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

UNITED STATES OF AMERICA,	)	
And,	)	
THE STATE OF LOUISIANA	)	
Plaintiffs,	)	Civil Action No. _____
v.	)	
ORION ENGINEERED CARBONS, LLC,	)	
Defendant.	)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the Louisiana Department of Environmental Quality ("LDEQ"), with the concurrence of the Louisiana Attorney General, allege:

NATURE OF THE ACTION

1. This is a civil action brought against Orion Engineered Carbons, LLC ("Defendant") pursuant to Sections 113(b), 167, and 304 of the Clean Air Act ("the Act" or "CAA"), 42 U.S.C. § 7413(b) 7477, and 7604, for injunctive relief and the assessment of civil penalties for violations of the following statutory and regulatory provisions: (1) the Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. §§ 7470-92; (2) the

Nonattainment New Source Review ("NNSR") provisions of the Act, 42 U.S.C. §§ 7501-7515; (3) the federally approved and enforceable Louisiana, Texas, and Ohio PSD and NNSR regulations set forth in the Louisiana, Texas and Ohio State Implementation Plans ("SIPs"); and (4) Title V of the Act, 42 U.S.C. §§ 7661-7661f and the federally approved Texas Title V program, including certain operating permit requirements. Collectively, the PSD and NNSR provisions are known as the New Source Review or "NSR" program.

2. The violations occurred at Defendant's carbon black manufacturing facilities located at 7095 Highway 83 S, Franklin, Louisiana 70538 ("Ivanhoe Facility"), 9440 FM 1559, Borger, Texas 79007 ("Borger Facility"), 1513 Echo Avenue, Orange, Texas, 77632 ("Orange Facility"), and 11135 State Route 7, Belpre, Ohio 45714 ("Belpre Facility") (collectively, "Facilities"). Defendant is engaged in the manufacture of carbon black at each of the Facilities, primarily for the sale to and later use by the tire manufacturing industry. Carbon black is a material primarily composed of elemental carbon that is used in the manufacture of pigment and as a reinforcing filler in rubber products, including tires.

3. Defendant is the owner and operator of the Ivanhoe Facility, which underwent modification without appropriate permits, without installing and continuously operating the appropriate NSR pollution control technology, and without meeting applicable NSR emission rates for emissions of nitrogen oxides ("NO_x"), sulfur dioxide ("SO_2"), and/or particulate matter ("PM").

4. Defendant is the owner and operator of the Borger Facility, which underwent modification without appropriate permits, without installing and continuously operating the appropriate NSR pollution control technology, and without meeting applicable NSR emission rates for NO_x, SO_2, and/or PM.

5. Defendant is the owner and operator of the Orange Facility, which (1) underwent modification without appropriate permits, without installing and continuously operating the appropriate NSR pollution control technology, and without meeting applicable NSR emission rates for NO_x, SO_2, and/or PM; and (2) failed to comply with certain additional provisions of applicable permits.

6. Defendant is the owner and operator of the Belpre Facility, which underwent modification without appropriate permits, without installing and continuously operating the appropriate NSR pollution control technology, and without meeting applicable NSR emission rates for NO_x, SO_2 and/or PM.

7. As a result of Defendant's continued operation of its Facilities, in the absence of appropriate controls, NO_x, SO_2, PM, and/or other pollutants have been released into the atmosphere, and, upon information and belief, will continue to be released in violation of the Act. These pollutants cause harm to human health and the environment once emitted into the air, including premature death, heart attacks, respiratory problems and adverse environmental effects.

JURISDICTION AND VENUE

8. 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). This Court has personal jurisdiction over the Defendant, which does business in the State of Louisiana and in this judicial District.

9. Venue is proper in this District pursuant to Sections 113(b) and 304(c) of the Act, 42 U.S.C. §§ 7413(b) and 7604(c), and 28 U.S.C. §§ 1391(b), (c) and 1395(a), because

violations occurred and are occurring in this District, and one of the four facilities at issue is operated by the Defendant in this District.

AUTHORITY

10. Authority to bring this action is vested in the Attorney General of the United States pursuant to Section 305 of the Act, 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).

NOTICES

11. Notice of the violations underlying this action was provided to the Defendant at least 30 days prior to the filing of this Complaint pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). Notice of the commencement of this action was provided to the States of Louisiana, Texas, and Ohio, pursuant to Sections 113(a)(1) and (b) of the CAA, 42 U.S.C. §§ 7413(a)(1) and (b).

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

THE DEFENDANT

13. Defendant is incorporated in Delaware and is the North American subsidiary of a German industrial group called Orion Engineered Carbons GmbH. Defendant is the current "owner or operator" of the Facilities, as that term is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a).

14. 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), and the applicable federal and state regulations.

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

The National Ambient Air Quality Standards

16. 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") 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.

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" but is considered "attainment" for NSR purposes.

18. At times relevant to this Complaint, including from 2010 through the present, St. Mary's Parish in Louisiana, where the Ivanhoe Facility is located, was in attainment or unclassifiable for each of the criteria pollutants relevant here: i.e., ozone, SO_2 and PM.

19. At times relevant to this Complaint, including from 2003 through the present, Hutchinson County in Texas, where the Borger Facility is located, was classified as in attainment or unclassifiable for each of the criteria pollutants relevant here: i.e., ozone, SO_2 and PM.

