

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

10 JUL 14 AM 8:27

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER )

MidAmerican Energy Company )  
Des Moines, Iowa )

Respondent )

) Docket No. CAA-07-2010-0023  
)  
)  
)  
)

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to Section 113(a)(3)(B) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(a)(3)(B), MidAmerican Energy Company (MidAmerican) is hereby ordered by the United States Environmental Protection Agency, Region 7 (EPA) to comply with the Acid Deposition Control Provisions of Title IV of the Act, 42 U.S.C. §7651, and regulations promulgated thereunder at 40 C.F.R. Parts 72 and 75.

I. Statutory and Regulatory Background

1. Title IV of the CAA Amendments of 1990 established the Acid Rain Program, a cap and trade system designed to control emissions of sulfur dioxide. Allowances are the currency with which compliance with the SO<sub>2</sub> emissions requirements is achieved. Units that reduce their emissions below the number of allowances they hold may trade allowances with other units in their system, sell them to other utilities on the open market or through EPA auctions, or bank them to cover emissions in future years. Under the provisions of Title IV, each allowance permits a unit to emit, during or after a specified calendar year, one ton of sulfur dioxide.

2. Section 412(e) of the Act, 42 U.S.C. § 7651k(e), makes it unlawful for the owner or operator of any source subject to Title IV of the Act to operate a source without complying with Section 412 and the implementing regulations at 40 C.F.R. Parts 72 and 75.

3. 40 C.F.R. § 72.95 provides, in relevant part, that the following allowance deduction formula shall be used to determine the total number of allowances to be deducted for the calendar year from the allowances held in an affected source's compliance account as of the allowance transfer deadline applicable to that year:

Total allowance deducted = Tons emitted + Allowances surrendered for underutilization  
+ Allowances deducted for Phase I extensions + Allowances deducted for  
substitution or compensating units.

4. 40 C.F.R. § 75.22 provides, in relevant part, that (a) the owner or operator shall use the following methods, which are found in Appendix A-4 to Part 60 of this chapter or have been published by ASTM, to conduct the following tests: monitoring system tests for certification or recertification of continuous emission monitoring systems and expected monitoring systems under Appendix E to this part; the emission tests required under § 75.81(c) and (d); and required quality assurance and quality control tests:

- (1) Methods 1 or 1A are the reference methods for selection of sampling site and sample traverses.
- (2) Method 2 or its allowable alternatives, as provided in appendix A to Part 60 of this chapter, except for Methods 2B and 2E, are the reference methods for determination of volumetric flow.

5. Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), grants the Administrator of EPA the authority to make a finding of violation of a requirement or prohibition of Section 113, and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition. This authority has been delegated to the Director, Air and Waste Management Division, Region 7.

## **II. Definitions**

6. "Owner or operator" is defined at 40 C.F.R. § 72.2, as "any person who is an owner or who operates, controls, or supervises an affected unit, affected source, combustion source, or process source and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit, affected source, combustion source, or process source."

## **III. Factual Background**

7. Respondent is a corporation that owns and operates electric and gas utility facilities and is incorporated under the laws of Iowa.

8. Respondent is the owner and/or operator of the Phase II affected units 2 and 3 at Walter Scott Energy Center and the Phase I affected unit Boiler 9 at Riverside Generating Station.

9. On or about August 19, 2009, MidAmerican disclosed to EPA inaccurate reporting of SO<sub>2</sub> emissions for the following plants and years:  
Walter Scott Energy Center Unit 2: 2002-2004, 2006-2008  
Walter Scott Energy Center Unit 3: 2001-2002, 2004-2008  
Riverside Generating Station Boiler 9: 2004-2005  
MidAmerican determined that from 2000-2008, the three subject units under-reported

SO2 emissions by a total of approximately 478 tons due to an inaccurate wall-effect factor used by the test contractor during CEMS relative accuracy test audit procedures.

10. As a result, Respondent agreed to permanently surrender to the EPA Enforcement Surrender Account four hundred seventy-eight (478) sulfur dioxide ("SO2") allowances as defined under the Acid Deposition Control provisions of Title IV of the CAA.

11. To accomplish the surrender of allowances set forth in paragraph 10 above, Respondent agreed to surrender to the EPA Enforcement Surrender Account the following SO2 allowances from MidAmerican's facility allowance accounts:

For: Walter Scott Units 2 and 3  
Council Bluffs, Iowa  
465 allowances

For: Riverside Generating Station Boiler 9  
Bettendorf, Iowa  
13 allowances

12. MidAmerican did not realize an economic benefit as a result of the incorrect calculation, and held enough allowances for each compliance year from 2000-2008 to cover MidAmerican's reported miscalculation of allowances for each year from 2000-2008.

