

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)	
STATE OF NEW JERSEY)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	
PSEG FOSSIL LLC)	
)	
Defendant.)	
)	
)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States (“the United States”), and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of New Jersey, by authority of the Attorney General of New Jersey (“New Jersey”), and through the undersigned attorneys, acting at the request of the New Jersey Department of Environmental Protection (“Department”), allege as follows:

NATURE OF THE ACTION

1. This is a civil action brought against PSEG Fossil LLC (“PSEG” or “Defendant”) pursuant to Sections 113(b), 42 U.S.C. § 7413(b); and 167 of the Clean Air Act (the “Act”), 42 U.S.C. § 7477; the New Jersey Air Pollution Control Act (“APCA”), N.J.S.A. 26:2C-1 et seq.; for injunctive relief and the assessment of civil penalties for PSEG’s violations of:

- (a) the Prevention of Significant Deterioration (“PSD”) and Nonattainment New Source Review (“NSR”) provisions of the Act, 42 U.S.C. §§ 7470-92;
 - (b) the New Jersey State Implementation Plan, which has been approved at 40 C.F.R. Part 52, Subpart FF, §§ 52.1570 through 52.1670, and includes 40 C.F.R. § 52.1603, which incorporates 40 C.F.R. § 52.21(b) through (w), and which is Federally-enforceable; and
 - (c) the APCA, N.J.S.A. 26:2C-1 et seq., and its implementing regulations, N.J.A.C. 7:27-1.1 et seq.
2. As set forth more fully herein, between approximately 1986 and the present, PSEG modified and thereafter operated the number 2 coal-fired steam electric generation unit located in Hudson County, New Jersey (“Unit 2 of the Hudson Plant), and the first and second coal-fired steam electric generation units located in Mercer County, New Jersey (Units 1 and 2 of the Mercer Plant) without first obtaining a PSD permit authorizing the construction, and without installing appropriate technology to control emissions of nitrogen oxides, sulfur dioxide, and particulate matter as required by the Act, the New Jersey SIP, and the APCA, and PSEG commenced construction of a major stationary source at the Bergen gas-fired electric generation plant located in Bergen County, New Jersey without first obtaining a PSD permit authorizing the construction and without complying with the Nonattainment New Source Review provisions of the Act, the New Jersey SIP, and the APCA.

3. As a result of PSEG' operation of the Hudson and Mercer plants following these unlawful modifications, and in the absence of appropriate controls, massive amounts of sulfur dioxide, nitrogen oxides, and particulate matter have been, and still are being, released into the atmosphere, aggravating air pollution locally and far downwind from these plants. PSEG's violations, alone and in combination with similar violations at other coal- or gas-fired electric power plants, have been significant contributors to some of the most severe environmental problems facing the nation today. An order of this Court directing PSEG, forthwith, to install and operate the best available technology to control these pollutants at these plants and at the Bergen plant under construction, in conjunction with orders sought in similar cases involving other coal and gas-fired electrical power plants in the Midwest and Southern United States, will produce an immediate, dramatic improvement in the quality of air breathed by tens of millions of Americans. It will reduce illness, protect lakes and streams from further degradation due to the fallout from acid rain, and allow the environment to restore itself following years, and in some cases, decades of illegal emissions.
4. Sulfur dioxide, nitrogen oxides, and particulate matter, when emitted into the air, can each have substantial adverse environmental and health impacts. Electric utility plants collectively account for about 70 percent of annual sulfur dioxide emissions and 30 percent of nitrogen oxides emissions in the United States.
5. Sulfur dioxide ("SO₂") interacts in the atmosphere to form sulfate aerosols, which may be transported long distances through the air. Most sulfate aerosols are particles that can be

inhaled. In the eastern United States, sulfate aerosols make up about 25 percent of the inhalable particles, and according to recent studies, high levels of sulfate aerosols are associated with increased sickness and mortality from lung disorders, such as asthma and bronchitis. Lowering sulfate aerosol emissions from electric utility plants may significantly reduce the incidence and severity of asthma and bronchitis, as well as associated hospital admissions and emergency room visits resulting from these ailments.