20. At times relevant to this Complaint, including from 2006 through the present, Orange County in Texas, where the Orange Facility is located, was classified as nonattainment for ozone. The pollutant NO_x is a known precursor to ozone. 40 C.F.R. § 51.165(a)(1)(xxxvii). At times relevant to this Complaint, including from 2006 through the present, Orange County was classified as in attainment or unclassifiable for SO_2 and PM.

21. At times relevant to this Complaint, including 2006, Washington County in Ohio, where the Belpre Facility is located, was classified as nonattainment for ozone. At times relevant to this Complaint, including 2006 through 2012, Washington County was classified as nonattainment for PM. At times relevant to this Complaint, including from 2006 through the present, Washington County was classified as in attainment or unclassifiable for SO_2.

22. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, states adopt and submit to EPA for approval rules for the attainment and maintenance of the NAAQS. 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. The States of Louisiana, Texas, and Ohio have adopted SIPs that have been approved by EPA. 40 C.F.R. Part 52, Subparts T, KK, SS.

24. Of relevance to this Complaint, Section 110(a)(2)(C) of the CAA, 42 U.S.C.§ 7410(a)(2)(C), requires each SIP to include, *inter alia*, "regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter [Subchapter I of the CAA]."

The Prevention of Significant Deterioration Requirements

a. Overview

25. Part C of the Act, 42 U.S.C. §§ 7470-7492, sets forth New Source Review requirements for areas designated as either "attainment" or "unclassifiable" for purposes of meeting the NAAQS. These requirements are designed to prevent the significant deterioration of air quality in those areas, protect public health and welfare, 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."

26. 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 in attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165 and the facility is subject to an emission limit based on Best Available Control

Technology ("BACT") for each pollutant subject to regulation under the Act that is emitted from the facility.

27. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates carbon black plants (furnace process) that emit or have the potential to emit 100 tons per year or more of any criteria pollutant to be "major emitting facilities."

28. 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."

29. EPA promulgated regulations to implement the PSD program. These regulations are found at 40 C.F.R. § 52.21 and 40 C.F.R. § 51.166 and are referred to as the "PSD regulations."

30. The PSD regulations define "major modification" as "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 for which a NAAQS has been promulgated. 40 C.F.R. § 52.21(b)(2)(i).

31. The PSD regulations define "net emissions increase" as "the amount by which the sum of the following exceeds zero: (a) any increase in actual emissions from a particular physical change or change in method of operation at a stationary source… and (b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable." 40 C.F.R. § 52.21(b)(3).

32. The PSD regulations set individual thresholds for each criteria pollutant that define whether a net emissions increase of a pollutant is "significant." *See* 40 C.F.R. § 52.21(b)(23)(i).

b. PSD Program in Louisiana, Texas, and Ohio

33. Section 161 of the Act, 42 U.S.C. § 7471, requires that each applicable SIP contain a PSD program. A state may comply with this section 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.

34. EPA approved Louisiana's PSD program, which provides for the state's issuance and enforcement of permits to prevent the significant deterioration of air quality, in a federally enforceable SIP, effective May 26, 1987. 52 Fed. Reg. 13671 (April 24, 1987). Since then, EPA has approved subsequent revisions to Louisiana's PSD regulations. 40 C.F.R. §§ 52.970(c) and 52.999(c). The Louisiana PSD program in the Louisiana SIP is codified at LAC 33:III.509.

35. EPA approved Texas's SIP program on June 24, 1992. 57 Fed. Reg. 28093. EPA has approved subsequent revisions to Texas's PSD regulations. *See*, *e.g.*, 62 Fed. Reg. 44083 (Aug. 19, 1997); 69 Fed. Reg. 43752 (July 22, 2004)). 40 C.F.R. §§ 52.2270(c), 52.2299(c), and 52.2303. The Texas PSD program in the Texas SIP is codified at 30 Texas Administrative Code ("TAC") §§ 116.12, 116.160.

36. EPA approved Ohio's PSD program on January 22, 2003. 68 Fed. Reg. 2909. EPA has approved subsequent revisions to the Ohio PSD regulations. *See*, *e.g.*, 75 Fed. Reg. 8496 (February 25, 2010); 80 Fed. Reg. 36477 (June 25, 2015). 40 C.F.R. §§

1894(c)(145) and 1894(c)(162). The Ohio PSD program in the Ohio SIP is codified at OAC 3745-31-01 through 3745-31-20.

37. These applicable PSD regulations in the Texas, Louisiana, and Ohio SIPs have, at all relevant times, prohibited construction and operation of a major modification at a major stationary source without, among other things, obtaining a PSD permit, undergoing a BACT determination, and applying BACT pursuant to such determination for each relevant pollutant.

38. Under the Louisiana, Texas, and Ohio SIPs, the term "major modification" is defined as "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 a regulated NSR pollutant…" 40 C.F.R. § 52.21(b)(2)(i); LAC 33:III.509.B; 30 TAC §§ 116.12, 116.160; OAC 3745-31-01(LLL).

