**THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF LOUISIANA**
**LAFAYETTE DIVISION**

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| UNITED STATES OF AMERICA,<br><br>and<br><br>THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY,<br><br>and<br><br>THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT,<br><br>Plaintiffs,<br><br>v.<br><br>COLUMBIAN CHEMICALS COMPANY,<br><br>Defendant. | Civil Action No. |

## COMPLAINT

The United States of America, by the 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"), the Louisiana Department of Environmental Quality ("LDEQ"), and the State of Kansas (through the Kansas Department of Health and Environment ("KDHE") allege:

## NATURE OF THE ACTION

1. This is a civil action brought against Columbian Chemicals Company ("Columbian") (or "Defendant") pursuant to Sections 113(b), 167, and 304 of the Clean Air Act ("the Act"), 42 U.S.C. §§ 7413(b), 7477, and 7604 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, and the federally approved and enforceable Louisiana and Kansas State Implementation Plans ("SIP"), and the federally approved and enforceable Louisiana and Kansas Title V programs.

2. The violations occurred at the Defendant's Centerville, Louisiana ("North Bend") and Ulysses, Kansas ("Hickok") carbon black manufacturing facilities (the "North Bend Facility," and "Hickok Facility" or "Facilities"). Columbian is engaged in the manufacture of carbon black.

3. Columbian is responsible for the modification and operation of its North Bend Facility and Hickok Facility. Columbian failed to comply with the Act's implementing regulations and the Louisiana and Kansas SIPs, by: (1) failing to obtain appropriate permits authorizing major modifications to the Facilities; (2) failing to install Best Available Control Technology ("BACT") to control emissions of nitrogen oxides ("$NO_x$") and sulfur dioxide ("$SO_2$"); and (3) failing to submit complete permit applications for Title V operating permits.

4. As a result of Defendant's continued operation of its Facilities, in the absence of appropriate controls, excess emissions have been released into the atmosphere, and upon information and belief, will continue to be released in violation of the Act. An order of this Court directing Defendant to (1) install and operate BACT to control these pollutants, and (2) apply for and comply with all permits for its Facilities that are in conformity with the requirements of the PSD provisions of the Act and the State SIPs, will produce an immediate and dramatic improvement in the quality of the air.

## JURISDICTION AND VENUE

5. This Court has jurisdiction of the subject matter of this action pursuant to Sections 113(b), 167, and 304 of the Act, 42 U.S.C. §§ 7413(b), 7477 and 7604, and pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367(a).

6. 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 one of the facilities at issue is operated by the Defendant in this District.

## NOTICES

7. On August 14, 2012 and August 29, 2012, EPA issued Defendant Notices and Findings of Violations ("NOVs") for violations at the North Bend City, Louisiana, and Hickok, Kansas Facilities. EPA provided a copy of each applicable NOV to the State of Louisiana and the State of Kansas as required by Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1).

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

9. Notice has been provided to Defendant, the State of Louisiana, and the State of Kansas as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

## AUTHORITY

10. Authority to bring this action is vested in the Attorney General of the United States by CAA Section 305, 42 U.S.C. § 7605, and pursuant to 28 U.S.C. §§ 516 and 519. The authority of the LDEQ to bring this action, with the concurrence of the Louisiana Attorney General, derives from the CAA and La. R.S. 30:2025(A). The authority of the Kansas Secretary

of Health and Environment to bring this action on behalf of the State of Kansas derives from the CAA, K.S.A. 75-502, and the Kansas Air Quality Act, K.S.A. 65-3001 *et seq*.

## THE DEFENDANT

11. Defendant is the "owner or operator" of the Facilities, as that term is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a).

12. The Facilities involved in the present action are carbon black manufacturing facilities.

13. Each Facility is a "major stationary source" as defined in the applicable PSD regulations, because each Facility is a carbon black plant that emits or has the potential to emit in excess of 100 tons per year of, *inter alia*, the following regulated NSR pollutants: $NO_X$ and $SO_2$.

14. Defendant operates seven carbon black units at the North Bend Facility.

15. Defendant operates two carbon black units at the Hickok Facility.

16. The units identified in paragraphs 14 through 15 above are the subjects of this Complaint.

17. For purposes of Section 113(b) of the Act, 42 U.S.C. § 7413(b), Defendant is, and has been at all times relevant to the present action, a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

## STATUTORY AND REGULATORY BACKGROUND

18. 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***

19. 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.