6. Nitrogen oxides ("NO_x") have numerous adverse effects on human health and welfare. NO_x reacts with other pollutants and sunlight to form ground level ozone, which scientists have long recognized as being harmful to human health and the environment. Ozone can inflame and potentially cause permanent damage to human lungs, triggering respiratory problems and decreasing lung capacity (especially among children who are active outdoors), as well as increased hospital visits. Ozone may also cause significant damage to vegetation. Nitrogen dioxide ("NO₂"), one type of NO_x, is a dangerous pollutant that can cause people to have difficulty breathing by constricting lower respiratory passages; it may weaken a person's immune system, causing increased susceptibility to pulmonary ailments and other forms of infections. While children and asthmatics are the primary sensitive populations, individuals suffering from bronchitis, emphysema, and other chronic pulmonary diseases have a heightened sensitivity to NO₂ exposure.
7. SO₂ and NO_x interact in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. Acid rain, which also comes in the form of snow or sleet,

"acidifies" lakes and streams rendering them uninhabitable by aquatic life, and it contributes to damage of trees at high elevations. It also accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. SO₂ and NO_x gases and their particulate matter derivatives, sulfates and nitrates, contribute to visibility degradation and have a significantly adverse impact on public health. In this civil action, the Plaintiffs intend to reduce dramatically the amount of SO₂ and NO_x that certain electric utility plants have been illegally releasing into the atmosphere. If the injunctive relief requested by the Plaintiffs is granted in this case and in other similar cases, many acidified lakes and streams will improve so that they may once again support fish and other forms of aquatic life. Visibility will improve, allowing for increased enjoyment of scenic vistas throughout the eastern half of our country. Stress to our Nation's forests from Maine to Georgia will be reduced. Deterioration of our historic buildings and monuments will be slowed. In addition, reductions in SO₂ and NO_x will reduce sulfates, nitrates, and ground level ozone, leading to significant improvements in public health.

8. Particulate matter ("PM") is the term for solid or liquid particles found in the air. Smaller particulate matter of a diameter of 10 micrometers or less is referred to as PM-10. Power plants are a major source of particulate matter. Breathing PM at concentrations in excess of existing ambient air standards may increase the chances of premature death, damage to lung tissue, cancer, or respiratory disease. The elderly, children, and people with chronic lung disease or asthma tend to be especially sensitive to the effects of PM. PM can also worsen the

effects of acid rain, reduce visibility, and damage man-made materials. Reductions in PM illegally released into the atmosphere by PSEG and others will significantly reduce the serious health and environmental effects caused by PM in our atmosphere.

JURISDICTION AND VENUE

9. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and pursuant to Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477, and supplemental jurisdiction of the state law claims pursuant to 28 U.S.C. § 1367.
10. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. §§ 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395 (a), because PSEG resides, has its principal place of business, and committed violations in this District, and because the facilities that are the subject of the Complaint -- the Hudson, Mercer and Bergen facilities -- are located within this District.

NOTICES

11. In accordance with Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), EPA has provided New Jersey with actual notice of PSEG's violations at least as early as February 20, 2001. On April 18, 2000, May 18, 2000, July 12, 2000, August 1, 2000, August 3, 2000, September 7, 2000, November 2, 2000, January 5, 2001 and February 20, 2001, PSEG provided EPA and the Department with documents revealing that PSEG had been operating the Hudson and Mercer facilities without having obtained PSD permits, without complying with the non-attainment new source review provisions of the Clean Air Act, and without having installed the

pollution control equipment required by the Clean Air Act and the APCA. PSEG also submitted documents to the Department, at least as early as February 20, 2001, revealing that it had commenced construction of a major stationary source at the Bergen facility without obtaining a PSD permit as required by the Act, and without complying with the APCA's non-attainment new source review provisions, N.J.A.C. 7:27-18.1 *et seq.* Further, since at least as early as February 20, 2001, the Department and EPA have jointly investigated the Defendant's violations as set forth in this complaint through oral and written communications between the two agencies and have engaged in settlement negotiations with PSEG concerning these violations.

12. The 30-day period between New Jersey and PSEG Fossil's receipt of actual notice and commencement of this civil action, as required by Section 113 of the Act, 42 U.S.C. § 7413, has elapsed.

THE DEFENDANT

13. Defendant PSEG Fossil, LLC, has been the owner and/or operator of the Hudson, Mercer, and Bergen facilities, the subjects of this Complaint, since 1964, 1961 and the late 1950's respectively, and currently owns and/or operates each of these facilities.
14. PSEG is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

15. 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. 42 U.S.C. § 7401(b)(1).
 - A. The National Ambient Air Quality Standards
16. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant which may endanger public health and welfare when emitted, and which results from numerous or diverse mobile or stationary sources. For each such “criteria” pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator to promulgate National Ambient Air Quality Standards (“NAAQS”) requisite to protect public health and welfare. Pursuant to Sections 108 and 109, EPA has identified and promulgated NAAQS for NO_x, SO₂, PM (now measured in the ambient air as PM-10) and ozone as such pollutants. 40 C.F.R. §§ 50.4 - 50.11.
17. 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 termed an "attainment" area. An area that does not meet the NAAQS is termed a "nonattainment" area. An area that cannot be classified due to insufficient data is termed “unclassifiable.”