39. Under the Louisiana, Texas, and Ohio SIPs and the applicable, federal PSD regulation the term "net emissions increase" means "the amount by which the sum of the following exceeds zero: (a) [t]he increase in emissions from a particular physical change or change in the method of operation at a stationary source . . . ; and (b) [a]ny other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable." 40 C.F.R. § 52.21(b)(3)(i); LAC 33:III.509.B; 30 TAC §§ 116.12, 116.160; OAC 3745-31(VVV).

40. Under the Louisiana, Texas, and Ohio SIPs and the applicable, federal PSD regulations, such an increase is "significant" if it equals or exceeds the significance threshold for the pollutant at issue. The relevant significance thresholds in this case are 40 tons per year of SO_2 or NO_x and 25 tons per year of PM. 40 C.F.R. § 52.21(b)(23)(i);

LAC33:III.509. B; 30 TAC §§ 116.12, 116.160; OAC 3745-31(VVVVV). Effective July 15, 2008, SO_2 is also regulated as a precursor to $PM_{2.5}$. 73 Fed. Reg. 28321, 28327-28 (May 16, 2008).

41. The owner or operator of the major stationary source proposing a major modification must, among other things, demonstrate that the proposed facility "will apply the best available control technology [BACT] . . . [.]" LAC 33:III.509.J; 30 TAC §§ 116.111(a)(2)(C), 116.160(c)(1)(A); OAC 3745-31-15.

42. Pursuant to the Louisiana, Texas, and Ohio SIPs, before any actual work is begun on a major modification of a major stationary source, the source owner or operator is required to obtain a New Source Review permit. LAC 33:III.509.I, 517; 30 TAC §§ 116.110(a)(1), 116.111, 116.160; OAC 3745-31-13A; 40 C.F.R. § 52.21.

The Nonattainment New Source Review Requirements

a. Overview

43. Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, sets forth provisions for New Source Review requirements for areas that are designated as "nonattainment" for purposes of meeting one or more of the NAAQS standards ("Nonattainment NSR" or "NNSR" provisions). The Nonattainment NSR provisions are intended to reduce emissions of air pollutants in areas that have not met the NAAQS so that the areas make progress toward meeting the NAAQS.

44. Under Section 172(c)(5) of Act, 42 U.S.C. § 7502(c)(5), a state is required to adopt Nonattainment NSR SIP rules that include provisions that require that all permits for the construction and operation of modified major stationary sources within nonattainment areas conform to the requirements of Section 173 of the CAA, 42 U.S.C. § 7503.

Section 173 of the CAA, in turn, sets forth a series of requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503.

b. NNSR Program in Texas and Ohio

45. EPA approved Texas's Nonattainment NSR permit program in a federally enforceable SIP on July 17, 2000. 65 Fed. Reg. 43,986. EPA has approved subsequent revisions to Texas's NNSR regulations. *See, e.g.*, 77 Fed. Reg. 65,119 (Oct. 25, 2012). The NNSR program in the Texas SIP is codified at 30 Tex. Admin. Code §§ 116.150–116.151.

46. EPA approved Ohio's Nonattainment NSR permit program in a federally enforceable SIP on January 10, 2003. 68 Fed. Reg. 1366. EPA has approved subsequent revisions to Ohio's NNSR regulations. *See, e.g.*, 75 Fed. Reg. 8496 (Feb. 25, 2010); 80 Fed. Reg. 36477 (June 25, 2015). 40 C.F.R. §§ 1894(c)(145) and 1894(c)(162). The NNSR program in the Ohio SIP is codified at OAC 3745-31-21 through 3745-31-27.

47. Section 173 of the Act, 42 U.S.C. § 7503, 30 TAC §§ 116.150(c), 116.150(d)(1), 116.151(b) and 116.151(c)(1)-(3), and OAC 3745-31-22(A)(1) and 3745-31-22(A)(3) provide that construction for a major modification in a nonattainment area may only 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 NAAQS is made; and (b) the pollution controls to be employed will reduce emissions to the lowest achievable emission rate ("LAER").

48. "Major modification" is defined in 30 TAC §116.12(20) as "any physical change in, or change in the method of operation of a major stationary source that causes a

significant project emissions increase and a significant net emissions increase for any federally regulated new source review pollutant" and in OAC 3745-31-01(LLL) as "any physical change or change in the method of operation that would result in a significant net increase . . . of any regulated pollutant for which the stationary source is already major."

49. "Net emissions increase" means the amount by which the sum of the following exceeds zero: (a) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and (b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable as calculated under the applicable rules. 30 Tex. Admin. Code §116.12(22); OAC 3745-31-01(VVV). A "significant" net emissions increase means an increase equal to or exceeding 40 tons per year for SO_2 or NO_x and 25 tons per year for PM. 30 Tex. Admin. Code §116.12(20)(A); OAC 3745-31-01(VVVVV).

50. LAER is defined, in pertinent part, as "the most stringent emissions limitation which is contained in [any SIP] for such class or category of major stationary source, unless . . . the proposed stationary source demonstrates that such limitations are not achievable, or . . . that is achieved in practice by such class or category of stationary source," whichever is more stringent. 42 U.S.C. § 7501(3); 30 Tex. Admin. Code §116.12(17); OAC 3745-31-01(III).

51. Though Nonattainment NSR is a preconstruction permitting program, the Act, its implementing regulations, and the Texas and Ohio Nonattainment NSR rules establish requirements for the lawful operation of the source following a modification.

