

2. The violations occurred at the Defendant's Phenix City, Alabama; Ponca City, Oklahoma, and Sunray, Texas carbon black manufacturing facilities (the "Phenix City Facility," "Ponca City Facility," and "Sunray Facility" or "Facilities"). CCC is engaged in the manufacture of carbon black.

3. CCC is responsible for the modification and operation of its Phenix City Facility, Ponca City Facility, and Sunray Facility. CCC failed to comply with the Act's implementing regulations and the Alabama, Oklahoma and Texas 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"), sulfur dioxide ("SO₂"), and/or particulate matter ("PM"); 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) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

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 May 24, 2012, the EPA issued Defendant Notices and Findings of Violations (“NOVs”) for violations at the Phenix City, Alabama; Ponca City, Oklahoma; and Sunray, Texas Facilities. EPA provided a copy of each applicable NOV to the State of Alabama, the State of Oklahoma, and the State of Texas 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. The United States is providing notice of the commencement of this action to the State of Alabama, the State of Oklahoma, and the State of Texas 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 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 SO₂.

14. Defendant operates two carbon black units at the Phenix City Facility.

15. Defendant operates four carbon black units at the Ponca City Facility.

16. Defendant operates three carbon black units at the Sunray Facility.

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

18. 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

19. 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

20. 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.

21. 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.”

22. At times relevant to this complaint, Defendant’s Facilities have been located in areas classified as attainment and/or unclassifiable for SO₂ and NO_x.

23. 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 Alabama, Oklahoma, and Texas have adopted SIPs that have been approved by the EPA. 40 C.F.R. Part 52, Subparts B, LL, and SS. 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.

24. 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

25. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration (“PSD”) of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the

NAAQS. 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.”

26. 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 BACT¹ 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 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.

27. 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

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”

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.”

28. 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.

29. 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 Alabama, Oklahoma, and Texas

30. Alabama administers a SIP-approved PSD program, which is governed by its PSD rules at Ala. Admin. Code r. 335-3-14. The Alabama PSD regulations were originally approved by EPA into the Alabama SIP on November 10, 1981 as Alabama Pollution Control Rules and Regulations, Chapter 16.4. *See* 46 Fed. Reg. 55517. Effective June 22, 1989, Alabama’s PSD program was recodified at Ala. Admin. Code r. 335-3-14. EPA has approved several amendments to the PSD portion of Alabama’s SIP,

most recently in 2010. *See* 75 Fed. Reg. 81863 (Dec. 29, 2010); 40 C.F.R. § 52.50 (setting forth EPA actions taken in regards to the Alabama SIP).

31. Oklahoma administers a SIP-approved PSD program. At times relevant to this Complaint, the PSD program was part of the Oklahoma Air Pollution Control Regulations (“OAPCR”). *See* OAPCR 1.4.1 – 1.4.4. Oklahoma’s PSD program was originally approved by EPA on August 25, 1983. *See* 48 Fed. Reg. 38,635. Since then, EPA has reviewed and approved various amendments and revisions to the Oklahoma SIP. *See* 40 C.F.R. § 52.1960 (setting forth EPA actions taken in regards to the Oklahoma SIP); 56 Fed. Reg. 33,717 (July 23, 1991); 75 Fed. Reg. 56,923 (Sept. 17, 2010) (reflecting, *inter alia*, various recodifications and administrative changes to the Oklahoma PSD provisions).

32. Texas administers a PSD program which was originally approved by EPA on June 24, 1992. *See* 57 Fed. Reg. 28,093 (June 24, 1992); 40 C.F.R. §§ 52.2270(c), 52.2299(c), 52.2303. Effective October 20, 1997, the Texas PSD regulations were recodified under Title 30, Section 116.160 of the Texas Administrative Code. *See* 62 Fed. Reg. 44,083, 44,085 (Aug. 19, 1997). At the time of the modification alleged in the Complaint, the Texas PSD program incorporated by reference certain sections of EPA’s PSD regulations codified at 40 C.F.R. § 52.21. *See id.* at 44,084; 30 Tex. Admin. Code § 116.160. Since then, EPA has reviewed and approved various amendments and revisions

to the Texas SIP. *See, e.g.*, 69 Fed. Reg. 43,752 (July 22, 2004); 40 C.F.R. §§ 52.2270, 2273 (identification of Texas SIP).

33. Applicable PSD provisions in the Alabama, Oklahoma, and Texas 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* Ala. Admin. Code r. 335-3-14-.04(8), (9) (Alabama Provisions); OAPCR 1.4.4(a), (e) (Oklahoma Provisions); 30 Tex. Admin. Code §§ 116.110, 116.111(a)(2)(C), 116.160; *see also* 54 Fed. Reg. 52,823, 52,824-25 (Dec. 22, 1989) (discussing Texas BACT requirement).

