



McGILLIVRAY
WESTERBERG
& BENDER LLC
ATTORNEYS

June 16, 2014

Via Certified U.S. Mail

Mr. J. Peter Lark
General Manager and CEO
Lansing Board of Water & Light
1232 Haco Dr.
Lansing, MI 48912

Ms. Brandie Ekren
General Counsel
Lansing Board of Water & Light
1232 Haco Dr.
Lansing, MI 48912

Ms. Deborah Allen
Plant Manager
Erickson Station
3725 S. Canal Road
Lansing, MI 48917

Mr. Thomas Dickinson
Plant Manager
Eckert Station
601 Island Avenue
Lansing, MI 48910

Re: *Notice of Intent to Sue Lansing Board of Water & Light for Violations of the Clean Air Act at the Eckert and Erickson Power Plants*

To Those Addressed Above:

On behalf of the Sierra Club and its members, we write to give you notice that Sierra Club intends to file a civil action against Lansing Board of Water & Light ("LBWL") for violations of the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, which have occurred and continue to occur at the Erickson and Eckert Stations (collectively, the "Stations"). This notice is being provided pursuant to 42 U.S.C. § 7604(b) and 40 C.F.R. Part 54.

A. Factual Background

The Erickson Station, located at 3725 S. Canal Road, Lansing, Ingham County, Michigan 48917, was constructed in 1973 and consists of a single pulverized coal-fired boiler and a turbine generator rated at 165 MW. It is equipped with an electrostatic

precipitator (ESP), low-NO_x burners, and Overfire Air. The Eckert Station, located at 601 Island Avenue, Lansing, Ingham County, Michigan 48901, is LBWL's oldest power plant; it consists of six pulverized coal-fired boilers installed between 1954 and 1970. The boilers are rated between 41 MW and 77 MW, and each is equipped with an ESP.

Each of the Stations operates coal-fired boilers that emit numerous air pollutants, including sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon dioxide (CO₂), carbon monoxide (CO), mercury, particulate matter, hydrogen chloride, and others. Individually and collectively these pollutants contribute to global warming, acid rain, regional haze, formation of ground level ozone or smog, fine particulates or soot, pollution of surface waters, and other effects harmful to human health and the environment. The violations described in this Notice Letter injure, and unless abated will continue to injure, the economic, aesthetic, health, and recreational interests of the Sierra Club and its members.

B. Violations of Applicable Opacity Limitations under Michigan's SIP, the Clean Air Act, and LBWL's Air Permits.

The Michigan State Implementation Plan ("SIP") provides the following limitation on opacity, as a surrogate for particulate emissions, which is applicable to each of the coal-fired boilers at each of the Stations covered by this Notice Letter:

Except as provided in subrules (2), (3), and (4) of this rule, a person shall not cause or permit to be discharged into the outer air from a process or process equipment a visible emission of a density greater than the most stringent of the following: (a) A 6-minute average of 20% opacity, except for 1 6-minute average per hour of not more than 27% opacity. (b) A limit specified by an applicable federal new source performance standard. (c) A limit specified as a condition of a permit to install or permit to operate.

Mich. Admin. Code R. 336.1301(1). This provision of the Michigan SIP has been approved by the U.S. EPA and is therefore federally enforceable. *See* 71 Fed. Reg. 31,093 (June 1, 2006); 40 C.F.R. 52.1170(c)(122)(i)(c)(1).

In addition, each of the Stations operates pursuant to a Renewable Operating Permit ("ROP") issued to LBWL by the Michigan Department of Environmental Quality

("MDEQ") pursuant to Title V of the Clean Air Act. The opacity limitation in the Michigan SIP, along with other emissions limitations made applicable to the Stations by other provisions of state or federal law, are incorporated into the ROP for each facility. The ROP is federally enforceable. The provisions of Mich. Admin. Code R. 336.1301 and the ROPs issued to LBWL are independently enforceable. A summary of the opacity limitation for each facility, and the regulatory basis for the limit, is provided in Table 1 below.