52. EPA is authorized to enforce violations of Texas's, Louisiana's, and Ohio's federally approved PSD and NNSR programs, as well as violations of permits issued pursuant to those programs. 42 U.S.C. § 7413(b); 40 C.F.R. § 52.23.

The Clean Air Act Title V Program

53. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources." The purpose of Title V is to ensure that all "applicable requirements" for compliance with the Act, including PSD and NNSR requirements, are collected in one place.

54. 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.

55. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. 57 Fed. Reg. 32,295; 40 C.F.R. Part 70.

56. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and the Texas Title V operating permit 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 by a permitting authority under Title V.

57. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), implementing regulations of the Act, 40 C.F.R. Part 70, and the Texas Title V operating permit program regulations have, at all relevant times, required that each Title V permit include, among other things, enforceable emission limitations (commonly set forth in a Maximum Allowable Emission Rate Table "MAERT").

58. The Texas Title V operating permit program regulations require that a source submit a timely and complete permit application that identifies all applicable requirements, certifies compliance with all applicable requirements, and contains a compliance plan for all applicable requirements for which the source is not in compliance. 30 TAC 122, Subchapter B, Division 3.

59. The Texas Title V operating permit program regulations require that any permit issued must incorporate all federally applicable requirements. 30 TAC 122.142(b)(2)(A).

60. Federal regulations at 40 C.F.R. § 70.5(b) and the Texas Title V regulations at 30 TAC § 122.136(b) require any applicant who fails to submit any relevant fact or who has submitted incorrect information in a permit application to promptly submit such supplementary facts or corrected information upon becoming aware of such failure or incorrect submittal.

61. EPA approved Texas's Title V program on December 6, 2001 (66 Fed. Reg. 63318). Texas's Title V operating permit program is codified at 30 TAC Chapter 122.

62. In all respects relevant to this Complaint, the Title V regulations of Texas closely mirror the federal Title V regulations codified at 40 C.F.R. Part 70.

63. All terms and conditions of a Title V permit are enforceable by EPA. 42 U.S.C. § 7413(b); 40 C.F.R. § 70.6(b).

Additional Permitting Requirements

a. Title 30 of the Texas Administrative Code, Chapter 116

64. The Texas SIP regulations governing the control of air pollution by permits for new construction and modification are codified at 30 TAC, Chapter 116.

65. 30 TAC § 116.115(b)(2)(F) states that "total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled 'Emission Sources--Maximum Allowable Emission Rates.' Emissions that exceed the maximum allowable emission rates are not authorized and are a violation of the permit."

66. Both 30 TAC §§ 116.115(b)(2)(G) and 116.615(9) apply to emission sources authorized by permits and state that permitted facilities may not be operated "unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations."

67. 30 TAC § 116.115(c) states that holders of permits "shall comply with all special conditions contained in the permit document."

68. 30 TAC § 116.115 was approved by EPA on April 2, 2010 (75 Fed. Reg. 16671) and was subsequently revised in a manner not relevant to this Complaint and reapproved by EPA on October 25, 2012 (77 Fed. Reg. 65119). 30 TAC § 116.116 was approved by EPA in 2011. 76 Fed. Reg. 67,600 (Nov. 2, 2011).

b. Title 30 of the Texas Administrative Code, Chapter 101

69. The Texas SIP regulations setting forth general air quality rules are codified at 30 TAC, Chapter 101.

70. Pursuant to 30 TAC § 101.221(a), all pollution "[e]mission capture equipment and abatement equipment must be considered to be in good working order and operated properly when operated in a manner such that each facility is operating within authorized emission limitations."

71. 30 TAC § 101.221 was approved by EPA in 2010. 75 Fed. Reg. 68,989 (Nov. 10, 2010).

ENFORCEMENT PROVISIONS

72. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that EPA may bring a civil action in accordance with Section 113(b) of the Act whenever it finds that any person has violated or is in violation of any requirement or prohibition of, *inter alia*, the PSD or NNSR provisions of the Act, the Title V provisions of the Act, the applicable SIP, or any permit or regulation issued thereunder.

73. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes EPA to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to $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 (note), as amended by 31 U.S.C. § 3701 (note), 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.

74. Section 167 of the Act, 42 U.S.C. § 7477, authorizes EPA 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 or NNSR requirements in Part C or Part D of the Act.

75. 40 C.F.R. § 52.23 provides that any failure by a person to comply with any provision of 40 C.F.R. Part 52, or with any approved regulatory 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.

76. 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 State of Louisiana is a "person" within the meaning of CAA Section 304. 42 U.S.C. § 7602(e).

77. 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).

GENERAL ALLEGATIONS

78. Paragraphs 1 through 77 are re-alleged and incorporated herein by reference.

79. At the Ivanhoe Facility, Defendant operates four carbon black units (Units 2-5).

80. At the Borger Facility, Defendant operates four carbon black units (Units B-1 to B-4).

81. At the Orange Facility, Defendant operates three carbon black units (Units 1-3).

82. At the Belpre Facility, Defendant operates four carbon black units (Units 1-4).

83. The Ivanhoe, Borger, Orange, and Belpre Facilities are owned and operated by Defendant and are engaged in the manufacture of carbon black.

