

**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)

EASTERN KENTUCKY POWER)
COOPERATIVE WILLIAM C. DALE)
TITLE V PERMIT No. V-08-009)

Issued by the Kentucky Environmental and)
Public Protection Cabinet)

Petition No. V-08-_____

OFFICE OF THE
EXECUTIVE SECRETARY

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SIERRA CLUB AND KENTUCKY ENVIRONMENTAL FOUNDATION PETITION TO
HAVE THE ADMINISTRATOR OBJECT TO THE EAST KENTUCKY POWER
COOPERATIVE'S WILLIAM C. DALE STATION COAL-FIRED POWER PLANT TITLE V
PERMIT

I. INTRODUCTION

Pursuant to Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), the Sierra Club and the Kentucky Environmental Foundation (collectively "Petitioners") petition the Administrator of the U.S. Environmental Protection Agency ("the Administrator" or "EPA") to object to the Title V operating permit issued by the Kentucky Environmental and Public Protection Cabinet, Department for Environmental Protection, Division for Air Quality (Kentucky DAQ), for the East Kentucky Power Cooperative (EKPC) William C. Dale Station ("Dale"). The Administrator is required to object to the Dale Permit because, as demonstrated below, the content of the permit does not meet requirements found in the Clean Air Act.

II. PREVIOUS PROCEEDINGS

The EPA granted final approval of the Kentucky Title V operating permit program on October 31, 2001. See 66 Fed. Reg. 54,953 (Oct. 31, 2001). Kentucky DAQ is the agency responsible for issuing Title V operating permits in Kentucky. 401 KAR 52:020.

According to the KY DAQ:

On May 6, 2008, public notice of the availability of the draft permit and supporting material was published in *The Winchester Sun* in Winchester, Kentucky. The public comment period expired 30 days from the date of publication.

Petitioners timely submitted comments on the draft permit on June 5th, 2008.

According to the KY DAQ:

The U.S. EPA was notified of the issuance of the proposed permit on August 11, 2008 via e-mail. The comment period expired 45 days from the date of e-mail. No comments were received during this period.

Executive Summary, FINAL, Title V, Operating Permit: V-08-009 William C. Dale Power Station. Thus, EPA's review period ended on September 25th, 2008. Therefore, Petitioners' petition is due November 24, 2008. Art Hofmeister of EPA Region 4 confirmed this due date in an August 25, 2008 e-mail to Petitioners' counsel. Hence, this petition is timely filed.

III. THE DALE PLANT

Dale Station is an old, dirty coal fired power plant located near Ford, Kentucky on the border of Madison County. The oldest unit at Dale Station is over 50 years old and the "newest" unit is 45 years old.

Madison County's fine particulate matter (PM 2.5) ambient air monitor shows that we have ambient levels of approximately 13 ug/m³ of PM 2.5. The United States Environmental Protection Agency (US EPA) Clean Air Scientific Advisory Committee has recommended that the PM 2.5 National Ambient Air Quality Standard (NAAQS) be reduced to 13-14 ug/m³.

Dale Station emitted over 15 million pounds of sulfur dioxide, the main contributor to fine particulate matter, in 2003. Thus, it is not surprising that 7 deaths per year are attributable to the pollution from Dale Station, according to a study done by the group, Clear the Air. See http://www.catf.us/projects/power_sector/power_plant_emissions/pollution_locator/. This web page also shows that Dale Station emits approximately 32 pounds per year of mercury, contributing to unsafe levels of mercury in all of our water bodies in Madison County. According to the Benchmarking Air Emissions – 2002, and Benchmarking Air Emissions, 2004 EKPC was the fifth most polluting power company out of the top 100 in the whole country, when it comes to sulfur dioxide emission rates.

IV. ARGUMENT

A. LEGAL BACKGROUND AND STANDARD OF REVIEW

The Clean Air Act is “Congress’s response to well-documented scientific and social concerns about the quality of the air that sustains life on earth and protects it from . . . degradation and pollution caused by modern industrial society.” Delaware Valley Citizens Council for Clean Air v. Davis, 932 F.2d 256, 260 (3rd Cir. 1991). A key component of achieving the Clean Air Act’s goal of protecting our precious air is the Title V operating permit program. Title V permits are supposed to consolidate all of the requirements for a facility into a single permit and provide for adequate monitoring and reporting to ensure the regulatory agencies and the public that the permittee is complying with its permit. See generally S. Rep. No. 101-228 at 346-47; see also In re: Roosevelt Regional Landfill, (EPA Administrator May 11, 1999) at 64 FR 25,336.

When a state or local air quality permitting authority issues a Title V operating permit, the EPA will object if EPA determines that the permit is not in compliance with any applicable

requirement or requirements under 40 CFR Part 70. 40 CFR § 70.8(c). However, if the EPA does not object on its own, then “any person may petition the Administrator within 60 days after the expiration of the Administrator’s 45-day review period to make such objection.” 40 CFR § 70.8(d); 42 U.S.C. § 7661d(b)(2)(CAA § 505(b)(2)). “To justify exercise of an objection by EPA to a [T]itle V permit pursuant to Section 505(b)(2), a petitioner must demonstrate that the permit is not in compliance with applicable requirements of the Act, including the requirements of Part 70. [40 CFR] § 70.8(d).” In re: PacifiCorp’s Jim Bridger and Naughton Plants, VIII-00-1 (EPA Administrator Nov. 16, 2000) at 4.

B. ERRORS IN THE PERMIT WHICH WARRANT AN OBJECTION BY EPA

1) THE MAXIMUM HEAT INPUT RATES IN THE PERMIT MUST BE ENFORCEABLE LIMITS.