18. The Hudson, Mercer, and Bergen facilities are located in portions of New Jersey classified as attainment for NO₂, SO₂, PM, and PM-10, but non-attainment for ozone.

B. The Prevention of Significant Deterioration Requirements

19. Part C of Title I 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 standards. 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 collectively as the "PSD program."
20. Sections 110(a)(2)(C) and 161 of the Act, 42 U.S.C. §§ 7410(a)(2)(C) and 7471, require each state to adopt a state implementation plan ("SIP") that contains emissions limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas that have been designated as either in attainment with NAAQs or unclassifiable.
21. A state may comply with Section 161 of the Act by having its own PSD regulations approved by EPA as part of its SIP, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166. If a state does not have a PSD program that has been approved by EPA and incorporated into the SIP, the Federal PSD regulations set forth at 40 C.F.R. § 52.21, may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

22. On August 7, 1980, EPA disapproved New Jersey's proposed PSD program, 45 Fed. Reg. 52741 (August 7, 1980). Accordingly, EPA incorporated by reference the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the New Jersey SIP, 40 C.F.R. § 52.1603. The Federal PSD regulations appearing at 40 C.F.R. § 52.21 are still incorporated into and part of the New Jersey SIP. 40 C.F.R. § 52.1603.
23. As set forth at 40 C.F.R. § 52.21(i), any major stationary source in an attainment or unclassifiable area that intends to construct a major modification or new major source must first obtain a PSD permit.
24. Under the PSD program, a "major stationary source" is defined to include fossil-fuel-fired steam electric plants of more than 250 million British thermal units (BTU) per hour heat input which emit or has the potential to emit one hundred tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a).
25. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as any physical change or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the "Act."
26. "Net emissions increase" means "the amount by which the sum of the following exceeds zero:
(a) [a]ny increase in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] from a particular physical change or change in method of operation at a stationary source; and (b) [a]ny other increases and decreases in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] at the source that are contemporaneous with the particular change and are

otherwise creditable.” 40 C.F.R. § 52.21(b)(3)(i). A “significant” net emissions increase means an increase in the rate of emissions that would equal or exceed any of the following rates for the following pollutants: 40 tons per year of NO_x; 40 tons per year of SO₂; and 25 tons per year of PM. 40 C.F.R. § 52.21(b)(23)(i).

27. As set forth at 42 U.S.C. § 7475(a)(4) and 40 C.F.R. § 52.21(j), a source with a major modification in an attainment or unclassifiable area must install and operate the best available control technology (“BACT”), as defined in 40 C.F.R. § 52.21(b)(12) and 42 U.S.C. § 7479(3), where the modification would result in a significant net emissions increase of a pollutant subject to regulation under the Act. 42 U.S.C. § 7475(a)(4).
28. Any application for a PSD permit must be accompanied by an analysis of ambient air quality in the area. 40 C.F.R. § 52.21(m).
29. The PSD program also requires any person who wishes to modify a major source in an attainment area to demonstrate, before construction commences, that the construction will not cause or contribute to air pollution that is in violation of any national ambient air quality standard or the maximum allowable increase in emissions of that pollutant. 40 C.F.R. § 52.21(k).
30. In addition, the owner or operator of a proposed source or modification must submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21.

C. The Nonattainment New Source Review Requirements

31. Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, sets forth provisions for New Source Review (“NSR”) requirements for areas designated as being in nonattainment with the NAAQS standards. These provisions are referred to herein as the “Nonattainment NSR” program. The Nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained NAAQS so that the areas make progress towards meeting the NAAQS. Prior to the effective date of the 1990 Clean Air Act Amendments, P. Law 101-549, effective November 15, 1990, the Nonattainment NSR provisions were set forth at 42 U.S.C. §§ 7501-7508.
32. Under Section 172(c)(5) of the Nonattainment NSR provisions of the Act, 42 U.S.C. § 7502(c)(5), each state is required to adopt Nonattainment NSR SIP rules that include provisions to require permits that conform to the requirements of Section 173 of the Act, 42 U.S.C. § 7503, for the construction and operation of modified major stationary sources within nonattainment areas. New Jersey has adopted such provisions in the APCA, N.J.S.A. 26:2C-1 *et seq.*
33. Section 173 of the Act, in turn, sets forth a series of minimum requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503. Section 173(a) of the Act, 42 U.S.C. 7503(a), provides that construction and operating permits may be issued if, *inter alia*:
- “(a) sufficient offsetting emission reductions have been obtained to reduce existing emissions to the point where reasonable further progress towards meeting the national

ambient air quality standards is maintained; and (b) the pollution controls to be employed will reduce emissions to the “lowest achievable emission rate.”