Table 1: Applicable Opacity Limits for Each Facility and Boiler

Station, Emissions Point and Unit	Opacity Limit(s)	Regulatory Basis for Limit ¹
Erickson Station - All Units	20% opacity, except for one 6-minute period per hour of not more than 27% opacity.	ROP No. MI-ROP-B4001-2010/PTI No. MI-PTI-B4001-2010, Condition A.11 (page 5); Mich. Admin. Code R. 336.1301(1)
Eckert Station - All Units	20% opacity, except for one 6-minute period per hour of not more than 27% opacity.	ROP No. MI-ROP-B2647-2012 / PTI No. MI-PTI-B2647-2012, Condition A.11 (page 6) (Plant-wide), Condition FGECKERT I.2. (page 39) (Eckert Units 1-6); Mich. Admin. Code R. 336.1301(1)(a) & (b)

The Michigan SIP also contains a limited affirmative defense (as to penalties only) for emissions violations that occur during periods of startup or shutdown. Mich. Admin. Code R. 336.1916 ("Rule 916"). LBWL would bear the burden of proof of this affirmative defense at trial, *id.* at 336.1916(1); *see also* 68 Fed. Reg. 8551 (Feb. 24, 2003) (identifying the criteria in Rule 916 "which are part of the defendant's burden of proof."). To claim this affirmative defense for any excess opacity emissions, LBWL would have to demonstrate, at a minimum, each of the following:

¹ Only the current ROP is specifically identified by permit number. Each Station has been subject to one or more predecessor permits that were in effect on or after January 1, 2008. Each such predecessor permit contained an identical opacity limitation as the current permit. Sierra Club intends to sue for each violation of an opacity limit contained in any predecessor permit for any of the Stations covered by this Notice Letter.

- (a) The periods of excess emissions that occurred during start-up or shutdown were short and infrequent and could not have been prevented through careful planning and design.
 - (b) The excess emissions that occurred during start-up or shutdown were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.
 - (c) The excess emissions caused by a bypass (an intentional diversion of control equipment) were unavoidable to prevent loss of life, personal injury, or severe property damage.
 - (d) The facility was operated at all times in a manner consistent with good practice for minimizing emissions.
 - (e) The frequency and duration of operating in start-up or shutdown mode were minimized to the maximum extent practicable.
 - (f) All reasonably possible steps were taken to minimize the impact of the excess emissions on ambient air quality.
 - (g) All emission monitoring systems were kept in operation if at all possible.
 - (h) The actions during the period of excess emissions were documented by contemporaneous operating logs or other relevant evidence as provided by R 336.1912.
- (2) This affirmative defense does not apply when a single emission unit, or multiple emission units at a stationary source, causes an exceedance of the national ambient air quality standards or any applicable prevention of significant deterioration increment.

Mich. Admin. Code R. 336.1916(1)-(2). To the extent LBWL may claim a startup or shutdown affirmative defense (as to penalties) for any of the excess opacity emissions identified in this Notice Letter, Sierra Club intends to dispute each and every application of the defense.

Each of the Stations uses a continuous opacity monitoring system ("COMS") and a data acquisition and handling system ("DAHS"), which measure and record the opacity at each emission unit or stack subject to an opacity limitation. The results of these measurements are reported on a quarterly basis by LBWL to MDEQ using

"Opacity Performance Summary Reports" and/or "Excess Emissions and Monitoring Systems Performance Report—Opacity Exceedence Events and Opacity Downtime Events" (collectively, "Opacity EERs") that identify the duration and cause of each period of excess opacity emissions. These quarterly Opacity EERs are required to identify "the magnitude, in actual percent opacity, of all 6-minute averages of opacity more than the applicable opacity standard for each hour of operation." These quarterly reports are accompanied by a standardized Renewable Operating Permit Report Certification, which must be signed by responsible official on behalf of LBWL and contains the following certification: "I certify that, based on information and belief formed after reasonable inquiry, the statements and information in this report and the supporting enclosures are true, accurate and complete." These reports are public records, and they form the basis for the opacity violations identified in this Notice Letter.

