

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

UNITED STATES OF AMERICA, and
THE STATE OF WEST VIRGINIA,

Plaintiffs,

v.

E.I. DU PONT DE NEMOURS & CO., and
LUCITE INTERNATIONAL, INC.,

Defendants.

Civil Action No.

COMPLAINT

Plaintiffs the United States of America, by authority of the Attorney General of the United States, on behalf of the Administrator of the United States Environmental Protection Agency (EPA), and the State of West Virginia, on behalf of the West Virginia Department of Environmental Protection, through the undersigned attorneys, allege:

NATURE OF THE ACTION

1. This is a civil action brought against Defendants E.I. du Pont de Nemours & Co. (DuPont) and Lucite International, Inc. (Lucite) pursuant to Section 113(b) of the Clean Air Act (the Act), 42 U.S.C. § 7413(b), seeking injunctive relief and civil penalties at a sulfuric acid plant owned by Lucite and operated by DuPont in Kanawha County, Belle, West Virginia (Plant), for violations of Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, the Prevention of Significant Deterioration (PSD) provisions of the Act; certain New Source Performance Standards (NSPS) promulgated under Section 111 of the Act, 42 U.S.C. § 7411; the Title V Permit requirements of the Act, 42 U.S.C. §§ 7661-7661f; the West Virginia Title V Permit requirements at the West

Virginia Code of State Rules ("W.Va. Code State R."), W.Va. Code State R. Tit. 45 § 30; and the federally enforceable State Implementation Plan (SIP) for West Virginia approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410.

2. The Plant is located at 901 West DuPont Avenue, Belle, West Virginia, 25015. DuPont owned the Plant until July 1, 1993 when it was sold to ICI Acrylics, Inc. (ICI). ICI then sold the Plant to Ineos Acrylics, Inc. on October 1, 1999. On May 7, 2002, Ineos Acrylics, Inc. changed its name to Lucite International, Inc. Lucite presently owns the Plant. DuPont has operated the Plant at all times relevant to this complaint. DuPont and/or Lucite constructed and modified the Plant. Following such construction and modification, Defendants owned and operated the Plant without first obtaining appropriate permits authorizing the construction and modification and subsequent operation of the Plant; failed to install and employ the best available control technology to control emissions of sulfur dioxide (SO₂) and sulfuric acid mist as the Act, the applicable federal regulations and the SIP require; failed to comply with the applicable NSPS; and failed to submit a timely and complete Title V permit application with information pertaining to modifications at the Plant.

JURISDICTION AND VENUE

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

4. 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 1395(a), because some or all of the violations which constitute the basis of this Complaint occurred in this District.

NOTICES

5. EPA issued a Notice and Finding of Violation to Lucite and DuPont on August 2, 2007, alleging PSD, SIP, Title V and NSPS violations at the Plant.

6. The United States has provided notice of the violations of the Act alleged herein to the State of West Virginia in accordance with Section 113(a) of the Act, 42 U.S.C. § 7413(a). The 30-day period established in Section 113(a), 42 U.S.C. § 7413(a), between the Notice and Finding of Violation provided by the United States and the commencement of this civil action has elapsed.

7. Notice of the commencement of this action has been given to each Co-Plaintiff in this action as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b), and to the EPA Administrator and the Defendants as required by Section 304(b) of the Act, 42 U.S.C. § 7604(b).

DEFENDANTS

8. DuPont is a Delaware corporation headquartered at 1007 Market Street, Wilmington, Delaware. DuPont is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

9. DuPont operates, and at all times relevant to this Complaint, DuPont operated the Plant. DuPont owned the Plant until July 1, 1993.

10. Lucite is a Missouri corporation, headquartered at 7275 Goodlett Farms Parkway, Cordova, Tennessee. Lucite is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e). Lucite owns the Plant.

STATUTORY AND REGULATORY BACKGROUND

11. The 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).

The National Ambient Air Quality Standards

12. Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare for certain criteria air pollutants. The primary NAAQS are to protect the public health, and secondary NAAQS are to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air. EPA has identified and promulgated primary and secondary NAAQS for SO₂, which are codified at 40 C.F.R. §§ 50.4, 50.5.