The Permit lists the maximum heat inputs for the boilers. See Final Permit at page 2 of 45 (maximum continuous rating of 255.9 MMBtu/hr for units 1 and 2); page 9 of 45 (maximum continuous rating of 796.3 MMBtu/hr for unit 3 and 756 MMBtu/hr for unit 4). However, the Permit fails to clearly state that these maximum heat inputs are enforceable limits. KY DAQ’s response to comments indicates that KY DAQ does not view the heat input rates as enforceable limits although KY DAQ does not provide any support for its claim and does not address 40 C.F.R. § 52.928 at all. See Comments and Response on the Draft Permit (Response) at page 12, Division Response 2.

EPA should object and require that the Permit explicitly provide that the maximum heat inputs are enforceable limits. Presumably, as was the case with EKPC’s Spurlock Station and TVA Paradise, Dale has a state issued operating permit that includes these maximum heat input. Furthermore, EPA position with regard to EKPC’s Spurlock Station is that these maximum heat

inputs included in the permit are enforceable limits and should be in the Title V permit. See United States v. East Kentucky Power Cooperative, 04-cv-34 (EDKy), Complaint at 16 – 17 (Third Claim for Relief) (Jan. 28, 2004) attached as Exhibit 1. There is no basis for EPA to take a different position on this issue with regard to EKPC's Dale power plant. Similarly, EPA has recently objected to the Title V permit for the Tennessee Valley Authority's Paradise Station coal fired power plant on essentially the same basis. See Feb. 18, 2005 letter from US EPA Beverly Bannister to KY DAQ John Lyons objecting to Paradise Title V permit attached as Exhibit 2.

Most importantly, the SO₂ emission limits in the Dale Permit are designed to ensure compliance with the SO₂ NAAQS. See Permit at pages 3 and 11 of 45 citing 40 C.F.R. § 52.928; 40 C.F.R. § 52.928 (The revised SO₂ emission limit for large coal-fired boilers in Bell, Clark, and Woodford Counties, submitted on June 29, 1979, was disapproved since it did not provide for attainment and maintenance of all SO₂ NAAQS. The limit approved by EPA on May 10, 1976 (41 FR 19105), remained the limit applicable to these sources.). However, an emission limit, expressed in lbs/mmBtu, cannot ensure compliance with an ambient air quality standard like a NAAQS because the total mass of pollutant emitted can increase with an increase in the heat input level, even though the source is in compliance with the lbs/mmBtu limit. An increase in the total mass of a pollutant emitted can increase ambient concentrations of that pollutant. Thus, the maximum heat input must also be controlled in order to ensure protection of the SO₂ NAAQS.

In other words, EPA must have used a mass emission rate when approving 40 C.F.R. § 52.928 because part of the approval was determining that the emission rates in 40 C.F.R. § 52.928 will ensure compliance with the SO₂ NAAQS. The emission rates used to support EPA's

compliance determination had two components; an emission limit in lbs/mmbtu and an input rate in mmbtu/hr. Both of these components are part of 40 C.F.R. § 52.928 and both of these components are applicable which requires that they must be included in the Dale Title V permit. EPA must object to the lack of clearly stated maximum heat input emission limits and require them in the Dale Title V permit along with adequate monitoring and reporting to ensure compliance.

2) THE COAL HANDLING EQUIPMENT NEEDS AN AVERAGING TIME FOR ITS PM EMISSION LIMIT AND MONITORING TO ENSURE COMPLIANCE WITH THAT EMISSION LIMIT.

Petitioners submitted a comment regarding the coal handling equipment which explained:

Furthermore, the compliance demonstration method has no rational relationship to a three hour emission limit [which is in the draft permit] as the input data is in monthly units but the emission limit is a three hour averaging time. Thus, a new compliance demonstration method is needed.

Rather than fix the problem of inadequate monitoring, an issue which has drawn an EPA objection to a KY DAQ permit in the past, KY DAQ simply deleted the averaging time out of the emission limit. However, KY DAQ cannot do this.

As a threshold matter, Petitioners did not raise the issue of a lack of an averaging time for the PM emission limit for the coal handling equipment in their comments because there was an averaging time in the draft permit at the time of Petitioners' comments. Thus, Petitioners are allowed to raise this issue for the first time in this petition.

As to the merits, KY DAQ cannot delete the averaging time to make its monitoring fit with the emission limits. It is a fundamental rule of permitting that to have emission limits that are enforceable as a practical matter, the emission limit must have an averaging time. Therefore, EPA should object to the permit and require an averaging time be placed back in the permit for

the PM emission limit for the coal handling equipment. The original 3 hour averaging time is the most appropriate.

Once the averaging time is returned to the permit, the monitoring and reporting needs to be adequate to ensure compliance with this three hour average emission limit. This is the same issue that EPA objected to in the TVA Paradise Title V permit. See Ex. 2 at second page.

V. CONCLUSION

For the reasons explained above, Petitioners request that EPA object to the Dale Title V permit.

Respectfully submitted,



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Dated: November 21, 2008

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

Eastern District of Kentucky
FILED

JAN 28 2004

AT LEXINGTON
LESLIE G WHITMER
CLERK U S DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
EAST KENTUCKY POWER)
COOPERATIVE, INC.,)
)
Defendant.)