84. Evonik Corporation ("Evonik"), which is a subsidiary of the German corporation Evonik Industries AG, is the former owner and operator of the Facilities. The private equity firms Rhône Capital and Triton Partners purchased the Facilities from Evonik Industries AG on July 29, 2011 and organized Orion Engineered Carbons, LLP to own and operate the Facilities.

85. At each of the Facilities, Defendant produces carbon black by subjecting heavy residual oil feedstock to extremely high temperatures in a controlled combustion process. In this process, Defendant partially combusts a heavy oil feed in a low oxygen reactor, producing solid carbon particles that are recovered as the carbon black product. The carbon black product is then dried, pelletized, and packaged.

86. At all times relevant to this Complaint, the Ivanhoe Facility was a "major stationary source," a "major emitting facility," and a "major source," within the meaning of the Act and the applicable PSD regulations in the Louisiana SIP, for NO_x, SO_2 and/or PM because the Ivanhoe Facility is a carbon black plant that emits or has the potential to emit in excess of 100 tons per year of the following regulated NSR pollutants: NO_x, SO_2 and/or PM.

87. At all times relevant to this Complaint, the Borger Facility and the Orange Facility were each a "major stationary source," a "major emitting facility," and a "major source," within the meaning of the Act and the applicable PSD regulations in the Texas SIP, for NO_x, SO_2 and/or PM because each of these facilities is a carbon black plant that emits or has the potential to emit in excess of 100 tons per year of the following regulated NSR pollutants: NO_x, SO_2, and/or PM.

88. At all times relevant to this Complaint, the Belpre Facility was a "major stationary source," a "major emitting facility," and a "major source," within the meaning of the Act and the applicable PSD and NNSR regulations in the Ohio SIP, for NO_x, SO_2 and/or PM because the Belpre Facility is a carbon black plant that emits or has the potential to emit in excess of 100 tons per year of the following regulated NSR pollutants: NO_x, SO_2 and/or PM.

89. Due to Defendant's failure to comply with applicable regulations promulgated by EPA and the States of Louisiana, Texas, and Ohio under the PSD and NNSR programs, Plaintiff alleges the First, Second, Third, and Fourth Claims for Relief below, based on violations resulting from major modifications made at the Ivanhoe, Borger, Orange, and Belpre Facilities.

90. Due to Defendant's failure at the Orange Facility to comply with emission limits and other requirements set forth in the applicable operating permits, Plaintiff alleges the Fifth Claim for Relief.

First Claim for Relief: Ivanhoe Facility – Violation of NSR Requirements

91. Paragraphs 1 through 90 are re-alleged and incorporated by reference.

92. Subject to a reasonable opportunity for further investigation and discovery, Defendant's predecessor, Evonik, constructed one or more "major modifications" as

defined in the Act, the Louisiana SIP, and applicable implementing regulations, at the Ivanhoe Facility, without applying for or receiving a NSR permit. Such major modifications involved one or more physical changes or changes in the method of operation, including but not necessarily limited to an upgrade of the primary bag filter at Unit 4 in 2010.

93. Such modifications included adding filter capacity at Unit 4 in 2010 in order to increase the production rate and reliability of Unit 4.

94. As a result of the increased production capacity available to the Ivanhoe Facility, the physical and/or operational changes described in Paragraph 92 resulted in, or should have been expected to result in, a "significant net emission increase" of NO_x, SO_2 and/or PM. As such, each of those changes constituted a "major modification" as defined by LAC 33:III.509.A.4 and 509.B.

95. Since July 29, 2011, Defendant has owned and operated the Ivanhoe Facility without having or seeking a NSR permit covering the major modifications identified in Paragraph 92, and without meeting the NSR emission limits applicable to the Facility as modified.

96. Because the Ivanhoe Facility physical changes and/or changes in the method of operation described in Paragraph 92 constituted a "major modification" or "major modifications," Defendant, as the owner and operator of the Facility, was required to, among other things, (1) obtain a NSR permit; (2) undertake a BACT and/or LAER determination; (3) install and operate NSR-compliant pollution controls for NO_x, SO_2 and/or PM emissions; (4) continuously meet emissions rates based on those NSR-compliant control technology determinations; and (5) demonstrate that emissions resulting from the major modifications

would not cause or contribute to air pollution in violation of any NAAQS in any air quality control region.

97. Defendant's failure to obtain a NSR permit covering the Facility as modified violated and continues to violate LAC 33:III.509 and 509.I.1 of the Louisiana SIP.

98. Defendant's failure to undertake a BACT and/or LAER determination, failure to install and operate NSR-compliant pollution controls to control NO_x, SO_2, and/or PM emissions, and failure to continuously meet the required NSR emissions rates applicable to the modified Ivanhoe Facility, violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, LAC 33:III.509.J.3 of the Louisiana SIP, and 40 C.F.R. § 52.21.

99. Defendant's failure to demonstrate that the major modifications made to the Facility did not cause a significant deterioration of air quality violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21, and LAC 33:III.509.K and M of the Louisiana SIP. By failing to demonstrate that the major modifications made to the Ivanhoe Facility did not cause or contribute to air pollution in violation of any NAAQS, the Defendant violated and continues to violate LAC 33:III.509.K and M of the Louisiana SIP.