34. Section 182(f) of the Act, 42 U.S.C. § 7511a(f), enacted as part of the Clean Air Amendments of 1990, set forth additional requirements to take effect no later than November 15, 1992, regarding the construction and operation of new or modified major stationary sources of NO_x located within nonattainment areas for ozone. Section 182(f) defines NO_x as a pollutant that must be treated as a contributor to the criteria pollutant ozone in an ozone nonattainment area. 42 U.S.C. § 7511a(f). For the purposes of Section 182, a “major stationary source” of NO_x is one that emits or has the potential to emit 100 tons per year or more of a regulated pollutant. 40 C.F.R. § 52.21(b)(1)(i). A “significant” net emissions increase of NO_x is one that would result in increased emissions of 40 tons per year or more. 42 U.S.C. § 7511a, 40 C.F.R. § 52.21(b)(23)(i).
35. Upon EPA approval, state SIP requirements are Federally enforceable under Section 113 of the Act, 42 U.S.C. § 7413(a), (b); 40 C.F.R. § 52.23.
36. On March 11, 1980, EPA conditionally approved New Jersey’s Nonattainment NSR SIP rules, N.J.A.C. 7:27-18.1 *et seq.*, at 45 Fed. Reg. 15531 (March 11, 1980). To satisfy EPA’s requirements for adoption of its Nonattainment NSR SIP, on August 5, 1980, New Jersey submitted a revised version of N.J.A.C. 7:27-18.1 *et seq.* 46 Fed. Reg. 21994, 21995 (April 15, 1981). On April 15, 1981, EPA finalized its approval of New Jersey’s Nonattainment NSR SIP rules, N.J.A.C. 7:27-18.1 *et seq.*, at 46 Fed. Reg. 21994, 21996.

D. New Jersey SIP General Permit Requirements

37. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the maintenance, implementation and enforcement of NAAQS. Under Section 110(a)(2) of the Act, 42 U.S.C. § 7410(a)(2), each SIP must include a permit program to regulate the modification and construction of any stationary source of air pollution, including stationary sources in attainment and nonattainment areas of the state, as necessary to assure that NAAQS are achieved.
38. Pursuant to Part C of the Act, the SIP of the State of New Jersey requires that no construction or operation of a major modification of a major stationary source or a new major stationary source may occur in an area designated as attainment without first obtaining a permit under the PSD regulations. 40 C.F.R. § 52.21 and 40 C.F.R. § 52.1603.
39. Pursuant to Part D of the Act, the SIP of the State of New Jersey requires that no construction or operation of a major modification of a major stationary source or a new major stationary source may occur in an area designated as nonattainment without first obtaining a permit under the Nonattainment NSR regulations, N.J.A.C. 7:27-8.3 and 18.1 *et seq.*

E. Clean Air Act Enforcement Provisions

40. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that:

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 requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of

such finding. At any time after the expiration of 30 days following the date on which the notice of violation is issued, the Administrator may . . .

* * *

(C) bring a civil action in accordance with subsection (b) of this section.

41. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that:

“except for a requirement or prohibition enforceable under the preceding provisions of this subsection, 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 this subchapter . . . including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued or approved under those provisions or subchapters . . .the Administrator may . . . bring a civil action in accordance with subsection (b) of this section”

42. Section 113(b)(1) of the Act, 42 U.S.C. § 7413(b)(1), and 40 C.F.R. § 52.23 authorize 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 of violation for violations occurring before January 30, 1997 and \$27,500 per day for each such violation occurring on or after January 30, 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 any requirement or prohibition of an applicable implementation plan.

43. Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), 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 of violation for violations occurring before January 30, 1997 and

\$27,500 per day for each such violation occurring on or after January 30, 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, requirements of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1), including violations of Section 165(a), 42 U.S.C. § 7475(a).

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

F. Air Pollution Control Act Requirements and Enforcement Provisions

45. The APCA's implementing regulations require that any person who constructs or modifies a significant source must first obtain a permit. N.J.A.C. 7:27-8.3. Section 9 of the APCA, N.J.S.A. 26:2C-1 et seq., requires any person who constructs, reconstructs, installs or modifies new equipment or control apparatus to incorporate advances in the art of air pollution control as provided by federal and state law and to install the applicable air pollution control technology. N.J.S.A. 26:2C-9.2c; N.J.A.C. 7:218.1 et seq. requires persons who construct, reconstruct or modify equipment or control apparatus in non-attainment areas to secure emission offsets.
46. The APCA and implementing regulations authorize the Department to institute a civil action for injunctive relief and/or civil penalties to prohibit and prevent violation of the APCA or any of

the provisions of this statute or the regulations. N.J.S.A. 26:2C-19, N.J.A.C. 7:27-8.26, N.J.A.C. 7:27-18.12, and N.J.A.C. 7:27A-3.1.

