

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2014 SEP 29 PM 4: 28

IN THE MATTER OF: )  
)  
Western Sugar Cooperative )  
18317 Highway 144 )  
Fort Morgan, CO 80701 )  
)  
& )  
)  
Western Sugar Cooperative )  
3020 State Avenue )  
Billings, MT 59101 )  
)  
Respondent. )

Docket No. ~~CAA-08-2014-0015~~ **CAA-08-2014-0015**

**ADMINISTRATIVE ORDER  
FOR COMPLIANCE**

Proceeding under Section 113(a) of  
the Clean Air Act, 42 U.S.C. §  
7413(a)

**STATUTORY AUTHORITY**

This Administrative Order for Compliance (Order) is issued to the Western Sugar Cooperative (Respondent) pursuant to section 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(B), as amended, for violations of the CAA's program for National Emission Standards for Hazardous Air Pollutants (NESHAPs) as set forth in section 112 of the CAA, 42 U.S.C. § 7412. The violation occurred at the Western Sugar Cooperative's Fort Morgan, Colorado and Billings, Montana coal-fired boilers. The authority to issue the Order has been properly delegated to the undersigned official.

**BACKGROUND**

1. The Western Sugar Cooperative Fort Morgan, located at 18317 Highway 144, Fort Morgan, Colorado, is the owner and operator of two existing coal-fired boilers, 196 MMBtu/hr each, burning sub-bituminous coal.
2. The Western Sugar Cooperative Billings, located at 3020 State Avenue, Billings, Montana, is the owner and operator of three existing coal-fired boilers, 148 MMBtu/hr each, burning sub-bituminous coal.
3. The Western Sugar Cooperative boilers in Fort Morgan, Colorado and in Billings, Montana are "area sources" of hazardous air pollutants, as that term is defined at 40 C.F.R. § 63.2.
4. On November 14, 2013, the Western Sugar Cooperative requested a compliance date extension from the EPA for its area source boilers that are subject to the NESHAPs. The compliance date for initial compliance testing for the boilers was September 17, 2014. The Western Sugar Cooperative asserted that a valid performance test may not be conducted during the period of shutdown as the reason for the extension request. The schedule requirement creates a unique problem for the Western Sugar

Cooperative because historically they do not operate from late February to mid-September and normal or representative operational loads are not achieved until sometime in October. A valid performance test must be run at normal or representative operational loads; therefore, the Western Sugar Cooperative asserted that the performance test to demonstrate compliance should be delayed until normal or representative operational loads can be achieved.

5. On July 10, 2014, the Western Sugar Cooperative formally updated the EPA regarding their request for an extension of the performance testing timeline for the boilers located at the Fort Morgan, Colorado and Billings, Montana facilities. That update indicated that performance testing would not be performed until November 15, 2014, when the facilities will be operating at sufficient capacity to be characterized as normal or representative operational loads.

### **NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

6. The boilers identified in Paragraphs 1 and 2 are subject to emission and operating limitations pursuant to the NESHAP's "Maximum Achievable Control Technology" (MACT) regulations for Industrial, Commercial, and Institutional Boilers Area Sources, codified at 40 C.F.R. Part 63, Subpart JJJJJJ. The compliance date for existing boilers under this subpart was September 17, 2014. 40 C.F.R. § 63.11196(a).
7. Pursuant to 40 C.F.R. § 63.11210(a), sources "must demonstrate initial compliance with each emission limit specified in Table 1 to this subpart that applies to you by either conducting performance (stack) tests, as applicable, according to § 63.11212 and Table 4 to this subpart or, for mercury, conducting fuel analyses, as applicable, according to § 63.11213 and Table 5 to this subpart."
8. Under 40 C.F.R. § 63.11210(b), existing affected area source boilers that have applicable emission limits "must demonstrate initial compliance with the applicable emission limits no later than 180 days after the compliance date that is specified in § 63.11196 and according to the applicable provisions in § 63.7(a)(2)...."

### **FINDINGS OF VIOLATION**

9. Failure to conduct performance tests at the Western Sugar Cooperative Billings and the Western Sugar Cooperative Fort Morgan facilities by September 17, 2014 are violations of 40 C.F.R. § 63.11210(b) of the NESHAPs for existing area source boilers.