20. 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."

21. At times relevant to this complaint, Defendant's Facilities have been located in areas classified as attainment and/or unclassifiable for $SO_2$ and $NO_x$.

22. Pursuant to Section 110 of the CAA, 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 States of Louisiana and Kansas have adopted SIPs that have been approved by the EPA. 40 C.F.R. Part 52, Subparts R and T. After such provisions are approved by EPA, these provisions constitute a state's "applicable implementation plan," within the meaning of Sections 113(b) and 302(q) of the CAA, 42 U.S.C. §§ 7413(b) and 7602(q), and

are considered the SIP. These SIPs are enforceable by the respective states in which they are adopted and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), by the United States.

23. Section 110(a)(2)(C) of the CAA, 42 U.S.C. § 7410(a)(2)(C), requires each SIP to include, *inter alia*, a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure the NAAQS are achieved.

***The Statutory Prevention of Significant Deterioration Requirements***

24. 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. 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. 42 U.S.C. § 7470. These provisions are referred to herein as the "PSD program."

25. As part of the PSD program, 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 is subject to BACT[1] for each pollutant subject to regulation under the Act that is emitted from the facility. Further, Section 165(a)(3) of the Act, 42 U.S.C. § 7575(a)(3), allows issuance of a PSD permit only if "the owner or operator

[1] Section 169(3) of the Act, 42 U.S.C. § 7479(3) defines BACT, in pertinent part, as "an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines if it is achievable for such facility . . . ."

of such facility demonstrates, as required pursuant to section 7410(j) of this title, that emissions from construction or operation of such facility" will not compromise compliance with applicable air quality standards.

26. Section 169(2) of the Act, 42 U.S.C. § 7479(2), 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."

27. Section 161 of the Act, 42 U.S.C. § 7471, requires that each applicable SIP contain a regulatory PSD program. A state may comply with this requirement by having its own PSD regulations approved by EPA, which must be at least as stringent as EPA regulations set forth at 40 C.F.R. § 51.166. Upon EPA approval, state PSD requirements are federally enforceable under Section 113 of the CAA, 42 U.S.C. §§ 7413(a), (b); 40 C.F.R. § 52.23.

28. 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 shall be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

***Applicable PSD Regulations in Louisiana and Kansas***

29. Louisiana administers a SIP-approved PSD program, which is governed by its PSD rules at LAC 33:III.509. On April 24, 1987, EPA approved a revision to the Louisiana SIP which provides for State issuance and enforcement of permits to prevent the significant deterioration of air quality. 52 Fed. Reg. 13671. EPA has approved subsequent revisions to Louisiana's PSD regulations. 40 C.F.R. §§ 52.970(c) and 52.999(c).

30. Kansas administers a PSD program which was originally approved by EPA on December 11, 1984. *See* 49 Fed. Reg. 48,185; 40 C.F.R. § 52.870(c). Effective November 22, 2002, the Kansas PSD regulations were recodified under 28-19-350 of the Kansas Administrative Regulations (KAR). *See* 68 Fed. Reg. 8845 (Feb. 26, 2003). At the time of the modification alleged in the Complaint, the Kansas PSD program incorporated by reference certain sections of EPA's PSD regulations codified at 40 C.F.R. § 52.21. *See id*.; KAR 28-19-350(b). Since then, EPA has reviewed and approved various amendments and revisions to the PSD provisions of the Kansas SIP. *See, e.g.*, 72 Fed. Reg. 29,429 (May 29, 2007); 76 Fed. Reg. 9658 (Feb. 22, 2011); 78 Fed. Reg. 37,126 (June 20, 2013); 40 C.F.R. § 52.870(c) (identification of Kansas SIP).

31. Applicable PSD provisions in the Louisiana and Kansas SIPs have at all times relevant to this Complaint prohibited construction of a "major modification" without, among other things, obtaining a PSD permit, undergoing a BACT determination, and applying BACT pursuant to such determination for each relevant pollutant. *See* LAC 33:III.509.B, 509.I, 509.J.3, 509.R (which correspond to 40 C.F.R. §§ 52.21(b)(12), 52.21(j), 52.21(r)(1)) (Louisiana Provisions); KAR 28-19-350(b) (Kansas Provisions, incorporating the same provisions of 40 C.F.R. § 52.21 by reference).