100. Unless restrained by an order of this Court, these violations will continue. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and/or a civil penalty of up to $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 (note), as amended by 31 U.S.C. § 3701 (note), 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: Orange Facility – Violation of NSR Requirements

101. Paragraphs 1 through 90 are re-alleged and incorporated by reference.

102. Subject to a reasonable opportunity for further investigation and discovery, Defendant's predecessor, Evonik, constructed one or more "major modifications" as defined in the Act, the Texas SIP, and applicable implementing regulations, at the Orange Facility, without applying for, or receiving, a NSR permit. Such major modifications included one or more physical changes or changes in the method of operation, including but not necessarily limited to an upgrade to the air preheater at Unit 3 in 2006 and the redesign of reactor oil coils at Units 1 and 2 in 2007.

103. The upgrade of the air preheater at Unit 3 in 2006 was designed to increase carbon black production capacity.

104. The redesign of reactor oil coils at Units 1 and 2 in 2007 was designed to allow more oil feedstock to be burned and increase carbon black production capacity.

105. As a result of the increased production capacity available to the Orange Facility, the physical and/or operational changes described in Paragraph 102 resulted in, or should have been expected to result in, a "significant net emission increase" of NO_x, SO_2 and/or PM. As such, each of those changes constituted a "major modification" as defined by 40 C.F.R. § 52.21(b) and 30 TAC §§ 116.12, 116.160.

106. Since July 29, 2011, Defendant has owned and operated the Orange Facility without having or seeking a NSR permit covering the major modifications identified in

Paragraph 102, and without meeting the NSR emission limits applicable to the Facility as modified.

107. Because the Orange Facility physical changes and/or changes in the method of operation described in Paragraph 102 constituted a "major modification" or "major modifications," Defendant, as the owner and operator of the Facility, was required to, among other things, (1) obtain a NSR permit; (2) undertake a BACT and/or LAER determination; (3) install and operate NSR-compliant pollution controls for NO_x, SO_2 and/or PM emissions; (4) continuously meet emissions rates based on those NSR-compliant control technology determinations; and (5) demonstrate that emissions resulting from the major modifications would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region.

108. Defendant's failure to obtain a NSR permit covering the Facility as modified violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21, and 30 TAC §§ 116.110(a) and 116.160.

109. Defendant's failure to undertake a BACT and/or LAER determination, failure to install and operate NSR-compliant pollution controls to control NO_x, SO_2, and/or PM emissions, and failure to continuously meet the required NSR emissions rates applicable to the modified Orange Facility, violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21, and 30 TAC §§ 116.111(a)(2)(C) and 116.160.

110. Defendant's failure to demonstrate that the major modifications made to the Facility did not cause a significant deterioration of air quality, violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21, and 30 TAC § 116.160.

111. Unless restrained by an order of this Court, these violations will continue. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and/or a civil penalty of up to $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 (note), as amended by 31 U.S.C. § 3701 (note), 40 C.F.R. § 19.4, and 82 Fed. Reg. 3633 (Jan. 12, 2017).

Third Claim for Relief: Borger Facility – Violation of NSR Requirements

112. Paragraphs 1 through 90 are re-alleged and incorporated by reference.

113. Subject to a reasonable opportunity for further investigation and discovery, Defendant's predecessor, Evonik, constructed one or more "major modifications" as defined in the Act, the Texas SIP, and applicable implementing regulations, at the Borger Facility, without applying for, or receiving, a NSR permit. Such major modifications included one or more physical changes or changes in the method of operation, including but not necessarily limited to: a) the replacement of a primary bag filter and upgrades to air preheaters and related equipment in 2003 as part of the "Borger Growth Plan of 2003"; b) an air preheater upgrade at Unit B-2 in 2006; and c) an air preheater upgrade at Unit B-2 in 2007.

114. The modifications undertaken as part of the Borger Growth Plan of 2003 were performed in order to increase carbon black production capacity.

115. The upgrade of the air preheater at Unit B-2 in 2006 was designed to enable firing of more oil in the reactor, thereby increasing carbon black production capacity.

116. The upgrade of the air preheater at Unit B-2 in 2007 was designed to enable firing of more oil in the reactor, thereby increasing carbon black production capacity.

117. As a result of the increased production capacity available to the Borger Facility, the physical and/or operational changes described in Paragraph 113 resulted in, or should have been expected to result in, a "significant net emission increase" of NO_x, SO_2 and/or PM. As such, each of those changes constituted a "major modification" as defined by 40 C.F.R. § 52.21(b) and 30 TAC §§ 116.12, 116.160.

118. Since July 29, 2011, Defendant has owned and operated the Borger Facility without having or seeking a NSR permit covering the major modifications identified in Paragraph 113, and without meeting the NSR emission limits applicable to the Facility as modified.

119. Because the Borger Facility physical changes and/or changes in the method of operation described in Paragraph 113 constituted a "major modification" or "major modifications," Defendant, as the owner and operator of the Facility, was required to, among other things, (1) obtain a NSR permit; (2) undertake a BACT and/or LAER determination; (3) install and operate NSR-compliant pollution controls for NO_x, SO_2, and/or PM emissions; (4) continuously meet emissions rates based on those NSR-compliant control technology determinations; and (5) demonstrate that emissions resulting from the major modifications would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region.

