draft excursion caused by unit load change, (4) boiler draft excursions caused by adjusting pulverizers, fans, sootblowers, and air horns, (5) flue gas SO₃ conditioning system out of service, (6) operating precipitator rappers continuously to remove ash deposits, (7) gas path field or fields out of service for maintenance, (8) opacity spikes, cause unknown, (9) draft excursion caused by ash collecting system, (10) air frozen causing poor atomization in fuel oil burners, (11) boiler chemical clean, turbine off-line, ignitors on for temperature control during boiler clean, (12) unit in startup mode, boiler draft system on, oil fuel firing, (13) unit in shutdown mode, draft system on for boiler cool down, no fuel firing, precipitator offline, (14) temporary boiler draft excursion caused by gas path being put in, or taken out of service. (15) loss of power to precipitator controls, (16) low stack temperature, suspect moisture interference probable cause, (17) suspect oil coating of precipitator internals from boiler startup, rapping precipitator to remove coating and buildup and (18) any other reason for which no exception to the limit exists. In any event, to the extent PacifiCorp has any federally-applicable defense to any reading in excess of the applicable opacity limit, it is PacifiCorp’s burden to prove.

III. Offer to review information.

To the extent you have evidence that shows, contrary to the allegations in this letter, that PacifiCorp is in full compliance with all applicable requirements at Jim Bridger we urge you to provide it to us so that we may potentially avoid, or at least limit, litigation on these issues.

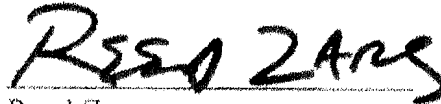
IV. Conclusion

PacifiCorp is currently operating Jim Bridger in violation of the Clean Air Act, the Wyoming SIP and applicable permits. Its civil penalty liability for past violations extends at least for the last five years. PacifiCorp should only operate the Jim Bridger Power Plant in the future in full compliance with its opacity limits and all other applicable requirements.

The address of Sierra Club in Wyoming is 247 Coffeen Avenue, Sheridan, WY 82801, and the national headquarters of Sierra Club is located at 85 Second Street, San Francisco, California 94105. The address of the Wyoming Outdoor Council is 262 Lincoln, Lander, WY 82520. Sierra Club and WOC have individual members who have been, and continue to be, injured by the excessive and unlawful emissions from Jim Bridger. If you have any questions regarding the allegations in this notice, believe any of the foregoing information to be in error, wish to discuss the exchange of information consistent with the suggestion above, or would

otherwise would like to discuss a settlement of this matter prior to the initiation of litigation, please contact the attorney below.

Yours Sincerely,



Reed Zars

Att: CD w/PacifiCorp quarterly reports 4th Quarter 2001 through 3rd Quarter 2006.

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