Sierra Club alleges that LBWL has exceeded the applicable opacity limitation at each coal-fired boiler at each of the Stations on numerous occasions since January 1, 2009. We have enclosed with this Notice Letter a CD containing a copy of each of LBWL's quarterly Opacity EERs for the period January 1, 2009 through December 31, 2013 for each coal-fired boiler at each of the Stations that has been obtained by Sierra Club. You may identify the specific opacity violations alleged herein in one of two ways:

- (1) Review the enclosed quarterly Opacity EERs (or your own copies of those Opacity EERs), specifically referring to the pages captioned "Opacity Exceedence Events—Duration", which identify each 6-minute period of reported excess opacity emissions by start date and time, end date and time, duration, and maximum opacity value; or
- (2) Review your raw COMS data, which may be obtained from your DAHS at each Station; search for each 6-minute period during which the measured opacity exceeded the applicable opacity limitation for each boiler.

LBWL also identifies purported "causes of COMS excess emissions" on its quarterly Opacity EERs. These asserted causes include "boiler startup/shutdown" and

“control equipment problems,” among others. Sierra Club disputes any attempt to characterize excess opacity emissions as anything other than a violation of the applicable opacity limits and the Clean Air Act, or to mischaracterize any cause of violation. LBWL bears the burden of proving that any reported incident of excess opacity emissions is subject to an affirmative defense, regardless of the purported cause of the excess emissions identified on the EERs.

The opacity exceedences alleged by Sierra Club, each of which was self-reported to MDEQ by the LBWL in its quarterly Opacity EERs, are summarized in Table 2, below.

Table 2: Summary of Opacity Violations by Station/Unit (2009-2013)

Facility / Boiler	Total Minutes of Reported Excess Opacity	Total Discrete 6-minute Opacity Violations
Eckert #1	4272	712
Eckert #2	4590	765
Eckert #3	4038	673
Eckert #4	1716	286
Eckert #5	3654	609
Eckert #6	1392	232
Erickson #1	1758	293
Total Opacity Violations:		3,570

Each 6-minute period of excess opacity is a separate and distinct violation of the applicable 20% opacity limitation contained in the Michigan SIP, the Title V ROP for the relevant Station, and the Clean Air Act. As identified above and in the attached Opacity EERs, Sierra Club alleges that LBWL committed at least 3,570 Clean Air Act violations during the period January 1, 2009 - December 31, 2013 at the Eckert and Erickson Stations by emitting air pollution with an opacity exceeding the applicable opacity limitation for those Stations.

More recent opacity EERs have yet to be made publicly available or obtained by Sierra Club, but Sierra Club believes it is likely to uncover additional opacity violations at each unit during the 60-day Notice Period and during the course of litigation.

Furthermore, the raw data from LBWL's COMS may show additional violations that were not reported to the State of Michigan. This letter puts you on notice that Sierra Club intends to sue for each violation of the applicable 6-minute opacity limits set forth herein, which as described above can be determined based on self-monitoring data collected and kept by LBWL. Each 6-minute period during which the average opacity exceeds the limit set forth in Table 1, above, is a separate and distinct violation of the Clean Air Act. Sierra Club also alleges that LBWL's opacity violations are ongoing and likely to continue in the future until such time as a court grants Sierra Club its requested relief. Therefore, Sierra Club hereby notifies you of its intent to sue LBWL for any additional opacity violations that have occurred or may yet occur at the Stations.

C. Violations of the Clean Air Act's Prevention of Significant Deterioration (PSD) Requirements and the Michigan SIP's Permit-to-Install Requirements.

The Clean Air Act's Prevention of Significant Deterioration ("PSD") program prohibits the construction and subsequent operation of a major emitting facility in an area designated as attainment unless a PSD permit has been issued. 42 U.S.C. § 7475(a).² A "major emitting facility" is any source within one of the categories in 42 U.S.C. § 7479(1) that has the potential to emit 100 tons per year of any pollutant, or any other source (not within such categories) with the potential to emit 250 tons per year or more of any air pollutant, 42 U.S.C. § 7479(1). "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a