G. General Allegations

47. At all times pertinent to this civil action, PSEG has been and is the owner and operator of the Hudson, Mercer, and Bergen facilities, including all of the boilers at these facilities.
48. At all times pertinent to this civil action, the Hudson, Mercer, and Berger facilities were each a "major stationary source," within the meaning of the Act for NO_x, SO₂, and PM for purposes of the PSD program. Each of these plants was also a "source" or "facility" within the meaning of the attainment and nonattainment New Jersey SIP General Permit Requirements.

FIRST CLAIM FOR RELIEF

(PSD and State Permit Violations at Unit 2 of the Hudson Plant)

49. Paragraphs 1 through 48 are realleged and incorporated herein by reference.
50. Between approximately 1986 and the present, PSEG commenced construction and operation of major modifications, as defined in paragraph 26, at Unit 2 of the Hudson Plant. These modifications resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following: NO_x, SO₂, and/or PM.
51. PSEG violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), the PSD regulations set forth in 40 C.F.R. § 52.21, incorporated into the New Jersey SIP at 40 C.F.R. § 52.1603, and the APCA, N.J.S.A. 26:2C-1 *et seq.* and its implementing regulations, N.J.A.C. 7:27-1.1 *et seq.*, by, *inter alia*, undertaking such major modifications at Unit 2 of the

Hudson Plant and operating these modified units without: (a) obtaining a PSD permit, as required by 40 C.F.R. § 52.21(i) and the New Jersey SIP; (b) applying best available control technology for NO_x, SO₂, and PM, as required by 40 C.F.R. § 52.21(j) and the New Jersey SIP; (c) demonstrating that construction or modification would not cause or contribute to air pollution in violation of any national and/or New Jersey ambient air quality standard or any specified incremental amount, as required by 40 C.F.R. § 52.21(m), the New Jersey SIP; (d) performing an analysis of the ambient air quality in the area, as required by 40 C.F.R. § 52.21(m), the New Jersey SIP and N.J.A.C. 7:27-8.3(c); (e) submitting to EPA or New Jersey all information necessary to conduct the analysis or make the necessary determinations under 40 C.F.R. § 52.21, as required under 40 C.F.R. § 52.21(n); and (f) obtaining the required New Jersey State permits and certificates pursuant to N.J.A.C. 7:27-8.3(a) and (b).

52. Based upon the foregoing, PSEG has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. §7475(a), 40 C.F.R. § 52.21, as incorporated into the New Jersey SIP and the APCA and its implementing regulations. Unless restrained by an order of this Court, these and similar violations of the PSD provisions of the Act will continue at Unit 2 of the Hudson Plant.

53. 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 PSD violations set forth above subject PSEG to injunctive relief and civil penalties of up to \$25,000 per day for each violation at Unit 2 of the Hudson Plant prior to January 30, 1997, and \$27,500 per day for each such violation on or after January 30, 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.

54. As provided in Section 19 of the APCA and in the implementing regulations, the violations set forth above subject PSEG to injunctive relief and civil penalties of up to \$10,000 for the first offense, up to \$25,000 for the second offense, and up to \$50,000 for the third offense and each subsequent offense, with each subsequent offense and each day constituting a separate and distinct offense. N.J.S.A. 26:2C-19.

SECOND CLAIM FOR RELIEF

(PSD and State Permit Violations at Unit 1 of the Mercer Plant)

55. Paragraphs 1 through 54 are realleged and incorporated herein by reference.
56. Between approximately 1986 and the present, PSEG commenced construction and operation of major modifications, as defined in paragraph 25, at Unit 1 at the Mercer Plant. These modifications resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following: NO_x, SO₂, and/or PM .
57. PSEG violated and continues to violate Section 165(a) of the Act, 42 U.S.C. §§ 7475(a), and the PSD regulations set forth in 40 C.F.R. § 52.21, incorporated into the New Jersey SIP at 40 C.F.R. § 52.1603, and the APCA, N.J.S.A. 26:2C-1 *et seq.* and its implementing regulations, N.J.A.C. 7:27-1.1 *et seq.*, by, *inter alia*, undertaking such major modifications at Unit 1 of the Mercer Plant and operating these modified units without: (a) obtaining a PSD permit, as required by 40 C.F.R. §§ 52.21(i) and (r)(1) and the New Jersey SIP; (b) applying

best available control technology for NO_x, SO₂, and/or PM, as required by 40 C.F.R. § 52.21(j) and the New Jersey SIP; (c) demonstrating that construction or modification would not cause or contribute to air pollution in violation of any national and/or New Jersey ambient air quality standard or any specified incremental amount, as required by 40 C.F.R. § 52.21(k) and the New Jersey SIP; (d) performing an analysis of the ambient air quality in the area, as required by 40 C.F.R. § 52.21(m) and the New Jersey SIP; (e) submitting to EPA or New Jersey all information necessary to conduct the analysis or make the necessary determinations under 40 C.F.R. § 52.21, as required under 40 C.F.R. § 52.21(n) and the New Jersey SIP; and (f) obtaining the required New Jersey State permits and certificates pursuant to N.J.A.C. 7:27-8.3(a) and (b).