### **COMPLIANCE ORDER**

10. Pursuant to section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), the EPA hereby issues the following order to the Western Sugar Cooperative Billings and the Western Sugar Cooperative Fort Morgan:

No later than November 15, 2014, the Western Sugar Cooperative Fort Morgan and the Western Sugar Cooperative Billings shall conduct the initial compliance performance tests required by 40 C.F.R. Part 63, Subpart JJJJJJ for the two existing coal-fired boilers (196 MMBtu/hr each) located at the Fort Morgan facility and the three existing coal-fired boilers (148 MMBtu/hr each) located at the Billings facility.

## **REPORTING REQUIREMENTS**

11. The Western Sugar Cooperative Fort Morgan shall provide a letter to the Director of the Air & Toxics Technical Enforcement Program at the EPA Region 8, 1595 Wynkoop Street, Denver, CO, 80202, no later than 30 calendar days after the initial performance testing. The letter shall indicate when initial performance testing was conducted, along with the results of the testing.
12. The Western Sugar Cooperative Billings shall provide a letter to the Director of the Air & Toxics Technical Enforcement Program at the EPA Region 8, 1595 Wynkoop Street, Denver, CO, 80202, no later than 30 calendar days after the initial performance testing compliance. The letter shall indicate when initial performance testing was conducted, along with the results of the testing.

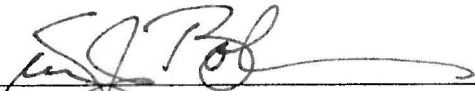
## **ENFORCEMENT**

13. Issuance of this Order does not preclude any other action by the EPA to redress past or future violations of the CAA, including any of the following:
  - a. an administrative penalty complaint pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), for penalties of not more than \$37,500 per day for each violation;
  - b. a civil action pursuant to section 113(b) of the CAA, 42 U.S.C. § 7413(b), for injunctive relief or civil penalties of not more than \$37,500 per day for each violation occurring; and
  - c. a criminal action pursuant to 42 U.S.C. § 7413 or Title 18 of the U.S. Code.
14. Pursuant to section 120 of the CAA, 42 U.S.C. § 7420, the EPA is also authorized to assess noncompliance penalties aimed at recovering the economic value that any person received by not complying with the CAA.
15. Pursuant to section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), failure to comply with this Order may lead to a civil action to obtain compliance and/or an action for civil or criminal penalties.
16. The Western Sugar Cooperative Fort Morgan and the Western Sugar Cooperative Billings may seek federal judicial review of this Order pursuant to section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

## **OPPORTUNITY FOR CONFERENCE**

The EPA is offering the Western Sugar Cooperative Fort Morgan and the Western Sugar Cooperative Billings an opportunity for a conference to discuss the Order. The request for such a conference must be made no later than fifteen (15) calendar days from the date the Western Sugar Cooperative Fort Morgan

and the Western Sugar Cooperative Billings receives this Order. If the Western Sugar Cooperative Fort Morgan and the Western Sugar Cooperative Billings wishes to make arrangements for a conference, please contact Virginia Sorrell, Enforcement Attorney, U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202-1129. Ms. Sorrell's phone number is (303) 312-6669. By offering the opportunity for a conference or participating in one, the EPA does not waive or limit its right to any remedy available under the CAA.

By:   
Suzanne J. Bohan  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Date: SEP 29 2014

**IN THE MATTER OF: WESTERN SUGAR COOPERATIVE (FORT MORGAN, CO) AND  
WESTERN SUGAR COOPERATIVE (BILLINGS, MT)  
DOCKET NO.: CAA-08-2014-0015**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one true and correct copy of the foregoing **ADMINISTRATIVE ORDER FOR COMPLIANCE** were hand delivered to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail to the following Monday, September 29, 2014 as indicated below:

to:

Shawn Sullivan  
Environmental Manager  
Western Sugar Cooperative  
1221 8<sup>th</sup> Avenue, Suite E  
Greeley, CO 80631  
CERTIFIED MAIL # 7008 3230 0003 0726 0481

Date: Monday, September 29, 2014

By: Dayle Aldinger  
Dayle Aldinger