² Sections 110(a) and 161 of the Clean Air Act require each state to adopt a SIP containing regulations implementing the PSD program. 42 U.S.C. §§ 7401(a) and 7471. In 1980, EPA disapproved Michigan's proposed PSD program and incorporated the federal regulations at 40 C.F.R. § 52.21(b) through (w) into the Michigan SIP. 45 Fed. Reg. 52676, 52741 (Aug. 7, 1980). EPA subsequently delegated MDEQ the authority to issue PSD permits through the federal PSD regulations. (Delegation letter, September 26, 1988). Effective October 16, 2008, EPA conditionally approved Michigan's PSD regulations at Mich. Admin. Code R. 336.2801 *et seq.* (with certain exceptions not applicable here), and gave final approval on March 25, 2010 (75 Fed. Reg. 14,352). On September 27, 2010, and September 12, 2012, EPA approved revisions to Michigan's PSD SIP provisions. 75 Fed. Reg. 59,083; 77 Fed. Reg. 56,124. The PSD regulations in Michigan's SIP are materially identical to EPA's PSD regulations at 40 C.F.R. § 52.21.

change in emissions. 40 C.F.R. § 52.21(b)(8); Mich. Admin. Code R. 336.2801(m); *see also* 42 U.S.C. § 7479(2)(B).³

Any major emitting source in an attainment or unclassified area that intends to construct a major modification must first obtain a PSD permit. 42 U.S.C. § 7475(a); 40 C.F.R. § 52.21(i); Mich. Admin. Code R. 336.2802(3). "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any criteria pollutant subject to regulation under the Act. 40 C.F.R. § 52.21(b)(2)(i); Mich. Admin. Code R. 336.2801(aa)(i). "Significant" is defined at 40 C.F.R. § 52.21(b)(23)(i) and Mich. Admin. Code R. 336.2801(qq)(i) in reference to a net emissions increase or the potential of a source to emit any of the criteria pollutants at a rate of emission that would equal or exceed pollutant specified thresholds (for example, 40 tons per year for SO₂). A major emitting facility constructing a major modification must also install and operate best available control technology (BACT) for each pollutant subject to regulation under the Act that it would have the potential to emit in significant quantities. 40 C.F.R. § 52.21(j); Mich. Admin. Code R. 336.2810(1) and (3). A major modification must also meet the applicable standards in 40 C.F.R. parts 60 and 61. *Id.*

³ Because the Eckert and Erickson Stations are electric utility steam generating plants, LBWL has had the option since March, 2003, to use an "actual-to-projected-actual" method to determine whether a project results in a significant emission increase. 40 C.F.R. § 52.21(a)(2)(iv)(c); 40 C.F.R. Pt. 51, Appx. S; Mich. Admin. R. 336.2802(4)(ii)(c), 336.2902(c). That method compares pre-project (baseline actual) emissions to post-project "projected actual emissions," which in turn contains two options. Under the first option, LBWL could have elected to project future emissions based on the highest projections of business activity, full utilization, and other factors, in which case LBWL would have been required to submit both pre-project and post project reports to the U.S. Environmental Protection Agency and the State of Michigan. 40 C.F.R. §§ 52.21(b)(41)(ii)(a)-(c), (r)(6)(ii), (iv); 40 C.F.R. Pt. 51, Appx. S; Mich. Admin. R. 336.2801(II)(i)-(ii), 336.2818(3)(a)-(d), 336.2901(dd)(i)-(ii)(C). However, LBWL has certified that it has not submitted such records, and thus it elected by default to determine emission increases under the second option: based on the plants' pre-project emissions compared to the post-project potential to emit. 40 C.F.R. §§ 52.21(b)(41)(d), (r)(6); 40 C.F.R. Pt. 51, Appx. S; Mich. Admin. R. 336.2801(II)(iii), 336.2818(3), 336.2901(dd)(ii)(D), 336.2902(6). If LBWL had elected to use projections of future utilization and emissions, rather than the post-project potential to emit, it would have violated the reporting obligations for the use of that method.

Michigan's SIP requires any person that installs, constructs, reconstructs, or modifies any process or process equipment that may emit any criteria pollutant under the Act or any air contaminant to obtain a Permit to Install (PTI) prior to undertaking the installation, construction, reconstruction, or modification. Mich. Admin. Code R. 336.1201(1). A PTI is required to operate a modified source until either a new PTI is issued or the requirements of the PTI are incorporated into a Renewable Operating Permit. Mich. Admin. Code R. 336.1201(6). For purposes of PTI issuance, Michigan's SIP defines "modify" as making a physical change in, or change in the method of operation of, existing process or process equipment which increases the amount of any air contaminant emitted into the outer air which is not already allowed to be emitted under the conditions of a permit or order or which results in the emission of any toxic air contaminant into the outer air not previously emitted. Mich. Admin. Code R. 336.1113(e).