32. The definitions contained in the PSD regulations in the Louisiana and Kansas SIPs have at all times relevant to this Complaint defined "major modification" to include any 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 CAA. LAC 33:III.509.B; KAR 28-19-350 (incorporating the federal PSD definition of "major modification" at 40 C.F.R. § 52.21(b)(2)(i)).

33. Applicable provisions in the PSD regulations in the Louisiana and Kansas SIPs have at all times relevant to this Complaint defined "major stationary source" to include carbon black facilities which emit or have the potential to emit one hundred tons per year or more of any regulated air pollutant. LAC 33:III.509.B; KAR 28-19-350 (incorporating the federal PSD definition of "major stationary source" at 40 C.F.R. § 52.21(b)(1)(i)(*a*) (1996)).

34. Applicable provisions in the PSD regulations in the Louisiana and Kansas SIPs have at all times relevant to this Complaint defined a "significant" net emissions increase to mean, *inter alia*, an increase in the rate of emissions that would equal or exceed 40 tons per year of $NO_x$ and 40 tons per year of $SO_2$. LAC 33:III.509.B; KAR 28-19-350 (incorporating the federal PSD definition of "significant" at 40 C.F.R. § 52.21(b)(23)(i) (1996)). Effective July 15, 2008, a "significant" increase in $SO_2$ is also regulated as a precursor to fine particulate matter ("$PM_{2.5}$"). *See* 73 Fed. Reg. 28,321, 28,327, 333-34 (May 16, 2008).

***Title V Requirements***

35. 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 requirements, are collected in one place.

36. A "major source" for purposes of Title V is defined, among other things, as a source with a potential to emit greater than 100 tons per year of any criteria pollutant. 42 U.S.C. §§ 7661(2), 7602.

37. EPA first promulgated regulations governing state Title V operating permit programs on July 21, 1992. *See* 57 Fed. Reg. 32,295. These regulations are codified at 40 C.F.R. Part 70. On July 1, 1996, EPA promulgated regulations governing a federal Title V

operating permit program to apply in areas lacking an EPA-approved Title V operating permit program. *See* 61 Fed. Reg. 34,202; 40 C.F.R. Part 71.

38. The Louisiana Title V operating permit program was granted full approval by EPA in on September 12, 1995. *See* 60 Fed. Reg. 47296 (Oct. 12, 1995). Louisiana's Title V operating permit program is found at LAC 33:111 Chapter 5

39. The Kansas Title V operating permit program was granted full approval by EPA in 1996. *See* 61 Fed. Reg. 2,938 (Jan. 30, 1996). Kansas' Title V operating permit program is found at KAR 28-19-500 *et seq*.

40. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and the Louisiana and Kansas Title V programs, 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 under Title V.

41. Section 503(b) – (d) of the Act, 42 U.S.C. § 7661b(b) – (d), and the applicable Title V regulations and Louisiana and Kansas Title V programs, have at all relevant times required the owner or operator of a major source to submit an application for a Title V permit that is timely and complete and which, among other things, identifies all applicable requirements (including any requirement to meet BACT pursuant to PSD), certifies compliance with all applicable requirements, and contains a compliance plan for all applicable requirements for which the source is not in compliance. *Id.*; *see* 40 C.F.R. §§ 70.5(a), (c), & (d); LAC 33:III.501.C, 517.C and 517.D; KAR 28-19-500, 28-19-510 to -512.

42. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), the Title V regulations at 40 C.F.R. § 70.6(a), and the Louisiana and Kansas Title V operating permit program 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, including any applicable PSD requirement to comply with an emission rate that meets BACT.

43. "Applicable requirement" is defined to include any applicable PSD requirements. LAC 33:III.502; KAR 28-19-200(e); 40 C.F.R. § 70.2.

**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 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); or (2) the Louisiana and Kansas SIPs or any permits 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 $32,500 per day for each violation occurring on or after September 27, 2007, up to and including January 12, 2009; $37,500 per day for each violation occurring on or after January 13, 2009 and up to and including November 2, 2015; and $95,284 per day for each violation occurring after November 2, 2015, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 82 Fed. Reg. 3633 (Jan. 12, 2017), against any person whenever such person has violated, or is in violation of, *inter alia*, the requirements or prohibitions described in the preceding paragraph.