Civil Action No. 04-34-KSF

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

NATURE OF THE ACTION

1. This is a civil action brought against EAST KENTUCKY POWER COOPERATIVE, INC. ("EKPC" or "Defendant") pursuant to Sections 113(b) and 167 of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(b) and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. §§ 7470-92, the New Source Performance Standards ("NSPS") of the Act, 42 U.S.C. § 7411, title V of the Act, 42 U.S.C. § 7661 *et seq.*, and the State Implementation Plan adopted by the Commonwealth of Kentucky and approved by EPA pursuant to Section 110 of the Act, 42

U.S.C. § 7410. Defendant modified, and thereafter operated, three electric generating units at two plants in Kentucky without first obtaining appropriate permits authorizing the modification and subsequent operation of these units, and without installing and employing the best available control technology to control emissions of nitrogen oxides (“NO_x”), sulfur dioxide (“SO₂”), and/or particulate matter (“PM”), as the Act requires. Defendant also operated one of its units at a heat rate input in excess of 4,850 million BTUs per hour, in violation of a condition contained in operating permits applicable to that plant. In addition, Defendant modified, and thereafter operated, two steam generating units located at one of its plants, resulting in emissions of NO_x, SO₂, and/or PM in violation of applicable New Source Performance Standards.

2. As a result of Defendant’s operation of the generating units following these unlawful modifications and the absence of appropriate controls, massive amounts of NO_x, SO₂, and/or PM have been, and still are being, released into the atmosphere.

JURISDICTION AND VENUE

3. This Court has jurisdiction of the subject matter of this action pursuant to Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in this District pursuant to Sections 113(b) of the Act, 42 U.S.C. §§ 7413(b), and 28 U.S.C. §§ 1391(b), (c) and 1395(a), because violations occurred and are occurring in this District, and the facilities at issue are operated by Defendant in this District.

NOTICES

5. The United States has provided notice of the commencement of this action to the State of Kentucky as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

6. The 30-day period established in 42 U.S.C. § 7413, between issuance of the Notices of Violation and commencement of a civil action, has elapsed.

THE DEFENDANT

7. Defendant owns and is an operator of fossil fuel fired electrical generating stations in Kentucky.

8. Defendant is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY BACKGROUND

9. The Clean Air Act is designed to protect and enhance the quality of the nation’s air so as to promote the public health and welfare and the productive capacity of its population.

Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

The National Ambient Air Quality Standards

10. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards (“NAAQS” or “ambient air quality standards”) for those air pollutants (“criteria pollutants”) for which air quality criteria have been issued pursuant to Section 108 of the Act, 42 U.S.C. § 7408. The primary NAAQS are to be adequate to protect the public health with an adequate margin of safety, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

11. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the

NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an “attainment” area. An area that does not meet the NAAQS is a “nonattainment” area. An area that cannot be classified due to insufficient data is “unclassifiable.”

12. At times relevant to this complaint, Defendant’s electrical generating plants that are the subject of this action were each located in an area that had been classified as attainment or unclassifiable for one or more of the following pollutants: NO_x, SO₂, and/or PM.

13. Pursuant to 42 U.S.C. § 7410, each State must adopt and submit to EPA for approval a State Implementation Plan (“SIP”) that provides for the attainment and maintenance of the NAAQS. The Commonwealth of Kentucky has adopted a SIP that has been approved by EPA.

The Prevention of Significant Deterioration Requirements

14. Part C of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration (“PSD”) of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are referred to herein as the “PSD program.”

15. Section 161 of the Act, 42 U.S.C. § 7471, requires that each applicable SIP contain a PSD program. The PSD program in the Kentucky SIP is codified at 401 Kentucky Administrative Regulation (KAR) 51:017.

16. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a “major emitting facility” in an area designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165 and the facility employs the best available control technology (“BACT”) for each pollutant subject to regulation under the Act that is emitted from the facility. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units (“BTUs”) per hour heat input and that emit or have the potential to emit one hundred tons per year or more of any pollutant to be “major emitting facilities.”

17. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines “construction” as including “modification” (as defined in Section 111(a) of the Act). “Modification” is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.”

18. Applicable provisions in the PSD regulations in the Kentucky SIP (401 KAR 51:017, Sections 8 and 9, and all relevant prior versions of these regulations) have at all relevant times prohibited a major stationary source from constructing a major modification in an area designated as attainment without, among other things, first obtaining a PSD permit, undergoing a new BACT determination, and applying BACT pursuant to such determination for each relevant pollutant. The Definitions contained in the PSD regulations in the Kentucky SIP (401 KAR 51:017, Section 1, and all relevant prior versions of these regulations) have at all relevant times

defined “construction” to include “any physical change or change in the method of operation . . . which would result in a change in actual emissions.” These regulations have at all relevant times also defined “major modification” to include “a physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under [the Clean Air Act].” These regulations have at all relevant times defined “major stationary source” to include fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input.

New Source Performance Standards

19. Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

20. Section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of EPA to promulgate regulations establishing federal standards of performance for new sources of air pollutants within each of these categories. “New sources” are defined as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2). These standards are known as New Source Performance Standards (“NSPS”).

21. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the applicable NSPS to such source.

22. Pursuant to Sections 111 and 114 of the Act, 42 U.S.C. §§ 7411, 7414, EPA promulgated 40 C.F.R. Part 60, Subpart A, §§ 60.1 - 60.19, which contain general provisions regarding NSPS.

23. 40 C.F.R. § 60.1 states that the provisions of 40 C.F.R. Part 60 apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

24. 40 C.F.R. § 60.2 defines “affected facility” as any apparatus to which a standard is applicable.

25. Pursuant to Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), at 40 C.F.R. §§ 60.40a-49a (Subpart Da), EPA has identified electric utility steam generating units as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare.

26. EPA’s general NSPS provisions apply to owners or operators of any stationary source that contains an “affected facility” subject to regulation under 40 C.F.R. Part 60. EPA has also promulgated NSPS for various industrial categories, including electric utility steam generating units. NSPS requirements for electric utility steam generating units for which construction or modification is commenced after September 18, 1978, are codified at 40 C.F.R. Part 60, Subpart Da, §§ 60.40a-49a.