On numerous occasions, LBLW has constructed a major modification at the Erickson Station that resulted in a significant net emissions increase of one or more regulated pollutants (including nitrogen oxides, sulfur dioxide, carbon monoxide, greenhouse gases, particulate matter, particulate matter smaller than 10 microns (PM₁₀) and particulate matter smaller than 2.5 microns (PM_{2.5})) without first obtaining a PSD permit or a PTI, and without applying BACT for each such pollutant. These unpermitted major modifications include, but are not limited to:

- 1) A project in or about 2000 to replace tubes on the Erickson superheater (*Project No. 00-129/Authorization No. 9681*);
- 2) A project in or about 2004 to convert the Erickson station to burn Powder River Basin coal (*Project No. 1999-106/Authorization No. 9579*);
- 3) A project in or about 2006 to upgrade screen tubes and convection pass tubes at the Erickson station (*Project No. 06-130/Authorization No. 5014*);
- 4) A project in or about 2010 to replace the secondary superheater and economizer at the Erickson station (*Project No. 08-120/Authorization No. PE-20000*);

- 5) A project in or about 2013 to upgrade the water wall tubes at the Erickson station (*Project No. 12-107/Authorization No. PE-20080*)

Additionally, on numerous occasions, LBWL has constructed a major modification at the Eckert Station that resulted in a significant net emissions increase of one or more regulated pollutants (including nitrogen oxides, sulfur dioxide, carbon monoxide, greenhouse gases, particulate matter, particulate matter smaller than 10 microns (PM₁₀) and particulate matter smaller than 2.5 microns (PM_{2.5})) without first obtaining a PSD permit or a PTI, and without applying BACT for each such pollutant. These unpermitted major modifications include, but are not limited to:

- 1) A project in or about 1998 to modify the Unit 5 turbine and boiler to operate the boiler in cycling mode, including upgrades to high pressure and low pressure turbine blading, diaphragms, and steam inlet nozzle block; installation of retractable high pressure packing; and machining to the control valves (*Project No. 9560/Authorization No. 98-108*);
- 2) A project in or about 2002 to replace Boiler #2 and #3 feedwater regulators (*Project No. 02-101/Authorization No. PE-9785*);
- 3) A project in or about 2009 to upgrade and modify the Unit #6 turbine, including modifications to the high pressure and low pressure sections and an upgrade to the generator retaining rings, stator wedges, and installation of a flux probe (*Project No. 09-106/ Authorization PE-20036*);
- 4) A project in or about 2009 to replace the Unit #6 economizer tubing (*Project No. PE-20043*)

Each of these projects at the Erickson and Eckert Stations is an ongoing violation. LBWL continues to violate the PSD permitting requirements of the Clean Air Act and the PTI requirements of the Michigan SIP (including 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and Mich. Admin. Code R. 336.2801, *et seq.*) by failing to obtain the required permits.

Additionally, each day that LBWL operates the Erickson and Eckert Station boilers without applying and complying with best available control technology (BACT) limits constitutes a new violation of the requirement to (1) obtain a permit containing BACT limits; and (2) install and operate pollution controls representing application of BACT for nitrogen oxides, sulfur dioxide, carbon monoxide, particulate matter, greenhouse gases, PM₁₀ and PM_{2.5}.

D. Violations of the Clean Air Act's Nonattainment Area New Source Review Program Requirements.

From 2004 until 2006, Ingham County, Michigan, was designated as not attaining the 1997, 8-hour, National Ambient Air Quality Standard (NAAQS) for ozone. Part D of Title I of the Clean Air Act sets forth a program for construction and modification of pollution sources in areas designated as nonattainment of a NAAQS, which is generally known as Nonattainment New Source Review or NNSR. 42 U.S.C. §§ 7501-7515. Pursuant to 42 U.S.C. § 7502(c)(5), Michigan was required to adopt NNSR rules that include provisions to require that all permits for construction and operation of modified major stationary sources within the nonattainment areas conform to the requirements of 42 U.S.C. § 7503. 40 C.F.R. Part 51, Appendix S applies to nonattainment areas until EPA approves a SIP provision implementing the NNSR program for ozone.