58. Based upon the foregoing, PSEG has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21 and the New Jersey SIP, and the APCA and its implementing regulations. Unless restrained by an order of this Court, these and similar violations of the PSD provisions of the Act will continue at Unit 1 at the Mercer Plant.
59. 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 PSD violations set forth above subject PSEG to injunctive relief and civil penalties of up to \$25,000 per day for each violation at Unit 1 at the Mercer Plant prior to January 30, 1997, and \$27,500 per day for each such violation on or after January 30, 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.

60. As provided in Section 19 of the APCA and in the implementing regulations, the violations set forth above subject PSEG to injunctive relief and civil penalties of up to \$10,000 for the first offense, up to \$25,000 for the second offense, and up to \$50,000 for the third offense and each subsequent offense, with each subsequent offense and each day constituting a separate and distinct offense. N.J.S.A. 26:2C-19.

THIRD CLAIM FOR RELIEF

(PSD and State Permit Violations at Unit 2 of the Mercer Plant)

61. Paragraphs 1 through 60 are realleged and incorporated herein by reference.

62. Between approximately 1986 until now, PSEG commenced construction and operation of major modifications, as defined in paragraph 25, at Unit 2 of the Mercer Plant. These modifications resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following: NO_x, SO₂, and/or PM .

63. PSEG violated and continues to violate Section 165(a) of the Act, 42 U.S.C. §§ 7475(a), and the PSD regulations set forth in 40 C.F.R. § 52.21, incorporated into the New Jersey SIP at 40 C.F.R. § 52.1603, and the APCA, N.J.S.A. 26:2C-1 *et seq.* and its implementing regulations, N.J.A.C. 7:27-1.1 *et seq.*, by, *inter alia*, undertaking such major modifications at Unit 2 of the Mercer Plant and operating these modified units without: (a) obtaining a PSD permit, as required by 40 C.F.R. § 52.21(i) and (r)(1) and the New Jersey SIP; (b) applying best available control technology for NO_x, SO₂, and/or PM, as required by 40 C.F.R. § 52.21(j) and the New Jersey SIP; (c) demonstrating that construction or modification would

not cause or contribute to air pollution in violation of any national and/or New Jersey ambient air quality standard or any specified incremental amount, as required by 40 C.F.R. § 52.21(k); (d) performing an analysis of the ambient air quality in the area, as required by 40 C.F.R. § 52.21(m), the New Jersey SIP; (e) submitting to EPA or New Jersey all information necessary to conduct the analysis or make the necessary determinations under 40 C.F.R. § 52.21, as required under 40 C.F.R. § 52.21(n) and the New Jersey SIP; and (f) obtaining the required New Jersey State permits and certificates pursuant to N.J.A.C. 27-8.3(a) and (b).

64. Based upon the foregoing, PSEG has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21 and the New Jersey SIP, and the APCA and its implementing regulations. Unless restrained by an order of this Court, these and similar violations of the PSD provisions of the Act will continue at Unit 2 of the Mercer Plant.
65. 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 PSD violations set forth above subject PSEG to injunctive relief and civil penalties of up to \$25,000 per day for each violation at Unit 2 of the Mercer Plant prior to January 30, 1997, and \$27,500 per day for each such violation on or after January 30, 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.
66. As provided in Section 19 of the APCA and in the implementing regulations, the violations set forth above subject PSEG to injunctive relief and civil penalties of up to \$10,000 for the first offense, up to \$25,000 for the second offense, and up to \$50,000 for the third offense and

each subsequent offense, with each subsequent offense and each day constituting a separate and distinct offense. N.J.S.A. 26:2C-19.