13. 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. Id. 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 designated as "unclassifiable." Id.

14. 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 attainment and maintenance of the NAAQS.

The Prevention of Significant Deterioration Requirements

15. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration 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.

16. Section 165(a) of the Act, 42 U.S.C. § 7475(a), and implementing regulations (herein referred to as the “PSD regulations”), prohibit the construction, major modification, and subsequent operation of a major emitting facility in an area designated as attainment or unclassifiable unless a permit (herein referred to as a “PSD permit”) has been issued setting forth emission limitations for such facility which conform to the PSD requirements. 40 C.F.R. § 52.21(a)(2)(iii).

17. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines “major emitting facility” as, *inter alia*, sulfuric acid plants which emit or have the potential to emit 100 tons per year (tpy) or more of any regulated air pollutant.

18. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require states to adopt a SIP that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.

19. A state may comply with Sections 110(a) and 161 of the Act by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.

West Virginia PSD Provisions Set Forth in the West Virginia SIP

20. West Virginia's PSD program is set forth in W.Va. Code State R. Tit. 45 § 14 and 40 C.F.R. §§ 52.21 and 52.2520 (1997, superseded). The West Virginia PSD program is part of the West Virginia SIP and was approved by EPA on April 11, 1986. 51 Fed. Reg. 12517 (April 11, 1986).

21. Pursuant to the Act, the West Virginia SIP provides that no construction or major modification and operation thereof of a major stationary source can occur without first reporting the construction and/or major modification to the Director of the West Virginia Department of Environmental Protection and/or obtaining a permit. W.Va. Code State R. Tit. 45 § 14.

22. W.Va. Code State R. Tit. 45 § 14 prohibits the construction or major modification in any area in West Virginia which has attained the National Ambient Air Quality Standards or is unclassifiable unless a permit has been obtained and other requirements of W.Va. Code State R. Tit. 45 § 14 have been satisfied.

23. The term "major stationary source" is defined, *inter alia*, as sulfuric acid plants which emit or have the potential to emit 100 tpy per year or more of any regulated air pollutant. W.Va. Code State R. Tit. 45 § 14-2.

24. The term "construction" means "any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an

emissions unit) which would result in a change in actual emissions.” W.Va. Code State R. Tit. 45 § 14-2.

25. The term “major modification” is defined as “any physical change in or change in the method of operation of a major stationary source which results in a significant net emission increase ... of any regulated pollutant.” W.Va. Code State R. Tit. 45 § 14-2. SO₂ is a “regulated air pollutant” under the West Virginia SIP. W.Va. Code State R. Tit. 45 §§ 13 and 14.

26. The term “commence” as applied to construction of a major stationary source or a major modification means the owner and/or operator has the necessary pre-construction approvals or permits and, either has: (a) caused to begin actual on-site construction of the source, to be completed within a reasonable time; or (b) entered into contracts, that cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction at the source within a reasonable time. W.Va. Code State R. Tit. 45 § 14-2.

27. “Net emissions increase” means “the amount of emissions by which the sum of the following exceeds zero: (a) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to subsection 3.4; and (b) any other increases and decreases in actual emissions at the major source that are contemporaneous with the particular change and are otherwise creditable.” W.Va. Code State R. Tit. 45 § 14-2.

28. “Significant” means a rate of emissions that would equal or exceed 40 tons per year of SO₂. W.Va. Code State R. Tit. 45 § 14-2.

29. The West Virginia SIP provides that any person constructing, relocating or making a major modification to a stationary source within a designated attainment or

unclassifiable area of the State of West Virginia must first submit a permit application to determine whether the proposed construction or modification will comply with the PSD rules.

W.Va. Code State R. Tit. 45 § 14.

30. Any person proposing a major modification of a stationary source must apply the best available control technology for each regulated pollutant for which the proposed major modification will result in a significant net emissions increase from the source. W.Va. Code State R. Tit. 45 § 14.

31. Any application for a PSD permit must be accompanied by an analysis of ambient air quality in the area. W.Va. Code State R. Tit. 45 § 14.

32. 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 W.Va. Code State R. Tit. 45 § 14.