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 or modification of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

47. 40 C.F.R. § 52.23 provides, *inter alia*, that any failure by a person to comply with any provision of 40 C.F.R. Part 52, or with any approved provision of a SIP, shall render such person in violation of the applicable SIP, and subject to enforcement action pursuant to Section 113 of the Act, 42 U.S.C. § 7413.

48. Section 304(a) of the CAA, 42 U.S.C. § 7604(a), authorizes any person to commence a civil action for a violation of an emission standard or limitation. The States of Louisiana and Kansas are each a "person" within the meaning of CAA Section 304. 42 U.S.C. § 7602(e).

49. Pursuant to La. R.S. 30:2025, the LDEQ may seek injunctive relief and civil penalties for violations of the Louisiana SIP. La. R.S. 30:2025 authorizes the LDEQ to seek a civil penalty of not more than the cost to the state of any response action made necessary by these violations which is not voluntarily paid by the violator, and a penalty of not more than $32,500 for each day of violation, and if it is established that any violation was done intentionally, willfully, or knowingly, or resulted in a discharge or disposal which caused irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health, defendant may be liable for an additional penalty of not more than $1,000,000. The LDEQ is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, *i.e.*, when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right. *Jurisich v. Jenkins*, 749 So. 2d 597 (La. 1999).

50. Pursuant to K.S.A. 65-3011 and 65-3018 the State of Kansas may seek injunctive relief and civil penalties for violations of the Kansas SIP.

**GENERAL ALLEGATIONS**

51. Paragraphs 1 through 50 are re-alleged and incorporated herein by reference.

52. The North Bend Facility is located at 370 Columbian Chemicals Lane, Centerville, Louisiana, 70522, St Mary Parish. At all times relevant to the present action, St Mary Parish, Louisiana has been classified as being in attainment or unclassifiable for the national standards for $NO_x$ and $SO_2$. Therefore, PSD rules applied to any modification or construction at the North Bend Facility.

53. The Hickok Facility is located at 3500 South Road S, Ulysses, Kansas, 67880, Grant County. At all times relevant to the present action, Grant County has been classified as being in attainment or unclassifiable for the national standards for $NO_X$ and $SO_2$. Therefore, PSD rules applied to any modification or construction at the Hickok Facility.

54. The Facilities are owned and operated by Defendant and are engaged in the manufacture of carbon black primarily for the tire manufacturing industry. At each Facility, Defendant partially combusts and thermally decomposes a heavy oil feed in a low oxygen reactor under controlled conditions, thus producing solid carbon particles which are recovered as the carbon black product. The carbon black is then dried, pelletized, and packaged.

55. At the North Bend Facility, Defendant operates seven carbon black units (Rubber Unit No. 1, Rubber Unit No. 3, and five specialty grade units numbered 1A, S1B, S2A, S2B, and S2C).

56. At the Hickok Facility, Defendant operates two carbon black units (Unit 2 and Unit 3).

57. At all times relevant to this action, the North Bend and Hickok Facilities have been "major emitting facilities and "major stationary sources" for $SO_2$ and $NO_x$ within the meaning of the CAA and the applicable SIPs.

58. At all times relevant to this action, the North Bend and Hickok Facilities have been "major sources" within the meaning of Title V of the CAA and the applicable Louisiana and Kansas Title V programs.

**First Claim for Relief: North Bend Facility – PSD Violations**

59. Paragraphs 1 through 58 are re-alleged and incorporated by reference.

60. Defendant constructed one or more major modifications, as defined in the CAA and applicable implementing regulations, at the North Bend Facility. Such major modifications included one or more physical changes or changes in the method of operation, including but not necessarily limited to (1) the installation of a new unit, Rubber Unit 3, in 1996; (2) the installation of a new air blower to increase capacity on Rubber Unit 2 in 2006; and (3) the installation of new larger capacity air preheaters on Rubber Unit 3 in 2010. Such modifications resulted in, or should have been expected to result in, significant net emissions increases, as defined by the Louisiana and Kansas SIPs, of pollutants such as $NO_x$ and $SO_2$.