#### **IV. Failure to Report and Deduct Acid Rain Credits**

13. Based on information available to EPA, including information disclosed by MidAmerican to EPA, EPA has determined that Respondent failed to report and deduct Acid Rain credits as required by 40 C.F.R. § 75.22(a)(2). Respondent also failed to use a proper test method as required by 40 C.F.R. § 60 Appendix A, Method 2H, 2.2.2. Therefore, Respondent failed to comply with the provisions of Section 412 of the Act, 42 U.S.C. § 7651k, and the implementing regulations at 40 C.F.R. Parts 72 and 75, at Walter Scott Units 2 and 3 and Riverside Boiler 9 of the MidAmerican station.

#### **V. Compliance Order**

14. Pursuant to Section 113(a)(3)(B) of the CAA, 42 U.S.C. 7413(a)(3)(B), EPA hereby orders Respondent to comply with the requirements set forth below:

15. Respondent is hereby ordered to comply with the Acid Deposition Control Provisions of Title IV of the Act, 42 U.S.C. § 7651, and regulations promulgated hereunder at 40 C.F.R. Parts 72 and 75.

16. Respondent shall within thirty (30) days of the effective date of this order, use the CAMD Business System (CBS) for the purpose of transferring 465 vintage 2010 or earlier SO2 allowances from the Walter Scott facility account and 13 vintage 2010 or earlier SO2 allowances

from the Riverside facility account to the EPA Enforcement Surrender Account for SO2 (account number 000000000043).

17. Respondent shall within ten (10) days of receipt of the allowance transfer confirmation from the Office of Air and Radiation, Clean Air Markets Division, submit to the EPA, Region 7, a copy of said confirmation.

18. The submission required by paragraph 17 shall be sent to:

Mr. Hugh McCullough  
Air Permitting and Compliance Branch  
U.S. EPA Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

#### **VI. Potential Liability**

19. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. Under Section 113(a) of the CAA, the Administrator may, inter alia: issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties of up to \$25,000 per day of violation; or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and the Civil Monetary Penalty Inflation Adjustment Rule, this penalty maximum was increased to \$32,500 per day for violations occurring on or after March 15, 2004. In addition, Respondent may be subject to an administrative or civil action for similar penalties and/or injunctive relief, pursuant to Sections 113(b) and (d) of the CAA, based on the violations addressed by this Order. Furthermore, for any person who knowingly violates the provisions of the CAA as set forth in Section 113(c) of the CAA, Section 113(c) provides for criminal penalties or imprisonment, or both.

20. This Order shall not relieve Respondent of its obligation to comply with all applicable federal, State, and local laws, regulations and other legal requirements, including but not limited to Title IV of the CAA, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit.

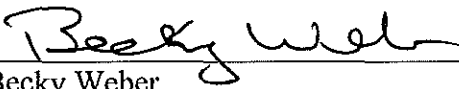
21. This Order shall become effective immediately upon receipt unless, within five (5) business days of receipt hereof, MidAmerican requests a conference with EPA. In such event, the effective date of the Order shall be extended until the date of such conference or to a time established by EPA. To request such a conference, contact Julie Murray, Attorney, Office of Regional Counsel, EPA Region 7, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101, telephone 913-551-7448.

MidAmerican Energy Company  
Administrative Compliance Order  
EPA Docket No.: CAA 07-2010-0023

22. All information and documents submitted by MidAmerican to EPA pursuant to this Order shall be subject to public inspection unless identified as confidential by MidAmerican in accordance with the requirements of 40 C.F.R. Part 2. Information and documents so identified will be disclosed only in accordance with the provisions of 40 C.F.R. Part 2.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date 7/12/10

  
Becky Weber  
Director  
Air and Waste Management Division

Certificate of Service

I hereby certify the original of this Administrative Compliance Order to MidAmerican Energy Company was hand delivered to the Regional Hearing Clerk and true and correct copies are being sent this 4<sup>th</sup> day of July, 2010, to:

Kevin Dodson  
Director, Environmental Programs, Compliance and Permitting  
MidAmerican Energy Company  
4299 NW Urbandale Drive  
Urbandale, Iowa 50322

and


Peg Roy  
Senior Attorney  
MidAmerican Energy Company  
666 Grand Ave. Suite 500  
Des Moines, Iowa 50306-0657

and

Paul J. Leighton  
Registered Agent  
MidAmerican Energy Company  
4299 NW Urbandale Drive  
Urbandale, Iowa 50322

and

Brian Hutchins  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324



---

Kimberly Gifford