34. The definitions contained in the PSD regulations in the Alabama, Oklahoma, and Texas SIPs have at all times relevant to this Complaint defined “major modification” to include any physical change 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. Ala. Admin. Code r. 335-3-14-.04(2)(b); OAPCR 1.4.4(b)(2); 30 Tex. Admin. Code § 116.160 (incorporating the federal PSD definition of “major modification” at 40 C.F.R. § 52.21(b)(2)(i)).

35. Applicable provisions in the PSD regulations in the Alabama, Oklahoma, and Texas 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. Ala. Admin. Code r. 335-3-14-.04(2)(a); OAPCR 1.4.4(b)(1); 30 Tex. Admin. Code § 116.160 (incorporating the federal PSD definition of “major stationary source” at 40 C.F.R. § 52.21(b)(1)(i)(a) (1996)).

36. Applicable provisions in the PSD regulations in the Alabama, Oklahoma, and Texas 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 SO₂. Ala. Admin. Code r. 335-3-14-.04(2)(w); OAPCR 1.4.4(b)(22); 30 Tex. Admin. Code § 116.160 (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 SO₂ 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

37. 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.

38. 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.

39. 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.

40. The Alabama Title V operating permit program was granted full approval by EPA in 2001. *See* 66 Fed. Reg. 54,444 (Nov. 28, 2001). Alabama’s Title V operating permit program is found at Ala. Admin. Code Chapter 335-3-16.

41. The Oklahoma Title V operating permit program was granted full approval by EPA in 2001. *See* 66 Fed. Reg. 63,170 (Dec. 5, 2001). Oklahoma’s Title V operating permit program is found at OAC 252.100-8.

42. The Texas Title V operating permit program was granted full approval by EPA in 2001. *See* 66 Fed. Reg. 63,318 (Dec. 6, 2001). Texas’ Title V operating permit program is found at 30 Tex. Admin. Code Chapter 122.

43. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and the Alabama, Oklahoma and Texas 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.

44. Section 503(b) – (d) of the Act, 42 U.S.C. § 7661b(b) – (d), and the applicable Title V regulations and Alabama, Oklahoma and Texas 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); Ala. Admin. Code r. 335-3-16-.04; OAC 252:100-8-5(e); 30 Tex. Admin. Code §§ 122.130 -122.140.

45. 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 Alabama, Oklahoma and 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 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.

46. “Applicable requirement” is defined to include any applicable PSD requirements. Ala. Admin. Code r. 335-3-16-.01(1)(e); OAC 252:100-8-2; 30 Tex. Admin. Code § 122.10(2)(H); 40 C.F.R. § 70.2.

ENFORCEMENT PROVISIONS

47. 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); (2) Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or (3) the Alabama, Oklahoma, and Texas SIPs or any permits issued thereunder.

48. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring before January 31, 1997; up to \$27,500 per day for each violation occurring between January 31, 1997 and March 15, 2004; \$32,500 for each violation occurring between March 15, 2004 and January 12, 2009; and \$37,500 for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, against any person whenever such person has

violated, or is in violation of, *inter alia*, the requirements or prohibitions described in the preceding paragraph.

49. 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.

50. 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.

GENERAL ALLEGATIONS

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

52. The Phenix City Facility is located at 1500 East State Docks Road, Phenix City, Alabama, 36869, Russell County. At all times relevant to the present action, Russell County has been classified as being in attainment or unclassifiable for the national standards for NO_x and SO₂. Therefore, PSD rules applied to any modification or construction at the Phenix City Facility.

53. The Ponca City Facility is located at 1006 East Oakland Ave., Ponca City, Oklahoma, 74601, Kay County. At all times relevant to the present action, Kay County

has been classified as being in attainment or unclassifiable for the national standards for NO_x and SO₂. Therefore, PSD rules applied to any modification or construction at the Ponca City Facility.

54. The Sunray Facility is located at 11702 Carbon Black Road, Sunray, TX, 79086, Moore County. At all times relevant to the present action, Moore County has been classified as being in attainment or unclassifiable for the national standards for NO_x and SO₂. Therefore, PSD rules applied to any modification or construction at the Sunray Facility.

55. 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.

56. At the Phenix City Facility, Defendant operates two carbon black units (Unit No. 1 and Unit No. 2).

57. At the Ponca City Facility, Defendant operates four carbon black units (Unit 1, Unit 2, Unit 3, and Unit 4).

58. At the Sunray Facility, Defendant operates 3 carbon black units (Unit 1, Unit 2, and Unit 3).

59. At all times relevant to this action, the Phenix City, Ponca City, and Sunray Facilities have been “major emitting facilities and “major stationary sources” for SO₂ and NO_x within the meaning of the CAA and the applicable SIPs.