27. Subpart Da applies to any “affected facility” that is an “electric utility steam generating unit” that is capable of combusting more than 73 megawatts (250 million Btu/hour)

heat input of fossil fuel (either alone or in combination with any other fuel) and for which construction or modification is commenced after September 18, 1978. 40 C.F.R. § 60.40a.

28. Under Subpart Da, "steam generating unit" means any furnace, boiler, or other device, other than nuclear steam generators, used for combusting fuel for the purpose of producing steam, including fossil-fuel-fired steam generators associated with combined cycle gas turbines. 40 C.F.R. § 60.41a.

29. An "electric utility steam generating unit," under Subpart Da, means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts ("MW") electrical output to any utility power distribution system for sale. 40 C.F.R. § 60.41a.

30. "Modification" under NSPS is defined as "any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted." 40 C.F.R. § 60.2. Under NSPS, any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of Section 111 of the Act, 42 U.S.C. § 7411. 40 C.F.R. § 60.14(a). Following the promulgation of 40 C.F.R. § 60.14(h) in July, 1992, no physical change, or change in method of operation, is treated as a modification of an existing electric steam generating unit if such change does not increase the maximum hourly emissions of a pollutant to which a standard applies above the maximum

hourly emissions achievable at the unit during the 5 years prior to the change. 40 C.F.R. § 60.14(h).

31. Under 40 C.F.R. § 60.14, upon modification, an existing facility becomes an “affected facility” for which the applicable NSPS must be satisfied.

32. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the Act.

33. Pursuant to 40 C.F.R. § 60.7(a), any owner or operator of an affected facility subject to NSPS must furnish written notification to EPA of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies postmarked 60 days or as soon as practicable before the change is commenced with information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change.

34. Pursuant to 40 C.F.R. § 60.8, the owner or operator of an affected facility that is an electric utility steam generating unit must conduct a performance test in accordance with 40 C.F.R. § 60.48a within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility and furnish EPA a written report of the results of such performance test.

35. Pursuant to 40 C.F.R. §§ 60.49a(b) and (i), the owner or operator of an electric utility steam generating unit subject to Subpart Da must submit quarterly reports to EPA containing certain emissions information.

36. Pursuant to 40 C.F.R. §§ 60.42a(a), 60.43a(a), and 60.44a(a), the owner or operator of an electric utility steam generating unit subject to Subpart Da may not discharge into the atmosphere from the affected facility any gases which contain NO_x, SO₂, or PM in excess of the applicable limitations.

37. Pursuant to Section 111(c) of the Act, 42 U.S.C. § 7411(c), the Commonwealth of Kentucky is a delegated state with respect to the relevant provisions of the NSPS program. The Kentucky regulations at 401 KAR 60:005 incorporate by reference the NSPS provisions codified in 40 C.F.R. §§ 60.1 to 60.19 and 60.40a to 60.49a.

Title V

38. Title V of the Act, 42 U.S.C. §§ 7661-7661f, 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 Act, including PSD and NSPS requirements, are collected in one place.

39. Kentucky’s title V operating permit program was granted interim approval by EPA on November 14, 1995 (60 Fed. Reg. 57186) and final approval by EPA on October 31, 2001 (66 Fed. Reg. 54953). Kentucky’s title V operating permit program was previously codified at 401 KAR 50:035. It is currently codified at 401 KAR 52:020.

40. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and the Kentucky title V operating permit program (401 KAR 52:020, Section 3, and all relevant prior versions of this regulation) have at all relevant times made it unlawful for any person to violate any requirement of a permit issued under title V or to operate a major source except in compliance with a permit issued by a permitting authority under title V.

41. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), implementing regulations of the Act, 40 C.F.R. § 70.2, and the Kentucky title V operating permit program regulations (401 KAR 52:020, Section 10, and all relevant prior versions of these regulations) have at all relevant times required that each title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Clean Air Act and the requirements of the applicable SIP, including any applicable PSD requirement to comply with an emission rate that meets BACT and any applicable NSPS requirement.

42. The Kentucky title V operating permit program regulations (401 KAR 52:020 Sections 4 and 5, and all relevant prior versions of these regulations) require that a source submit a complete permit application which, among other things, identifies all applicable requirements (including any requirement to meet BACT pursuant to PSD and to comply with NSPS), certifies compliance with all applicable requirements, and contains a compliance plan for all applicable requirements for which the source is not in compliance.

The State Construction and Operating Permit Program in the Kentucky SIP

43. Prior to the approval of the Kentucky title V operating permit program, the Kentucky regulations contained a general state construction and operating permit program that required, *inter alia*, that “air contaminant sources” obtain operating permits and that prohibited the operation of such sources in violation of such permits. This program was approved by EPA as part of the Kentucky SIP and was codified at 401 KAR 50:035. This program was replaced by the Kentucky title V operating permit program, first codified at 401 KAR 50:035 and later at 401 KAR 52:020.

ENFORCEMENT PROVISIONS

44. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any other requirement or prohibition of, *inter alia*, (1) the Prevention of Significant Deterioration requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); (2) the New Source Performance Standards in Section 111 of the Act, 42 U.S.C. § 7411; (3) title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or (4) the Kentucky State Implementation Plan or any permit issued thereunder.

45. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring before January 31, 1997 and \$27,500 per day for each such violation occurring on or after January 31, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, *inter alia*, the requirements or prohibitions described in Paragraph 44.

46. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

DEFENDANT'S COAL-FIRED GENERATING UNITS

47. At all times pertinent to this civil action, Defendant was and is the owner and operator of:

- A) the Spurlock Plant, located in Mason County, Kentucky. The Spurlock Plant operates two coal-fired generating units, including Spurlock Unit No. 2.
- B) the Dale Plant, located in Clark County, Kentucky. The Dale Plant operates four coal-fired generating units, including Dale Unit No. 3 and Dale Unit No. 4.