33. Violations of West Virginia's SIP requirements are subject to federal enforcement under Section 113 of the Act, 42 U.S.C. § 7413 and 40 C.F.R. § 52.23.

New Source Performance Standards

34. Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), requires EPA to publish and periodically revise a list of categories of stationary sources, including those categories that, in EPA's judgment, cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare.

35. Once a category is included on the list, Section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), requires EPA to promulgate a federal standard of performance for new sources within the category, also known as a New Source Performance Standard (NSPS). 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 NSPS applicable to such source.

36. “Stationary source” is defined as a building, structure, facility or installation which emits or may emit any air pollutant. 42 U.S.C. § 7411(a)(3); 40 C.F.R. § 60. 2.

37. “New sources” as defined in Section 111(a)(2) of the Act, 42 U.S.C. § 7411(a)(2), are stationary sources, the construction or modification of which is commenced after the publication of the NSPS regulations or proposed NSPS regulations applicable to such sources.

38. EPA’s general NSPS regulations at 40 C.F.R. Part 60, Subpart A contain general provisions applicable to all NSPS sources. 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. 40 C.F.R. § 60.2 defines “affected facility” as any apparatus to which a standard is applicable.

39. EPA promulgated a NSPS for sulfuric acid production plants for which construction or modification is commenced after August 17, 1971. These requirements are codified at 40 C.F.R. Part 60, Subpart H, §§ 60.80-85 (NSPS Subpart H).

40. The “affected facility” to which NSPS Subpart H applies is defined as each “sulfuric acid production unit” for which construction or modification is commenced after August 17, 1971. 40 C.F.R. § 60.80. A “sulfuric acid production unit” is any facility producing

sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge” 40 C.F.R. § 60.81.

41. “Modification” under Section 111(a)(4) of the Act, 42 U.S.C. 7411(a)(4), and implementing regulations, 40 C.F.R. §§ 60.2, 60.14(a), is 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 into the atmosphere of any air pollutant (to which a standard applies) not previously emitted. An “existing facility” is “any apparatus of the type for which a standard is promulgated in this part, and the construction or modification of which was commenced before the date of proposal of that standard. . . .” 40 C.F.R. §§ 60.2, 60.14(a).

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

43. Pursuant to 40 C.F.R. § 60.7(a)(4), any owner or operator of an affected facility subject to a 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.

44. Pursuant to 40 C.F.R. § 60.8, the owner or operator of an affected facility must conduct a performance test 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.

45. Pursuant to 40 C.F.R. § 60.82, the owner or operator of a sulfuric acid production unit subject to Subpart H may not discharge into the atmosphere from the affected facility any gases which contain sulfur dioxide in excess of 2 kg per metric ton of acid produced (4.0 lb. SO₂ per ton of acid produced).

46. Pursuant to 40 C.F.R. § 60.83, the owner or operator of a sulfuric acid production unit subject to Subpart H may not discharge into the atmosphere from the affected facility any gases which contain acid mist, expressed as sulfuric acid, in excess of 0.075 kg per metric ton of acid produced (0.15 lb. sulfuric acid per ton of acid produced).

47. Pursuant to 40 C.F.R. § 60.84, the owner or operator of a sulfuric acid production unit must install, calibrate, maintain, and operate a continuous monitoring system for measuring SO₂ emissions.

Title V Permit Program

48. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources." Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a permit program to be administered by any state or local air pollution control agency. 57 Fed. Reg. 32250 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70. EPA promulgated final approval of the West Virginia Title V program on October 3, 2001 and the program became effective on November 19, 2001. 66 Fed. Reg. 50,325. 40 C.F.R. § 70 Appendix A. EPA had promulgated interim approval on November

15, 1995 (effective December 15, 1995) for West Virginia's Title V program. 60 Fed. Reg. 57,352. See W.Va. Code State R. Tit. 45 § 30.

49. "Major source" is defined by Section 501(2) of the Act, 42 U.S.C. § 7661(2), 40 C.F.R. § 70.2, and W.Va. Code State R. Tit. 45 § 30-2, as, among other things, any source which directly emits or has the potential to emit 100 tons or more per year of any regulated air pollutant. SO₂ is listed as a regulated air pollutant under 40 C.F.R. § 70.2.

50. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and implementing regulations, 40 C.F.R. § 70.1(b), 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. W.Va. Code State R. Tit. 45 § 30-6.2.

51. Section 504(a) of the Act, 42 U.S.C. § 7661c(a) and implementing regulations, 40 C.F.R. § 70.6a, 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 Act and the requirements of the relevant SIP. W.Va. Code State R. Tit. 45 § 30-5. "Applicable requirements" as defined at 40 C.F.R. § 70.2 include any relevant PSD, SIP and NSPS requirements. W.Va. Code State R. Tit. 45 § 30-2.

52. Section 503 of the Act, 42 U.S.C. § 7661b, and implementing regulations, 40 C.F.R. § 70.5(a), require any owner or operator of a source subject to Title V permitting requirements to submit a timely and complete permit application. Among other things, this permit application must contain information sufficient to evaluate the subject source and its application and to determine all applicable requirements (including any requirement to meet

applicable control technology requirements pursuant to the PSD regulations and to comply with NSPS), certification of compliance with all applicable requirements, information that may be necessary to determine the applicability of other applicable requirements of the Act, and a compliance plan for all applicable requirements for which the source is not in compliance. W.Va. Code State R. Tit. 45 §§ 30-4 and 30-5.

53. 40 C.F.R. § 70.5(b) requires that any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application, promptly submit such supplementary facts or corrected information upon becoming aware of such failure or incorrect submittal. W.Va. Code State R. Tit. 45 §§ 30-4.2.

Enforcement Provisions

54. 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 such notice of a violation is issued, the Administrator may . . .

* * *

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

55. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that “[e]xcept 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 . . . the Administrator may . . . bring a civil action in accordance with subsection (b) of this section”

56. 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 civil penalties against any person whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan, and other requirements of the Act.

GENERAL ALLEGATIONS

57. At all times relevant to this Complaint, Defendants owned and/or operated the Plant.

58. Sulfuric acid is produced at the Plant using a process in which elemental sulfur or spent sulfuric acid is burned to form sulfur dioxide, which is then converted to sulfur trioxide and then finally converted to sulfuric acid.

59. At all times relevant to this Complaint, there were emissions of SO₂ and sulfuric acid mist from the Plant.

60. EPA has conducted an investigation of the Plant, which included a site inspection, review of permitting history and emissions data, and analysis of other relevant information obtained from Defendants concerning construction and operation of the Plant. The United States alleges the following based on the results of EPA’s investigation, information and belief.

FIRST CLAIM FOR RELIEF
(PSD Violations)

61. The foregoing Paragraphs are realleged and incorporated herein by reference.

62. Since its initial construction the Plant has emitted or has had the potential to emit 100 tpy or more of SO₂ and is a “major emitting facility” as that term is defined in Section 169(1) of the Act, 42 U.S.C. § 7479(1), and a “major stationary source” as that term is defined in 40 C.F.R. § 52.21 and W.Va. Code State R. Tit. 45 §14.

63. The Plant is subject to the PSD regulations at W.Va. Code State R. Tit. 45 § 14.

64. Major modifications to the Plant in or around 1996 resulted in significant net emission increases of SO₂ and sulfuric acid mist as defined by 40 C.F.R. § 52.21 and W.Va. Code State R. Tit. 45 § 14.

65. Since the construction of, or major modification(s) to, the Plant, Defendants have been in violation of Section 165(a) of the Act, 42 U.S.C. § 7475(a), the PSD regulations set forth in 40 C.F.R. § 52.21, and W.Va. Code State R. Tit. 45 § 14 of the West Virginia SIP, by, without limitation, undertaking such construction or major modification(s) and operating the Plant without first obtaining a PSD permit as required by 40 C.F.R. § 52.21(a)(2)(iii) and W.Va. Code State R. Tit. 45 § 14; by failing to install and operate best available control technology for control of SO₂ as required by 40 C.F.R. § 52.21(j) and W.Va. Code State R. Tit. 45 § 14; by failing to provide the permitting authorities with all relevant information necessary to perform an analysis of whether any proposed activities will cause or contribute to air pollution and of the ambient air quality in the area as required by 40 C.F.R. § 52.21(k) and (m) and W.Va. Code State R. Tit. 45 § 14; and by failing to provide the permitting authorities with all relevant information necessary to

perform an analysis of whether any proposed activities constituted a “major modification,” in violation of 40 C.F.R. § 52.21(n) and W.Va. Code State R. Tit. 45 § 14.