Appendix S and Mich. Admin. Code R. 336.2908 provide that construction and operation permits for major modifications in nonattainment areas may only be issued if (a) sufficient offsetting emission reductions have been obtained to reduce existing emissions to the point where reasonable further progress towards meeting the NAAQS is made; and (b) the pollution controls to be employed will reduce emissions to the lowest achievable emission rate. Further, the obligation to comply with the lowest achievable emission rate is a freestanding obligation that applies to each major modification, regardless of whether a permit has been obtained. 40 CFR Pt. 51, Appx S; Mich. Admin. R. 336.2908(3).

A "major modification" is defined in Appendix S and Mich. Admin. Code R. 336.2901(s) as any physical change or change in method of operation that results in both a significant increase and a significant net increase of a regulated nonattainment

pollutant from a major stationary source. A significant increase for ozone is 40 tons of volatile organic compounds or NO_x per year. 40 C.F.R. Pt. 51, Appx. S; Mich. Admin. Code R. 336.2901(gg)(D).

The projects listed above that were commenced during the years 2004, 2005, and 2006 were physical changes and changes in method of operation, each of which resulted in a significant net emissions increase of NO_x, and therefore of ozone. By failing to obtain the required permit, including applicable offsets and lowest achievable emission rate limits, LBWL violated 42 U.S.C. § 7501-7515, 40 C.F.R. Part 51, Appx. S, and Mich. Admin. R. 336.2901-336.2908. Additionally, each day on which the Erickson plant operated after each such modification constitutes another violation of the obligation to comply with lowest achievable emission rate.

E. Violations of the Clean Air Act's Title V Permitting Requirements.

Title V of the Act establishes an operating permit program for certain sources, including "major sources." The purpose of Title V is to ensure that all "applicable requirements" for compliance with the Clean Air Act, including PSD requirements, are collected in one place. 42 U.S.C. § 7661-7661f. EPA granted interim approval of the State of Michigan's Title V operating permit program, which took effect on February 10, 1997. EPA granted final approval effective on November 30, 2001. 40 C.F.R. Part 70, Appendix A. Michigan's Title V operating permit program is codified at Mich. Admin. Code R. 336.1210-336.1218 ("Rule 210-218").

The Clean Air Act and Michigan's Title V operating permit program require that each Title V permit include, among other things, enforceable emissions limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act and the requirements of the applicable SIP, including any applicable PSD requirement to comply with an emission rate that meets BACT. 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(a)(1) and Michigan's Rule 213.

The CAA and Michigan's Title V operating permit program from the year 2000 onward have required an operator of an emissions unit to apply for a modification to a Title V permit when there is a modification pursuant to Title I of the Act. 42 U.S.C. §§

7661a, 7661b; 40 C.F.R. § 70.5; Mich. Admin. Code R. 336.1216(3). Any application for a Title V permit must be complete and include, *inter alia*, the citation and description of all requirements applicable to the source and a description and compliance plan for requirements for which the source is not in compliance. 42 U.S.C. § 7661b(c), 40 C.F.R. §§ 70.5(a) and (c), and Mich. Stat. § 334.5507(1)(f). The Act also requires each permit application for a Title V permit to identify the requirements applicable to the source, and, for those requirements that the source is not currently complying with, propose a schedule of compliance. 42 U.S.C. § 7661b(b); 40 C.F.R. § 70.5(c)(8).

LBWL violated the provisions of the Clean Air Act, 40 C.F.R. Part 70, and the Michigan SIP cited above by constructing numerous major modifications at the Erickson and Eckert plants (including, but not limited to, those projects identified in Sections C and D of this notice letter) without seeking and obtaining a modification to its renewable operating permit and without identifying the PSD and BACT obligations described in Section C as requirements applicable to the Erickson and Eckert plants, and without identifying the NNSR and LAER obligations described in Section D as requirements applicable to the Erickson plant, as a result of those major modifications. These violations are ongoing, and will continue until such time as LBWL obtains a modification of its renewable operating permits for the Stations reflecting the requisite PSD/BACT and NNSR/LAER requirements discussed above.