120. Defendant's failure to obtain a NSR permit covering the Facility as modified violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21, and 30 TAC §§ 116.110(a) and 116.160.

121. Defendant's failure to undertake a BACT and/or LAER determination, failure to install and operate NSR-compliant pollution controls to control NO_x, SO_2, and/or PM emissions, and failure to continuously meet the required NSR emissions rates applicable to the modified Borger Facility, violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21, and 30 TAC §§ 116.111(a)(2)(C) and 116.160.

122. Defendant's failure to demonstrate that the major modifications did not cause a significant deterioration of air quality, violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21, and 30 TAC § 116.160.

123. Unless restrained by an order of this Court, these violations will continue. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and/or a civil penalty of up to $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 (note), as amended by 31 U.S.C. § 3701 (note), 40 C.F.R. § 19.4, and 82 Fed. Reg. 3633 (Jan. 12, 2017).

Fourth Claim for Relief: Belpre Facility – Violation of NSR Requirements

124. Paragraphs 1 through 90 are re-alleged and incorporated by reference.

125. Subject to a reasonable opportunity for further investigation and discovery, Orion's predecessor, Evonik, constructed one or more "major modifications" as defined in the Act, the Ohio SIP, and applicable implementing regulations, at the Belpre Facility, without applying for, or receiving, a NSR permit. Such major modifications included one or more physical changes or changes in the method of operation, including but not

necessarily limited to upgrading the primary bag filter at Unit 1 in 2006 and installing a new air preheater at Unit 2 in 2007.

126. The upgrade of the primary bag filter at Unit 1 in 2006 was designed to increase reliability and carbon black production capacity.

127. The installation of the new air preheater at Unit 2 in 2007 was designed to increase carbon black production capacity by adding a new air preheater to a unit that had previously had its air preheater removed.

128. As a result of the increased production capacity available to the Belpre Facility, the physical and/or operational changes described in Paragraph 125 resulted in, or should have been expected to result in, a "significant net emission increase" of NO_x, SO_2 and/or PM. As such, each of those changes constituted a "major modification" as defined by 40 C.F.R. § 52.21(b) and OAC 3745-31-01.

129. Since July 29, 2011, Defendant has owned and operated the Belpre Facility without having or seeking a NSR permit covering the major modifications identified in Paragraph 125.

130. Because the Belpre physical changes and/or changes in the method of operation described in Paragraph 125 constituted a "major modification" or "major modifications," Defendant, as the owner and operator of the Belpre Facility, was required to, among other things, (1) obtain a NSR permit; (2) undertake a BACT and/or LAER determination; (3) install and operate NSR-complaint controls for NO_x, SO_2, and/or PM emissions; (4) continuously meet emissions rates based on those NSR-compliant control technology determinations; and (5) demonstrate that emissions resulting from the major

modification did not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region.

131. Defendant's failure to obtain a NSR permit covering the Facility as modified violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21, and OAC 3745-31.

132. Defendant's failure to undertake a BACT and/or LAER determination, failure to install and operate NSR-compliant pollution controls to control NO_x, SO_2, and/or PM emissions, and failure to continuously meet the emissions rates applicable to the modified Facility violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21, and OAC 3745-31.

133. Defendant's failure to demonstrate that the major modification did not cause a significant deterioration of air quality violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21, and OAC 3745-31.

134. Unless restrained by an order of this Court, these violations will continue. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and/or a civil penalty of up to $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 (note), as amended by 31 U.S.C. § 3701 (note), 40 C.F.R. § 19.4, and 82 Fed. Reg. 3633 (Jan. 12, 2017).

Fifth Claim for Relief: Orange Facility –Permit Violations

135. Paragraphs 1 through 90 are re-alleged and incorporated by reference

136. Defendant is authorized to operate certain air emission equipment at the Orange Facility by Texas Commission on Environmental Quality ("TCEQ") NSR/PSD Air Permit Numbers 9403B and PSDTX627M2 ("Air Permit"). In addition, Defendant is authorized to operate the Orange Facility pursuant to Title V Permit Number O-1660, first issued by TCEQ on January 21, 2005 (and subsequently revised and renewed).

137. For each emission point at the Orange Facility, the Air Permit specifies the authorized emissions.

138. Special Condition 1A and the MAERT in the Air Permit authorizes emissions from Dryer Stack Numbers 1-4, also known as Emission Point Numbers ("EPNs") 20-23, not to exceed the rate of 3.0 lbs/hour for PM and 1.8 lbs/hour for PM_{10}.

139. Special Condition 1A and the MAERT in the Air Permit authorizes emissions from Dryer Stack Number 1 (EPN 20) not to exceed the rate of 12.1 lbs/hour for NO_x.

140. The Air Permit specifies that emissions that exceed the limits set forth in the MAERT are not authorized and are violations of the Air Permit.

141. The emission limits set forth in the Air Permit are applicable requirements under 30 TAC Chapter 122 and are federally enforceable under the Orange Facility Title V Permit O-1660.

142. On September 3, 2014, EPA issued a request to Defendant, pursuant to Section 114 of the Act, 42 U.S.C. § 7414 ("2014 Section 114 Information Request"), requiring Orion to perform stack testing at the Facilities to assess emissions of certain pollutants, including NO_x, PM, and PM_{10}. In March and April 2015, Defendant performed stack testing at the Orange Facility and provided the results to EPA.