60. At all times relevant to this action, the Phenix City, Ponca City, and Sunray Facilities have been “major sources” within the meaning of Title V of the CAA and the applicable Alabama, Oklahoma, and Texas Title V programs.

(I) First Claim for Relief: Phenix City Facility – PSD Violations

61. Paragraphs 1 through 60 are re-alleged and incorporated by reference.

62. Defendant constructed one or more major modifications, as defined in the CAA and applicable implementing regulations, at the Phenix City 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 replacement of major components such as reactors, dryer drum, fans, and other work necessary to increase production at Phenix City Unit 1 in 1993; (2) a series of oxygen enrichment projects and other work at Phenix City Unit 1 in 1996; (3) the installation of new air preheaters at Phenix City Unit 1 in 2006; and (4) the replacements and redesign of portions of the dryer and other work necessary to increase production at Phenix City Unit 2 in 2003. Such modifications resulted in significant net emissions increases, as defined by the Alabama SIP, of pollutants such as NO_x and SO₂.

63. Defendant did not comply with the PSD requirements in the CAA and the Alabama 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, and failed to install and operate BACT for NO_x and SO₂ pursuant to such determination, as required by the CAA and the Alabama SIP. *See* Ala. Admin. Code r. 335-3-14-.04(1), (8), (9).

64. 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 Alabama SIP. Unless restrained by an order of this Court, these violations will continue.

65. 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 for each day of violation occurring on or after March 16, 2004; and \$37,500 for each day of violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

(II) Second Claim for Relief: Phenix City Facility – Title V Violations

66. Paragraphs 1 through 65 are re-alleged and incorporated by reference.

67. As set forth above, Defendant constructed one or more major modifications, as defined in the CAA and applicable implementing regulations, at the Phenix City Facility. As a result, these major modifications triggered the requirements to, *inter alia*, undergo

BACT determinations, obtain PSD permits establishing emissions limitations that meet BACT requirements pursuant to such determinations, and operate in compliance with such limitations. Defendant has failed to meet these requirements.

68. Subsequently, Defendant failed to submit a complete application for a Title V operating permit for the Phenix City Facility and identify all applicable requirements, accurately certify compliance with such requirements, and contain a compliance plan for all applicable requirements for which the source was not in compliance (including the requirement to meet BACT pursuant to a determination under PSD). Defendant failed to obtain a proper or adequate Title V operating permit for the modified Phenix City Facility that contained emissions limitations for NO_x and SO₂ that met BACT. Defendant thereafter operated the modified Phenix City Facility without meeting such limitations and without having an adequate operating permit that requires compliance with such limitations or contains a compliance plan for all applicable requirements for which the source is not in compliance.

69. Defendant has violated and continues to violate Sections 502(a), 503(c), and 504(a) of the Act, 42 U.S.C. §§ 7661a(a), 7661b(c), and 7661c(a), 40 C.F.R. §§ 70.5 and 70.6; and the Alabama Title V operating permit regulations at Ala. Admin. Code Chapter 335-3-16. Unless restrained by an order of this Court, these violations will continue.

70. 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 for

each day of violation occurring on or after March 16, 2004; and \$37,500 for each day of violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

(III) Third Claim for Relief: Ponca City Facility – PSD Violations

71. Paragraphs 1 through 60 are re-alleged and incorporated by reference.

72. Defendant constructed one or more major modifications, as defined in the CAA and applicable implementing regulations, at the Ponca City Facility. Such major modifications included one or more physical changes or changes in the method of operation, including but not necessarily limited to (1) a series of oxygen enrichment projects and other work at Ponca City Unit 4 in 2003 to 2004; and (2) the installation of new air preheaters and reactor upgrade at Ponca City Unit 1 in 2004 to 2007 to increase production at the unit. Such modifications resulted in significant net emissions increases, as defined by the Oklahoma SIP, of pollutants such as NO_x and SO₂.

73. Defendant did not comply with the PSD requirements in the CAA and the Oklahoma 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, and failed to install and operate BACT for NO_x and SO₂ pursuant to such determination, as required by the CAA and the Oklahoma SIP. *See* OAPCR 1.4.2(a); OAPCR 1.4.4(a), (e).

74. 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 Oklahoma SIP. Unless restrained by an order of this Court, these violations will continue.

75. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$32,500 for each day of violation occurring on or after March 16, 2004; and \$37,500 for each day of violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

(IV) Fourth Claim for Relief: Ponca City Facility – Title V Violations

76. Paragraphs 1 through 60 and 71 through 75 are re-alleged and incorporated by reference.

77. As set forth above, Defendant constructed one or more major modifications, as defined in the CAA and applicable implementing regulations, at the Ponca City Facility. As a result, these major modifications triggered the requirements to, *inter alia*, undergo BACT determinations, obtain PSD permits establishing emissions limitations that meet BACT requirements pursuant to such determinations, and operate in compliance with such limitations. Defendant has failed to meet these requirements.