48. At all times pertinent to this civil action, the Spurlock Plant, the Dale Plant, Spurlock Unit No. 2, Dale Unit No. 3, and Dale Unit No. 4 were each a “major emitting facility” and a “major stationary source,” within the meaning of the Act and the PSD regulations in the Kentucky SIP for NO_x, SO₂, and/or PM. At all times pertinent to this civil action, Spurlock Unit No. 2 was an “air contaminant source” within the meaning of the Kentucky general state construction and operating program approved by EPA as part of the Kentucky SIP. Unit No. 3 and Unit No. 4 at the Dale Plant are each an “affected facility” and an “electric utility steam generating unit” that is subject to the requirements of NSPS, including Subpart Da thereof. At all times pertinent to this civil action, the Spurlock Plant and the Dale Plant were each a “major source” within the meaning of title V of the Act and the Kentucky title V program regulations.

FIRST CLAIM FOR RELIEF

(PSD Violations at Spurlock Steam Plant, Unit No. 2)

49. At various times, Defendant commenced construction of one or more major modifications, as defined in the Act and the Kentucky SIP, at the Spurlock Plant. These modifications included one or more physical changes or changes in the method of operation at Spurlock Unit No. 2, including conversion of the unit from an electricity-generating-only unit to a cogeneration unit, and increasing the heat input rate at the unit. Defendant was informed by the Kentucky Natural Resources and Environmental Protection Cabinet in a letter dated February 3,

1994, that such an increase in the heat input rate at the unit required a PSD assessment to determine if it would result in a significant net emissions increase. Defendant did not provide such an assessment. These modifications resulted in significant net emissions increases, as defined by the relevant PSD regulations, of one or more of the following: NO_x, SO₂, and/or PM.

50. Defendant did not comply with the PSD requirements in the Kentucky SIP with respect to the major modifications at the Spurlock 2 Unit. Among other things, Defendant failed to obtain a PSD permit as required by the Kentucky SIP (401 KAR 51:017 Section 8) prior to commencing construction and operation of the major modifications at Spurlock Unit No. 2. Defendant did not undergo a new BACT determination in connection with these major modifications. Defendant failed to install and operate the best available control technology for control of NO_x, SO₂, and/or PM, as applicable, pursuant to such determination, as required by the Kentucky SIP (401 KAR 51:017 Section 9) at Spurlock Unit No. 2.

51. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and the PSD provisions of the Kentucky SIP (401 KAR 51:017 and all relevant prior versions of these regulations) at Spurlock Unit No. 2. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

52. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 31, 1997, and \$27,500 per day for each violation on or after January 31, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SECOND CLAIM FOR RELIEF

(Title V Violations at Spurlock Plant, Unit No. 2 - operation with a deficient permit)

53. As set forth above, Defendant commenced one or more major modifications at Spurlock Unit No. 2, as defined under the PSD regulations in the Kentucky SIP. As a result, these modifications triggered the requirements to, *inter alia*, undergo a new BACT determination, to obtain a PSD permit establishing emissions limitations that meet BACT pursuant to such a determination, and to operate in compliance with such limitations. Defendant failed to satisfy these requirements.

54. Subsequently, Defendant failed to submit a complete application for a title V operating permit for Spurlock Unit No. 2 that identified all applicable requirements, that accurately certified compliance with such requirements, and that contained a compliance plan for all applicable requirements for which the source was not in compliance (including the requirement to meet BACT pursuant to a new BACT determination under PSD). Defendant failed to obtain a proper or adequate title V operating permit for Spurlock Unit No. 2 that contained emission limitations for NO_x, SO₂, and/or PM that met BACT pursuant to a new BACT determination. Defendant thereafter operated Spurlock Unit No. 2 without meeting such limitations and without having a valid operating permit that required compliance with such limitations or that contained a compliance plan for all applicable requirements for which the source was not in compliance. Defendant's conduct violated Sections 502(a) and 504(a) of the Act, 42 U.S.C. §§ 7661a(a) and 7661c(a), and the Kentucky title V operating permit program regulations (401 KAR 52:020 and all relevant prior versions of these regulations). Unless restrained by an order of this Court, these and similar violations will continue.

55. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 31, 1997, and \$27,500 per day for each violation on or after January 31, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRD CLAIM FOR RELIEF

(Operating Permit Violations at Spurlock Plant, Unit No. 2)

56. In 1982, the Kentucky Natural Resources and Environmental Protection Cabinet issued a permit to Defendant for the operation of the Spurlock Plant (the "1982 Spurlock state operating permit"). The 1982 Spurlock state operating permit contains various conditions, limitations, and other requirements for operation of the Spurlock Plant, including 4,850 million BTU per hour as a maximum heat input rate for Unit No. 2 of the Plant. The 1982 Spurlock state operating permit was issued pursuant to a provision of the Kentucky SIP then codified at 401 KAR 50:035, as approved by EPA.

57. On December 10, 1999, the Kentucky Natural Resources and Environmental Protection Cabinet issued a title V permit to Defendant for the operation of the Spurlock Plant (the "Spurlock title V permit"). The Spurlock title V permit explicitly subsumes all previously issued construction and operating permits, including the 1982 Spurlock state operating permit.

58. At various times, Defendant has operated Spurlock Unit No. 2 at a heat input rate in excess of 4,850 million BTU per hour, in violation of the 1982 Spurlock state operating permit, the Spurlock title V permit, the state operating permit regulations in the Kentucky SIP (401 KAR 50:035), the Kentucky title V operating permit regulations (401 KAR 52:020 and all relevant

prior versions of these regulations), and Section 502(a) of the Act, 42 U.S.C. § 7661(a). Unless restrained by an order of this Court, these and similar violations will continue.

59. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 31, 1997, and \$27,500 per day for each such violation on or after January 31, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FOURTH CLAIM FOR RELIEF

(PSD Violations at Dale Steam Plant, Unit No. 4, 1994-1995 Project)

60. At various times, Defendant commenced construction of one or more major modifications, as defined in the Act and the Kentucky SIP, at Unit No. 4 of the Dale Plant. These major modifications included, but were not necessarily limited to, a project in 1994-1995 involving conversion of the boiler to a balanced draft configuration and replacement or renovation of major components of the boiler and turbine at the unit. These modifications resulted in significant net emissions increases, as defined by the relevant PSD regulations, of one or more of the following: NO_x, SO₂, and/or PM.

61. Defendant did not comply with the PSD requirements in the Kentucky SIP with respect to the major modifications at the Dale Unit No. 4. Among other things, Defendant failed to obtain a PSD permit as required by the Kentucky SIP (401 KAR 51:017 Section 8) prior to commencing construction or operation of the major modifications at Dale Unit No. 4. Defendant failed to install and operate the best available control technology for NO_x, SO₂, and/or PM, as applicable, as required by the Kentucky SIP (401 KAR 51:017 Section 9) at Dale Unit No. 4.

62. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and the PSD provisions of the Kentucky SIP (401 KAR 51:017 and all relevant prior versions of these regulations) at the Dale Plant, Unit No. 4. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

63. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 31, 1997, and \$27,500 per day for each violation on or after January 31, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FIFTH CLAIM FOR RELIEF

(NSPS violations at Dale Steam Plant, Unit No. 4, 1994-1995 Project)

64. Defendant is the "owner or operator," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of an electric utility steam generating unit within the meaning of 40 C.F.R. §§ 60.40a and 60.41a, designated Dale Unit No. 4, located at Dale Station.

65. At various times, Defendant undertook the "modification" of an "existing facility" at Dale Station Unit No. 4 as those terms are defined in the NSPS. 40 C.F.R. §§ 60.2, 60.14. This modification included, but was not necessarily limited to, conversion of the boiler to a balanced draft configuration and replacement or renovation of major components of the boiler and turbine at the unit in 1994 and 1995. This modification increased the gross Megawatt generation capacity at Dale Unit No. 4 and the maximum hourly emission rate of PM, SO₂, and/or NO_x from

Dale Unit No. 4 above the maximum hourly emissions achievable at that unit during the applicable baseline period prior to the change.

66. As a result of this modification, Dale Unit No. 4 is an “affected facility” under Subparts A and Da of NSPS and is subject to the NSPS, including provisions of Subpart A and Da of the NSPS.

67. With regard to the modification of Dale Unit No. 4, Defendant failed to furnish written notification to EPA or the Commonwealth of Kentucky of the physical changes to the Unit which may have increased the emission rate of any air pollutant to which a standard applies postmarked 60 days or as soon as practicable before the change is commenced with information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change as required by 40 C.F.R. § 60.7(a).

68. Defendant failed to conduct a performance test in accordance with the procedures required by § 60.48a within 60 days after achieving the maximum production rate or within 180 days after initial startup at Dale Unit No. 4 and furnish a written report of the results of such performance test to EPA or the Commonwealth of Kentucky after each of the modifications in violation of 40 C.F.R. § 60.8.

69. Defendant failed to report emission information to EPA or the Commonwealth of Kentucky following the modifications listed above in violation of 40 C.F.R. §§ 60.49a(b) and (i).

70. Defendant failed to comply and continues to fail to comply with the NSPS emissions limitations applicable to Unit No. 4 after the modifications listed above for at least one of the

following pollutants -- PM, SO₂, and/or NO_x -- after the refurbishment in violation of 40 C.F.R. §§ 60.42a, 60.43a, and 60.44a.

71. Each day that Defendant fails to comply with each of the NSPS requirements described in this Complaint, constitutes a violation of the NSPS regulations, and the Act. Unless restrained by an order of this Court, these and similar violations will continue.

72. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 31, 1997, and \$27,500 per day for each violation on or after January 31, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SIXTH CLAIM FOR RELIEF

(Title V Violations at Dale Plant, Unit No. 4 - operation with a deficient permit)

73. As set forth above, Defendant undertook activities constituting one or more major modifications at the Dale Plant Unit No. 4 under the PSD regulations in the Kentucky SIP and constituting modification of an existing facility under NSPS. As a result, these activities triggered the requirements to, *inter alia*, obtain a PSD permit establishing emissions limitations that meet BACT and to operate in compliance with BACT, and to comply with NSPS, including Subpart Da thereof. Defendant failed to satisfy these requirements.

74. Subsequently, Defendant failed to submit a complete application for a title V operating permit for Dale Unit No. 4 that identified all applicable requirements, that accurately certified compliance with such requirements, and that contained a compliance plan for all applicable requirements for which the source was not in compliance (including the requirement

to meet BACT pursuant to PSD and to comply with NSPS). Defendant failed to obtain a proper or adequate title V operating permit for Dale Unit No. 4 that contained emission limitations for NO_x, SO₂, and/or PM that met BACT or that are consistent with the applicable NSPS emissions limitations. Defendant thereafter operated Dale Unit No. 4 without meeting BACT or NSPS and without having a valid operating permit that required compliance with BACT or NSPS or that contained a compliance plan for all applicable requirements for which the source was not in compliance. Defendant's conduct violated Sections 502(a) and 504(a) of the Act, 42 U.S.C. §§ 7661a(a) and 7661c(a), and the Kentucky title V operating permit program regulations (401 KAR 52:020 and all relevant prior versions of these regulations). Unless restrained by an order of this Court, these and similar violations will continue.

75. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 31, 1997, and \$27,500 per day for each violation on or after January 31, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SEVENTH CLAIM FOR RELIEF

(PSD Violations at Dale Steam Plant, Unit No. 3, 1996 Project)

76. At various times, Defendant commenced construction of one or more major modifications, as defined in the Act and the Kentucky SIP, at Unit No. 3 of the Dale Plant. These major modifications included, but were not necessarily limited to, a project in 1996 involving various replacements or renovations of major components of the boiler and turbine at

the unit. These modifications resulted in significant net emissions increases, as defined by the relevant PSD regulations, of one or more of the following: NO_x, SO₂, and/or PM.

77. Defendant did not comply with the PSD requirements in the Kentucky SIP with respect to the major modifications at Dale Unit No. 3. Among other things, Defendant failed to obtain a PSD permit as required by the Kentucky SIP, 401 KAR 51:017 Section 8, prior to commencing construction or operation of the major modifications at Dale Unit No. 3. Defendant failed to install and operate the best available control technology for NO_x, SO₂, and/or PM, as applicable, as required by the Kentucky SIP, 401 KAR 51:017 Section 9, at Dale Unit No. 3.

78. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and the Kentucky SIP (401 KAR 51:017 and all relevant prior versions of these regulations) at the Dale Plant, Unit No. 3. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

79. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 31, 1997, and \$27,500 per day for each violation on or after January 31, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

EIGHTH CLAIM FOR RELIEF

(NSPS violations at Dale Steam Plant, Unit No. 3, 1996 Project)

80. Defendant is the "owner or operator," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of an electric utility steam generating unit

within the meaning of 40 C.F.R. §§ 60.40a and 60.41a, designated Dale Unit No. 3, located at Dale Station.

81. At various times, Defendant undertook the “modification” of an “existing facility” at Dale Station Unit No. 3 as those terms are defined in the NSPS. 40 C.F.R. §§ 60.2, 60.14. Such modification included, but was not necessarily limited to, a 1996 project involving various replacements or renovations of major components of the boiler and turbine at the unit. This modification increased the gross Megawatt generation capacity at Dale Unit No. 3 and the maximum hourly emission rate of PM, SO₂, and/or NO_x from Dale Unit No. 3 above the maximum hourly emissions achievable at that unit during the applicable baseline period prior to the change.

82. As a result of this modification, Dale Unit No. 3 is an “affected facility” under Subparts A and Da of NSPS and is subject to the NSPS, including provisions of Subpart A and Da of the NSPS.

83. With regard to each modification of Unit No. 3, Defendant failed to furnish written notification to EPA or the Commonwealth of Kentucky of the physical changes to the Unit which may have increased the emission rate of any air pollutant to which a standard applies postmarked 60 days or as soon as practicable before the change is commenced with information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change as required by 40 C.F.R. § 60.7(a).

84. Defendant failed to conduct a performance test in accordance with the procedures required by § 60.48a within 60 days after achieving the maximum production rate or within 180

days after initial startup at Dale Unit No. 3 and furnish a written report of the results of such performance test to EPA or the Commonwealth of Kentucky after each of the modifications in violation of 40 C.F.R. § 60.8.

85. Defendant failed to report emission information to EPA or the Commonwealth of Kentucky following the modifications listed above in violation of 40 C.F.R. §§ 60.49a(b) and (i).

86. Defendant failed to comply and continues to fail to comply with the NSPS emissions limitations applicable to Unit No. 3 after the modifications listed above for at least one of the following pollutants -- PM, SO₂, and/or NO_x -- after the refurbishment in violation of 40 C.F.R. §§ 60.42a, 60.43a, and 60.44a.

87. Each day that Defendant fails to comply with each of the NSPS requirements described in this Complaint, constitutes a violation of the NSPS regulations, and the Act. Unless restrained by an order of this Court, these and similar violations will continue.

88. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 31, 1997, and \$27,500 per day for each violation on or after January 31, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

NINTH CLAIM FOR RELIEF

(Title V Violations at Dale Plant, Unit No. 3 - operation with a deficient permit)

89. As set forth above, Defendant undertook activities constituting one or more major modifications at the Dale Plant Unit No. 3 under the PSD regulations in the Kentucky SIP and constituting modification of an existing facility under NSPS. As a result, these activities

triggered the requirements to, *inter alia*, obtain a PSD permit establishing emissions limitations that meet BACT and to operate in compliance with BACT, and to comply with NSPS, including Subpart Da thereof. Defendant failed to satisfy these requirements.

90. Subsequently, Defendant failed to submit a complete application for a title V operating permit for Dale Unit No. 3 that identified all applicable requirements, that accurately certified compliance with such requirements, and that contained a compliance plan for all applicable requirements for which the source was not in compliance (including the requirement to meet BACT pursuant to PSD and to comply with NSPS). Defendant failed to obtain a proper or adequate title V operating permit for Dale Unit No. 3 that contained emission limitations for NO_x, SO₂, and/or PM that met BACT or are consistent with the applicable NSPS emissions limitations. Defendant thereafter operated Dale Unit No. 3 without meeting BACT or NSPS and without having a valid operating permit that required compliance with BACT or NSPS or that contained a compliance plan for all applicable requirements for which the source was not in compliance. Defendant's conduct violated Sections 502(a) and 504(a) of the Act, 42 U.S.C. §§ 7661a(a) and 7661c(a), and the Kentucky title V operating permit program regulations (401 KAR 52:020 and all relevant prior versions of these regulations). Unless restrained by an order of this Court, these and similar violations will continue.

91. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 31, 1997, and \$27,500 per day for each violation on or after January 31, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations set forth above, the United States of America requests that this Court:

1. Permanently enjoin the Defendant from operating the Spurlock and Dale plants, including the construction of future modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;
2. Order Defendant to remedy its past violations by, among other things, requiring Defendant to install and operate, as appropriate, the best available control technology at its plants, for each pollutant subject to regulation under the Clean Air Act;
3. Order Defendant to apply for permits that are in conformity with the requirements of the PSD and title V programs;
4. Order Defendant to comply with the NSPS provisions of the Act and the NSPS regulations;
5. Order Defendant to conduct audits of its operations to determine if any additional modifications have occurred which would require it to meet the requirements of PSD and NSPS and report the results of these audits to the United States;
6. Order defendant to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above;
7. Assess a civil penalty against Defendant of up to \$25,000 per day for each violation of the Clean Air Act and applicable regulations which occurred before January 31, 1997, and \$27,500 per day for each violation on or after January 31, 1997;

8. Award Plaintiff its costs of this action; and,

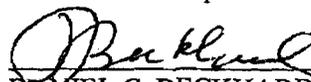
9. Grant such other relief as the Court deems just and proper.

Dated: January 28, 2004

Respectfully submitted,



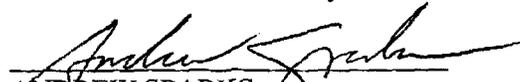
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Assistant Attorney General
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OF COUNSEL:

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Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

EXHIBIT 2

859-986-1299



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 4
 ATLANTA FEDERAL CENTER
 61 FORSYTH STREET
 ATLANTA, GEORGIA 30305-8960

FEB 18 2005

4APT-APB

John S. Lyons, Director
 Department for Environmental Protection
 Kentucky Natural Resources & Environmental
 Protection Cabinet
 803 Schenkel Lane
 Frankfort, Kentucky 40601

RECEIVED

FEB 18 2005

PERMIT REVIEW BRANCH
 DIVISION FOR AIR QUALITY

Dear Mr. Lyons:

The United States Environmental Protection Agency (EPA) has reviewed the proposed title V operating permit for Tennessee Valley Authority (TVA) - Plant Paradise located in Drakesboro (Muhlenberg County), Kentucky. Based on the review of the proposed permit and the supporting information for this facility, EPA formally objects, under the authority of Section 505(b) of the Clean Air Act (the Act) and 40 CFR § 70.8(c), to the issuance of the title V permit for this facility. The bases for EPA's objection are that the permit does not include all applicable requirements to assure compliance with the Act and that it includes limitations which are not practically enforceable.

Section 505(b)(1) of the Act and 40 CFR § 70.8(c) require EPA to object to the issuance of a proposed permit amendment in writing within 45 days of receipt of the proposed permit (and all necessary supporting information) if EPA determines that the permit is not in compliance with the applicable requirements under the Act or 40 CFR Part 70. Pursuant to 40 CFR § 70.8(c), this letter provides a statement of the reason(s) for EPA's objection and a description of the terms and conditions that the permit must include to respond to the objection.

Specifically, the following items are deficient in the proposed title V permit for TVA - Plant Paradise:

1. 40 CFR § 70.6(a)(1) requires that the title V permit include operational limitations that assure compliance with all applicable requirements. Since non-title V, state operating permits 0-87-012 and 0-86-75 (which contain the maximum heat inputs for boilers COMB1, COMB2, and COMB3) were incorporated into the Kentucky State Implementation Plan (SIP) as source-specific SIP revisions [40 CFR §§ 52.920(d) and 52.939(c)(49) and (54)], they are "applicable requirements." Therefore, pursuant to § 70.6(a)(1), the permit must include the maximum heat inputs or "operational limitations" for boilers COMB1, COMB2, and COMB3 (6,305 mmBTU/hr for COMB1 and COMB2 and 10,390 mmBTU/hr for COMB3, respectively) to assure

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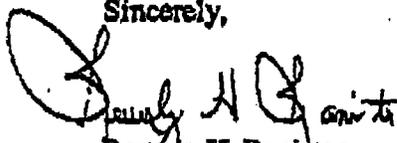
compliance with all applicable requirements, specifically permits 0-87-012 and 0-86-75. In addition to the respective heat input limitations, the permit needs to include the appropriate periodic monitoring and reporting requirements.

- Review*
- 40 CFR § 70.6(a)(3)(B) requires that the title V permit contain appropriate periodic monitoring where the applicable requirement does not require periodic testing or monitoring. However, the two lime storage silos (EQPT15) and the Unit 3 limestone handling system (GACT10) are subject to hourly process rate limitations (5 and 900/600 tons per hour, respectively) without appropriate periodic monitoring. Therefore, pursuant to § 70.6(a)(3)(B), the permit must include the requirement that hours of operation be monitored (and recorded) along with the respective throughput amounts.

40 CFR § 70.8(c)(4) and Section 505(c) of the Act provide that if the permitting authority fails to revise and resubmit a proposed permit amendment within 90 days to satisfy the objection, the authority to issue or deny the permit amendment defaults to EPA, and EPA will act accordingly. Because the objection issues must be fully addressed within 90 days, we suggest that the revised permit be submitted with sufficient advance notice so that any outstanding issues may be resolved prior to the expiration of the 90-day period.

We are committed to working with you to resolve the above issues. Please let us know if we may provide assistance to you and your staff. If you have any questions or wish to discuss this further, please contact Gregg Worley, Chief, Air Permitting Section at (404) 562-9141. Should your staff need further assistance, they may also contact Art Hofmeister, Kentucky title V contact, at (404) 562-9115.

Sincerely,



Beverly H. Banister

Director

Air, Pesticides and Toxics
Management Division

cc: Janet K. Watts, TVA

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