143. On September 15-17, 2015 EPA inspected the Orange Facility to assess compliance with the Act. During the inspection, EPA reviewed Orion's records, including but not limited to Title V permit deviation reports.

144. The March and April 2015 stack test results provided by Defendant demonstrate the following three-hour emissions rates for PM: 5.67 lbs/hr for Dryer No. 1 Stack ("EPN 20"), 4.53 lbs/hr for Dryer No. 2 Stack ("EPN 21"), 4.20 lbs/hr for Dryer Stack No. 3 ("EPN 22"), and 5.66 lbs/hr for Dryer No. 4 Stack ("EPN 23"). The March and April 2015 stack test results demonstrate that since at least April 3, 2015 Defendant has exceeded its Air Permit limit for PM emissions for EPN 20, EPN 21, EPN 22, and EPN 23.

145. The March and April 2015 stack test results provided by Defendant demonstrate the following three-hour emissions rates for PM_{10}: 6.19 lbs/hr for EPN 20, 3.58 lbs/hr for EPN 21, and 4.14 lbs/hour for EPN 23. The March and April 2015 stack test results demonstrate that since at least April 3, 2015, Defendant has exceeded its Air Permit limit for PM_{10} for EPN 20, EPN 21, and EPN 23.

146. The March and April 2015 stack test results provided by Defendant demonstrate a three-hour emission rate for NO_x of 12.59 lbs/hour at EPN 20. The March and April 2015 stack test results demonstrate that since at least April 3, 2015, Defendant has exceeded its Air Permit limit for NO_x at EPN 20.

147. The violations of the emission rates in the Air Permit for PM (described in Paragraph 144), PM_{10} (described in Paragraph 145), and NO_x (described in Paragraph 146) constitute violations of the Air Permit, of Title V Permit Number O-1660, and of 30 TAC §§ 116.115(b)(2)(F) and 116.115(c).

148. Defendant failed to respond to the 2014 Section 114 Information Request requirement to conduct stack testing on the Orange Facility VOC Incinerator ("EPN 1-INC") due to elevated temperatures. During the September 15-17 inspection, EPA determined that since at least January 1, 2012, Defendant has failed to maintain in good working order and properly operate EPN 1-INC.

149. Defendant's failure to maintain in good working order and properly operate EPN 1-INC constitutes a continuing violation of 30 TAC §§ 101.221(a), 116.115(b)(2)(G), Special Condition 12(d) of the Air Permit, and Title V Permit Number O-1660.

150. During the September 15-17 inspection, EPA determined that Defendant failed to maintain in good working order and properly operate its equipment for PM emissions capture and abatement for at least 81 events occurring during the period beginning on or around July 21, 2011 through September 23, 2015.

151. Defendant's failure to maintain in good working order and properly operate its equipment for PM emissions capture and abatement constitutes a violation of 30 TAC §§101.221(a), 116.115(b)(2)(G), and Special Condition 9 of the Air Permit, and Title V Permit O-1660.

152. During the September 15-17 inspection, EPA determined that Defendant failed to prevent 239.5 lbs of unauthorized PM emissions from at least 81 events during the period beginning on or around July 21, 2011 through September 23, 2015.

153. Defendant's failure to prevent 239.5 lbs of unauthorized PM emissions constitutes a violation of 30 TAC §§116.115(b)(2)(F) and 116.115(c), Special Condition 9 of the Air Permit, and Title V Permit O-1660.

154. Unless restrained by an order of this Court, the violations alleged in Paragraphs 135 through 153 will continue. As provided in CAA Section 113(b), 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the violations set forth above subject Defendant to injunctive relief and/or a civil penalty of up to $37,500 per day for each violation occurring 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 (note), as amended by 31 U.S.C. § 3701 (note), 40 C.F.R. § 19.4, and 82 Fed. Reg. 3633 (Jan. 12, 2017).

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in Paragraphs 1 through 154 above, the United States of America and LDEQ request that this Court:

1. Permanently enjoin the Defendant from operating the Ivanhoe, Orange, Borger, and Belpre Facilities except in accordance with the Clean Air Act and all applicable regulatory requirements;

2. Order the Defendant to remedy its violations of applicable state and federal regulations by, among other things, requiring Defendant to install and operate the best available control technology or the lowest achievable emission rate at its Facilities, as required, for each pollutant subject to regulation under the Clean Air Act;

3. Order Defendant to apply for and comply with all permits for its Facilities that are in conformity with the requirements of the PSD and NNSR provisions of the Act and the Louisiana, Texas, and Ohio SIPs;

4. Order Defendant to conduct audits of its operations to determine if any additional modifications have occurred which would require it to meet the requirements of PSD and/or NNSR and report the results of these audits to the United States;

5. Order Defendant to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above;

6. Assess a civil penalty against the Defendant of up to $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. 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, assess an additional penalty of not more than $1,000,000, pursuant to La. R.S. 30:2025(E)(1)(a).

7. Award Plaintiffs their costs of this action; and,

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

DATED: December 22nd, 2017

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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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 to counsel for Defendant Orion Engineered Carbons, LLC, by electronic mail:

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