66. Unless restrained by an order of this Court, the violations of the Act alleged in this First Claim for Relief will continue.

67. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendants to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004; up to \$32,500 per day for each such violation between March 15, 2004 and January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule under the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 73 Fed. Reg. 75340-46 (December 11, 2008), as promulgated at 40 C.F.R. § 19.4 (table).

SECOND CLAIM FOR RELIEF
(NSPS Violations)

68. The foregoing Paragraphs are realleged and incorporated herein by reference.

69. The Plant is a “stationary source” as that term is defined in Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3) and the implementing regulations at 40 C.F.R. § 60.2.

70. Defendants are the owners or operators, 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 a sulfuric acid production unit, within the meaning of 40 C.F.R. § 60.80, located at the Plant.

71. Defendants commenced construction or modification, as those terms are defined at 40 C.F.R. §§ 60.2 and 60.14, respectively, of the sulfuric acid production unit at the Plant after August 17, 1971, between 1988 and 1996.

72. The sulfuric acid production unit at the Plant is an "affected facility" subject to the NSPS, Subparts A and H, 40 C.F.R. §§ 60.1-60.19 and 60.80-60.85, respectively.

73. Defendants failed to keep records of and notify EPA of their construction or modification of their affected facility at the Plant in violation of 40 C.F.R. § 60.7.

74. Defendants failed to conduct a performance test within 180 days after the construction or modification of their affected facilities at the Plant and to furnish the EPA a written report of the results, in violation of 40 C.F.R. § 60.8.

75. Since the construction or modification of the affected facility at the Plant, Defendants have operated the sulfuric acid production unit in such a manner that the emission limitation of 2 kg SO₂ per metric ton of acid produced (4.0 lb. per ton) has been exceeded, in violation of 40 C.F.R. § 60.82.

76. Since the construction or modification of the affected facility at the Plant, Defendants have operated the sulfuric acid production unit in such a manner that the emission limitation of 0.075 kg acid mist (expressed as sulfuric acid) per metric ton of acid produced (0.15 lb. per ton) has been exceeded, in violation of 40 C.F.R. § 60.83.

77. The sulfuric acid production unit at the Plant is not equipped with a properly installed, calibrated, and maintained continuous emission monitor which meets Performance Specification 2 in 40 C.F.R. Part 60 Appendix B and therefore is in violation of 40 C.F.R. § 60.13, 40 C.F.R. § 60.84.

78. Unless restrained by an order of this Court, the violations of the Act alleged in this Second Claim for Relief will continue.

79. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendants to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004; up to \$32,500 per day for each such violation between March 15, 2004 and January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule under the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 73 Fed. Reg. 75340-46 (December 11, 2008), as promulgated at 40 C.F.R. § 19.4 (table).

THIRD CLAIM FOR RELIEF
(Title V Permit Program Violations)

80. The foregoing Paragraphs are realleged and incorporated herein by reference.

81. At all times relevant to this complaint, the Plant was a “major source” within the meaning of Section 501(2) of the Act, 42 U.S.C. § 7661(2), 40 C.F.R. § 70.2, and W.Va. Code State R. Tit. 45 §§ 14 and 30.

82. The Plant is subject to the Title V permitting requirements in 40 C.F.R. Part 70 and W.Va. Code State R. Tit. 45 § 30.

83. Defendants commenced construction or major modification of the Plant as defined under the PSD regulations at W.Va. Code State R. Tit. 45 § 14 as alleged in Paragraph 64.

84. Defendants commenced construction or modification of the Plant as defined under the NSPS regulations, 40 C.F.R. Part 60, as alleged in Paragraph 71.

85. After the acts alleged in Paragraphs 83 and 84, Defendants failed to submit a complete application for Title V operating permit(s) and annual compliance certifications for the Plant 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 with Sections 502 and 503 of the Act, 42 U.S.C. §§ 7661a and b, and the implementing regulations, 40 C.F.R. Parts 70 and 71, and W.Va. Code State R. Tit. 45 § 30.