F. Notice and Relief to be Sought

The citizen suit provision of the Clean Air Act allows Sierra Club to commence suit in a United States district court against LBWL for violations of an emission standard or limitation. 42 U.S.C. § 7604(a). An emission standard or limitation is defined as any requirement under 42 U.S.C. § 7411 or § 7412, any condition or requirement applicable under a state implementation plan approved by the U.S. EPA, any Title V permit, or any requirement to obtain a permit as a condition of operations. 42 U.S.C. § 7604(f).

This letter serves as your notice that Sierra Club intends to file a suit to enforce the Clean Air Act for the violations described herein and any other violations for which this letter provides sufficient notice. Sierra Club will ask the district court to impose appropriate injunctive relief, civil penalties, a beneficial environmental project in the

areas impacted by air pollution emissions from LBWL's Stations, as authorized by 42 U.S.C. § 7604(g)(2), and Sierra Club's costs of litigation and attorneys' fees.

E. Party Giving Notice

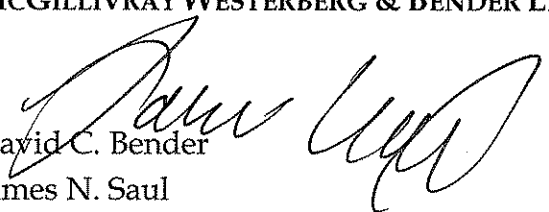
The party giving notice is the Sierra Club. Sierra Club has a national office located at 85 Second Street, 2nd Floor, San Francisco, CA 94105, and also has Michigan Chapter offices located at 109 E. Grand River Avenue, Lansing, MI 48906. However, Sierra Club requests that all communications be provided to its attorneys:

David C. Bender
James N. Saul
McGillivray Westerberg & Bender LLC
211 S. Paterson St., Suite 320
Madison, WI 53703
P: (608) 310-3560
F: (608) 310-3561

If you believe any of the facts described above are in error or have any information indicating that you have not violated the Clean Air Act we urge you to contact the undersigned counsel immediately.

Sierra Club is interested in obtaining early and prompt resolution of these violations, and will be willing to discuss the claims alleged during the 60-day notice period. However, if those discussions do not occur or if the matter is not resolved to Sierra Club's satisfaction during the notice period, Sierra Club will file suit on or about the 60th day following the date of this letter.

MCGILLIVRAY WESTERBERG & BENDER LLC


David C. Bender
James N. Saul

Counsel for Sierra Club

COPIES SENT BY CERTIFIED MAIL TO:

Hon. Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dr. Susan Hedman
U.S. EPA, Region 5
Ralph Metcalfe Federal Building
77 West Jackson Blvd.
Chicago, IL 60604-3590

Hon. Eric H. Holder, Jr.
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Governor Rick Snyder
Office of the Governor
P.O. Box 30013
Lansing, Michigan 48909

COPIES SENT BY FIRST CLASS U.S. MAIL TO:

Mr. Dennis M. Louney
Commissioner
Lansing Board of Water & Light
1232 Haco Dr.
Lansing, MI 48912

Ms. Margaret A. Bossenbery
Commissioner
Lansing Board of Water & Light
1232 Haco Dr.
Lansing, MI 48912

Mr. Anthony McCloud
Commissioner
Lansing Board of Water & Light
1232 Haco Dr.
Lansing, MI 48912

Ms. Sandra Zerkle
Commissioner
Lansing Board of Water & Light
1232 Haco Dr.
Lansing, MI 48912

Mr. David J. Price
Commissioner
Lansing Board of Water & Light
1232 Haco Dr.
Lansing, MI 48912

Mr. Tracy Thomas
Commissioner
Lansing Board of Water & Light
1232 Haco Dr.
Lansing, MI 48912

Ms. Cynthia M. Ward
Commissioner
Lansing Board of Water & Light
1232 Haco Dr.
Lansing, MI 4891

Mr. Anthony M. Mullen
Commissioner
Lansing Board of Water & Light
1232 Haco Dr.
Lansing, MI 48912