61. Defendant did not comply with the PSD requirements in the CAA and the Louisiana SIP with respect to the units it modified. Among other things, Defendant failed to obtain PSD permits for the modified units, failed to undergo BACT determinations, failed to install and operate BACT for $NO_x$ and $SO_2$ pursuant to such determination, and failed to continuously meet the required PSD emissions rates applicable to the modified North Bend Facility as required by the CAA and the Louisiana SIP. *See* LAC 33:III.509.J.3 and 509.I.1.

62. Defendant has violated and continues to violate Section 165(a) of the CAA, 42 U.S.C. § 7475(a) and the PSD provisions of the Louisiana SIP. Unless restrained by an order of this Court, these violations will continue.

63. 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 $32,500 per day for each violation occurring on or after September 27, 2007 up to and including January 12, 2009; $37,500 per day for each violation occurring on or after January 13, 2009 and up to and including November 2, 2015; and $95,284 per day for each violation occurring after November 2, 2015, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 82 Fed. Reg. 3633 (Jan. 12, 2017). La. R.S. 30:2025E provides for similar civil penalties to be awarded to LDEQ.

**Second Claim for Relief: Hickok Facility – PSD Violations**

64. Paragraphs 1 through 58 are re-alleged and incorporated by reference.

65. Defendant constructed one or more major modifications, as defined in the CAA and applicable implementing regulations, at the Hickok Facility. Such major modifications included one or more physical changes or changes in the method of operation, including but not necessarily limited to (1) the modification of a dryer and related work to increase capacity at Unit 3 in 1997 and Unit 2 in 1998 and 2007; and (2) the installation of a new blower to increase capacity at Unit 2 in 2003. Such modifications resulted in, or should have been expected to result in, significant net emissions increases, as defined by the Kansas SIP, of pollutants such as $SO_2$.

66. Defendant did not comply with the PSD requirements in the CAA and the Kansas SIP with respect to the units it modified. Among other things, Defendant failed to obtain a PSD

permit for the modified unit, failed to undergo a BACT determination, failed to install and operate BACT for $SO_2$ pursuant to such determination, and failed to continuously meet the required PSD emissions rates applicable to the modified Hickok Facility as required by the CAA and the Kansas SIP. *See* KAR 28-19-350.

67. Defendant has violated and continues to violate Section 165(a) of the CAA, 42 U.S.C. § 7475(a) and the PSD provisions of the Kansas SIP. Unless restrained by an order of this Court, these violations will continue.

68. 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 $32,500 per day for each violation occurring on or after September 27, 2007 up to and including January 12, 2009; $37,500 per day for each violation occurring on or after January 13, 2009, and up to and including November 2, 2015; and $95,284 per day for each violation occurring after November 2, 2015, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 82 Fed. Reg. 3633 (Jan. 12, 2017).

## PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations set forth above, Plaintiffs request that this Court:

1. Permanently enjoin the Defendant from operating carbon black manufacturing Units at North Bend, Louisiana and Hickok, Kansas, except in accordance with the Clean Air Act and any applicable regulatory requirements;

2. Order the Defendant to remedy its violations by, among other things, requiring Defendant to install and operate BACT at its Facilities for each pollutant subject to regulation

under the Clean Air Act;

3. Order the Defendant to apply for permits that are in conformity with the requirements of the PSD provisions of the CAA and the Louisiana and Kansas SIPs and Title V programs;

4. Order the 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 report the results of these audits to the Plaintiffs;

5. Order the 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;

6. Assess a civil penalty against the Defendant of up to $32,500 per day for each violation occurring on or after September 27, 2007, up to and including January 12, 2009; $37,500 per day for each violation occurring on or after January 13, 2009, and up to and including November 2, 2015; and $95,284 per day for each violation occurring after November 2, 2015;

7. Assess a civil penalty against the Defendant of not more than $32,500 for each day of violation, and if it is established that any violation was done intentionally, willfully, or knowingly, or resulted in a discharge or disposal which caused irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health, an additional penalty of not more than $1,000,000, pursuant to La. R.S. 30:2025(E)(1)(a).

8. Award Plaintiffs their costs in this action; and,

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

Dated: December 21, 2017

*Respectfully submitted,*

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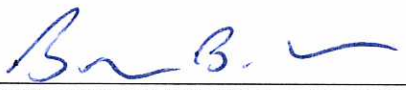
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 22, 2017, a copy of the foregoing Complaint was filed electronically with the Clerk of Court using the CM/ECF system. I also certify that I have served this filing on the counsel listed below via electronic mail:

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