86. Unless restrained by an order of this Court, the violations of the Act alleged in this Third Claim for Relief will continue.

87. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendants to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004; up to \$32,500 per day for each such violation between March 15, 2004 and January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule under the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 73 Fed. Reg. 75340-46 (December 11, 2008), as promulgated at 40 C.F.R. § 19.4 (table).

FOURTH CLAIM FOR RELIEF
(West Virginia SIP Permit Requirements)

88. The foregoing Paragraphs are realleged and incorporated herein by reference.

89. At various times, Defendants commenced construction or modifications of the Plant, as defined in the West Virginia SIP and as alleged in Paragraphs 64 and 71, resulting in emissions increases of regulated pollutants at the Plant.

90. Defendants violated and continue to violate provisions of the West Virginia SIP Permit Requirements with regard to the construction or modifications in Paragraph 89, above by undertaking such construction or modifications and operating the facility after the construction or modifications without applying for and obtaining a permit to construct and operate the modification. See W.Va. Code State R. Tit. 45 §§ 13 and 14. In addition, Defendants have not installed and operated best available control technology following the construction or modifications as required by W.Va. Code State R. Tit. 45 § 14, and have not demonstrated that the construction or modifications will not interfere with the attainment or maintenance of a NAAQS as required by W.Va. Code State R. Tit. 45 § 14.

91. Based upon the foregoing, the Defendants have violated and continue to violate the West Virginia SIP provisions of W.Va. Code State R. Tit. 45 §§ 13 and 14. Unless restrained by an order of this Court, these and similar violations of the West Virginia SIP will continue.

92. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendants to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004; up to \$32,500 per day for each such violation between March 15, 2004 and January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009, pursuant to the Civil Monetary Penalty Inflation Adjustment

Rule under the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 73 Fed. Reg. 75340-46 (December 11, 2008), as promulgated at 40 C.F.R. § 19.4 (table).

PRAYER FOR RELIEF

WHEREFORE, based upon all the foregoing allegations, the Plaintiffs request that this Court:

1. Permanently enjoin Defendants from operating the Plant, including the construction of future modifications, except in accordance with the Clean Air Act, the West Virginia SIP, and applicable regulatory requirements;
2. Order Defendants to remedy its past violations by, among other things, requiring Defendants to install, as appropriate, the best available control technology, or such other emissions control technology required by law, on the Plant for each pollutant subject to regulation under the Clean Air Act and the West Virginia SIP;
3. Order Defendants to apply for permits that are in conformity with the requirements of the Clean Air Act and the West Virginia SIP requirements;
4. Order Defendants to comply with the NSPS provisions of the Act;
5. Assess a civil penalty against Defendants of up to \$25,000 per day for each violation of the Act occurring prior to January 30, 1997, up to \$27,500 per day for each violation of the Act occurring between January 30, 1997 and March 15, 2004, up to \$32,500 for each violation of the Act occurring between March 15, 2004 and January 12, 2009, and up to \$37,500 for each violation of the Act occurring after January 12, 2009;
6. Award Plaintiffs their costs of this action; and,
7. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

THE UNITED STATES OF AMERICA

JOHN C. CRUDEN

Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

MARCELLO MOLLO

Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044
Phone: (202) 514-2757
Facsimile: (202) 616-6583

gov

CHARLES T. MILLER

United States Attorney
Southern District of West Virginia

s/Kelly R. Curry

KELLY R. CURRY

Assistant United States Attorney
WV State Bar No. 7645
Attorney for United States
P.O. Box 1713, Charleston, WV 25326
Phone: 304-345-2200
Facsimile: 304-347-5443

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OF COUNSEL

DONNA L. MASTRO

Senior Assistant Regional Counsel

Office of Regional Counsel

U.S. EPA, Region 3

1650 Arch Street

Philadelphia, PA 19103-2029

THE STATE OF WEST VIRGINIA

~~JOHN A. BENEDICT~~

Director

Division of Air Quality

West Virginia Department of Environmental Protection

HEATHER A. CONNOLLY 

Chief

Office of Legal Services

West Virginia Department of Environmental Protection