FOURTH CLAIM FOR RELIEF

(PSD and State Permit Violations at Unit 2 of the Bergen Plant)

67. Paragraphs 1 through 66 are realleged and incorporated herein by reference.
68. Between approximately 1996 and the present, PSEG commenced construction of a major stationary source, as defined in paragraph 25, by constructing a new major source at the Bergen Plant.
69. PSEG violated and continues to violate Section 165(a) of the Act, 42 U.S.C. §§ 7475(a), and the PSD regulations set forth in 40 C.F.R. § 52.21, incorporated into the New Jersey SIP at 40 C.F.R. § 52.1603, and the APCA, N.J.S.A. 26:2C-1 *et seq.* and its implementing regulations, N.J.A.C. 7:27-1.1 *et seq.*, by, *inter alia*, undertaking such construction at Unit 2 of the Bergen Plant without: (a) obtaining a PSD permit, as required by 40 C.F.R. §§ 52.21(i) and (r)(1) and the New Jersey SIP; (b) demonstrating that construction or modification would not cause or contribute to air pollution in violation of any national and/or New Jersey ambient air quality standard or any specified incremental amount, as required by 40 C.F.R. § 52.21(k) and the New Jersey SIP; (c) performing an analysis of the ambient air quality in the area, as required by 40 C.F.R. § 52.21(m) and the New Jersey SIP; (d) submitting to EPA or New Jersey all information necessary to conduct the analysis or make the necessary determinations under 40 C.F.R. § 52.21, as required under 40 C.F.R. § 52.21(n) and the New Jersey SIP;

and (e) obtaining the required New Jersey State permits and certificates pursuant to N.J.A.C. 7:27-8.3(a) and (b).

70. Based upon the foregoing, PSEG has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. §7475(a), 40 C.F.R. § 52.21, as incorporated into the New Jersey SIP and the APCA and its implementing regulations. Unless restrained by an order of this Court, these and similar violations of the PSD provisions of the Act will continue at Unit 2 of the Bergen Plant.
71. 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 PSD violations set forth above subject PSEG PSEG to injunctive relief and civil penalties of up to \$25,000 per day for each violation at Unit 2 of the Bergen Plant prior to January 30, 1997, and \$27,500 per day for each such violation on or after January 30, 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.
72. As provided in Section 19 of the APCA and in the implementing regulations, the violations set forth above subject PSEG to injunctive relief and civil penalties of up to \$10,000 for the first offense, up to \$25,000 for the second offense, and up to \$50,000 for the third offense and each subsequent offense, with each subsequent offense and each day constituting a separate and distinct offense. N.J.S.A. 26:2C-19.

FIFTH CLAIM FOR RELIEF

(Nonattainment NSR Violations at Unit 2 of the Hudson Plant)

73. Paragraphs 1 through 72 are realleged and incorporated herein by reference.
74. At various times, PSEG commenced construction at Unit 2 of the Hudson Plant during time periods when EPA determined that Hudson County was a nonattainment area for ozone. This construction resulted in “significant net emission increases” of NO_x, as defined by the Act, 42 U.S.C. §§ 7501-7515.
75. PSEG has violated and continues to violate the Nonattainment NSR provisions of the Act by, *inter alia*, undertaking such construction at Unit 2 of the Hudson Plant and operating the unit after the construction without complying with the requirements set forth in Part D, Title I of the Act, 42 U.S.C. §§ 7501-7515.
76. Based upon the foregoing, PSEG has violated and continues to violate the Nonattainment NSR provisions of Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515. Unless restrained by an order of this Court, these and similar violations of the Nonattainment NSR provisions of the Act will continue at Unit 2 of the Hudson Plant.
77. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the Nonattainment NSR violations set forth above at Unit 2 of the Hudson Plant subject PSEG to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation on or after January 30, 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

(Nonattainment NSR Violations at Unit 1 of the Mercer Plant)

78. Paragraphs 1 through 77 are realleged and incorporated herein by reference.
79. At various times, PSEG commenced construction at Unit 1 of the Mercer Plant during time periods when EPA determined that Mercer County was a nonattainment area for ozone. This construction resulted in “significant net emission increases” of NO_x, as defined by the Act, 42 U.S.C. §§ 7501-7515.
80. PSEG has violated and continues to violate the Nonattainment NSR provisions of the Act by, *inter alia*, undertaking such construction at Unit 1 of the Mercer Plant, and operating the units after the construction, without complying with the requirements in Part D of Title I of 42 U.S.C. §§ 7501-7515.
81. Based upon the foregoing, PSEG has violated and continues to violate the Nonattainment NSR provisions of Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515. Unless restrained by an order of this Court, these and similar violations of the Nonattainment NSR provisions of the Act will continue at Unit 1 of the Mercer Plant.
82. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the Nonattainment NSR violations set forth above at Unit 1 of the Mercer Plant subject PSEG to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and

\$27,500 per day for each such violation on or after January 30, 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

(Nonattainment NSR Violations at Unit 2 of the Mercer Plant)