78. Subsequently, Defendant failed to submit a complete application for a Title V operating permit for the Ponca City Facility and identify all applicable requirements,

accurately certify compliance with such requirements, and contain a compliance plan for all applicable requirements for which the source was not in compliance (including the requirement to meet BACT pursuant to a determination under PSD). Defendant failed to obtain a proper or adequate Title V operating permit for the modified Ponca City Facility that contained emissions limitations for NO_x and SO₂ that met BACT. Defendant thereafter operated the modified Ponca City Facility without meeting such limitations and without having an adequate operating permit that requires compliance with such limitations or contains a compliance plan for all applicable requirements for which the source is not in compliance.

79. Defendant has violated and continues to violate Sections 502(a), 503(c), and 504(a) of the Act, 42 U.S.C. §§ 7661a(a), 7661b(c), and 7661c(a), 40 C.F.R. §§ 70.5 and 70.6; and the Oklahoma Title V operating permit regulations at OAC 252.100-8. Unless restrained by an order of this Court, these violations will continue.

80. 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 for each day of violation occurring on or after March 16, 2004; and \$37,500 for each day of violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

(V) **Fifth Claim for Relief: Sunray Facility – PSD Violations**

81. Paragraphs 1 through 60 are re-alleged and incorporated by reference.

82. Defendant constructed one or more major modifications, as defined in the CAA and applicable implementing regulations, at the Sunray Facility. Such major modifications included one or more physical changes or changes in the method of operation, including but not necessarily limited to the installation of a new combustion air blower and related work to increase production at Sunray Unit 2 in 2000. Such modifications resulted in significant net emissions increases, as defined by the Texas SIP, of pollutants such as SO₂.

83. Defendant did not comply with the PSD requirements in the CAA and the Texas SIP with respect to the modification of Sunray Unit 2. Among other things, Defendant failed to obtain a PSD permit for the modified unit, failed to undergo a BACT determination, and failed to install and operate BACT for SO₂ pursuant to such determination, as required by the CAA and the Texas SIP. *See* 30 Tex. Admin. Code §§ 116.110, 116.111(a)(2)(C), 116.160.

84. 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 Texas SIP. Unless restrained by an order of this Court, these violations will continue.

85. 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 for each day of violation occurring on or after March 16, 2004; and \$37,500 for each day of violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

(VI) Sixth Claim for Relief: Sunray Facility – Title V Violations

86. Paragraphs 1 through 60 and 81 through 85 are re-alleged and incorporated by reference.

87. As set forth above, Defendant constructed one or more major modifications, as defined in the CAA and applicable implementing regulations, at the Sunray Facility. As a result, these major modifications triggered the requirements to, *inter alia*, undergo BACT determinations, obtain PSD permits establishing emissions limitations that meet BACT requirements pursuant to such determinations, and operate in compliance with such limitations. Defendant has failed to meet these requirements.

88. Subsequently, Defendant failed to submit a complete application for a Title V operating permit for the Sunray Facility and identify all applicable requirements, accurately certify compliance with such requirements, and contain a compliance plan for all applicable requirements for which the source was not in compliance (including the requirement to meet BACT pursuant to a determination under PSD). Defendant failed to

obtain a proper or adequate Title V operating permit for the modified Sunray Facility that contained emissions limitations for NO_x and SO₂ that met BACT. Defendant thereafter operated the modified Sunray Facility without meeting such limitations and without having an adequate operating permit that requires compliance with such limitations or contains a compliance plan for all applicable requirements for which the source is not in compliance.

89. Defendant has violated and continues to violate Sections 502(a), 503(c), and 504(a) of the Act, 42 U.S.C. §§ 7661a(a), 7661b(c), and 7661c(a), 40 C.F.R. §§ 70.5 and 70.6; and the Texas Title V operating permit regulations at 30 Tex. Admin Code Chapter 122. Unless restrained by an order of this Court, these violations will continue.

90. 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 for each day of violation occurring on or after March 16, 2004; and \$37,500 for each day of violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

PRAYER FOR RELIEF

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

1. Permanently enjoin the Defendant from operating carbon black manufacturing units at Phenix City, Alabama; Ponca City, Oklahoma; and Sunray, Texas, 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 Alabama, Oklahoma, and Texas 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 United States;

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 for each day of violation occurring on or after March 16, 2004; and \$37,500 for each day of violation

occurring on or after January 13, 2009;

7. Award the United States its costs of this action; and,
8. Grant such other relief as the Court deems just and proper.

Dated: March 23, 2015

Respectfully submitted,

s/ John C. Cruden

(Signed copy of document bearing signature of Attorney is being maintained in the office of Filing Attorney)

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s/ Jason A. Dunn

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