83. Paragraphs 1 through 82 are realleged and incorporated herein by reference.
84. At various times, PSEG commenced construction at Unit 2 of the Mercer Plant during time periods when EPA determined that Mercer County was a nonattainment area for ozone. This construction resulted in “significant net emission increases” of NO_x, as defined by the Act, 42 U.S.C. §§ 7501-7515.
85. PSEG has violated and continues to violate the Nonattainment NSR provisions of the Act by, *inter alia*, undertaking such construction at Unit 2 of the Mercer Plant, and operating the units after the construction, without complying with the requirements in Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515.
86. Based upon the foregoing, PSEG has violated and continues to violate the Nonattainment NSR provisions of Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515. Unless restrained by an order of this Court, these and similar violations of the Nonattainment NSR provisions of the Act will continue at Unit 2 of the Mercer Plant.
87. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the Nonattainment NSR violations set forth above at Unit 2 of the Mercer Plant subject PSEG to injunctive relief and

civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation on or after January 30, 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

(Nonattainment NSR Violations at Unit 2 of the Bergen Plant)

88. Paragraphs 1 through 87 are realleged and incorporated herein by reference.
89. At various times, PSEG commenced construction at Unit 2 of the Bergen Plant during time periods when EPA and NJDEP determined that Bergen County County was a nonattainment area for ozone. This construction resulted in “potential increases in emissions of 25 tons per year or more of any regulated pollutant” as defined in the New Jersey Nonattainment NSR SIP provisions, N.J.S.A. 26:2C-9.2 and N.J.A.C. 7:27-18.1 *et seq.* The construction also resulted in “significant net emission increases” of NO_x, as defined by the Act and the New Jersey SIP, 42 U.S.C. §§ 7501-7515; 7:27-18.1 *et seq.*
90. PSEG has violated and continues to violate the Nonattainment NSR provisions of the Act and the New Jersey SIP by, *inter alia*, undertaking such construction and operating Unit 2 of the Bergen Plant after the construction without: (a) obtaining a Nonattainment NSR permit; (b) achieving the lowest achievable emission rate (LAER) for their NO_x emissions. 42 U.S.C. §§ 7501-7515 and N.J.A.C. 7:27-18.1 *et seq.*; and securing a permit and emission offsets as required by N.J.A.C. 7:27-18.3(c)1 and 7:27-8.3 (a). PSEG also failed to obtain a permit

without Federally enforceable emission offsets at least as great as the modified source*s emissions.

91. Based upon the foregoing, PSEG has violated and continues to violate the Nonattainment NSR provisions of Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, and of the APCA at N.J.S.A. 26:2C-9.2 and N.J.A.C. 7:27-18.1 *et seq.* Unless restrained by an order of this Court, these and similar violations of the Nonattainment NSR provisions of the Act and the New Jersey SIP will continue at Unit 2 of the Bergen Plant.
92. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the Nonattainment NSR violations set forth above at Unit 2 of the Bergen Plant subject PSEG to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation on or after January 30, 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.
93. As provided in Section 19 of the APCA and in the implementing regulations, the violations set forth above subject PSEG to injunctive relief and civil penalties of up to \$10,000 for the first offense, up to \$25,000 for the second offense and up to \$50,000 for the third and each subsequent offense, with each subsequent offense and each day constituting a separate and distinct offense. N.J.S.A. 26:2C-19.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 93 above, the Plaintiffs request that this Court:

1. Permanently enjoin PSEG from operating the Mercer and Hudson facilities, including the construction of future modifications, except in accordance with the Clean Air Act, the APCA, and any applicable regulatory requirements;
2. Permanently enjoin PSEG from further constructing and operating the Bergen facility, including the construction of future modifications, except in accordance with the Clean Air Act, the APCA, and any applicable regulatory requirements;
3. Order PSEG to remedy its past violations by, *inter alia*, requiring PSEG to install, as appropriate, the best available control technology, on each boiler unit at the Mercer, Hudson, and Bergen facilities for each pollutant subject to regulation under the Clean Air Act, and to take such other measures as are necessary to bring PSEG's plants into compliance with the PSD provisions of the Act, the New Jersey SIP, and the APCA and implementing regulations;
4. Order PSEG to achieve the lowest achievable emission rate (LAER) at those Units found to be in violation of the Nonattainment NSR provisions of the Act, in accordance with the Clean Air Act, its implementing regulations, and the New Jersey SIP;
5. Order PSEG 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;
6. Order PSEG to apply for permits that are in conformity with the requirements of the PSD provisions of the Act, the New Jersey SIP, and the APCA and implementing regulations;

7. Assess a civil penalty against PSEG of up to \$25,000 per day for each violation of the Clean Air Act and the applicable regulations, and \$27,500 per day for each such violation on or after January 30, 1997;
8. Assess a civil penalty against PSEG of up to \$10,000 for each first offense of the APCA and applicable regulations, up to \$25,000 for each second offense, and up to \$50,000 for each subsequent offense on or after January 30, 1997;
9. Award Plaintiffs their costs of this action; and
10. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

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