

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	1:99-CV-2859-JEC
GEORGIA POWER COMPANY,)	
SAVANNAH ELECTRIC AND POWER)	
COMPANY,)	
)	
Defendants.)	
)	

AMENDED 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"), alleges:

NATURE OF THE ACTION

1. This is a civil action brought against the Defendants pursuant to Sections 113 and 167 of the Clean Air Act ("the Act"), 42 U.S.C. § 7413 and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions, 42 U.S.C. §§ 7470-92, and the New Source Performance Standards

("NSPS") of the Act, 42 U.S.C. § 7411, and for violations of the State Implementation Plan ("SIP") approved under the Act for the state of Georgia. Defendants modified, and thereafter operated, the following coal-fired electric generating power plants: Bowen in Bartow County, Kraft in Chatham County, and Scherer in Monroe County, Georgia, without first obtaining appropriate permits authorizing the construction. Defendants thereafter operated and continue to operate those plants without installing the appropriate pollution control technology to control emissions of nitrogen oxides ("NO_x"), sulfur dioxide ("SO₂"), and particulate matter ("PM"), as the Act requires.

2. As a result of Defendants' operation of the power plants following these unlawful modifications and without appropriate controls, massive amounts of SO₂, NO_x, and PM have been, and still are being, released into the atmosphere aggravating air pollution locally and far downwind from these plants.

3. Defendants' violations, alone and in combination with similar violations at other coal-fired electric power plants, have been significant contributors to some of the most severe environmental problems facing the nation today. An order of

this Court directing these Defendants, forthwith, to install and operate the pollution control technology to control these pollutants, in conjunction with orders being sought in similar cases involving other coal-fired electrical power plants in the midwest and southern United States filed by the United States concurrent with the filing of the original complaint, will produce an immediate and dramatic improvement in the quality of air breathed by millions of Americans downwind of the these plants. Such an order, in conjunction with others sought in other jurisdictions, will reduce illness, improve visibility, and protect national parks, wilderness areas, forests, lakes, and streams from further degradation due to the fallout from acid precipitation, and allow the environment to restore itself following years, and in some cases decades, of illegal emissions.

4. Sulfur dioxide, NO_x , and PM when emitted into the air can have adverse environmental and health impacts. Electric utility plants collectively account for about 70 percent of annual SO_2 emissions and 30 percent of NO_x emissions in the United States. Sulfur dioxide interacts in the atmosphere to form sulfate aerosols, which may be transported long distances through the air. Most sulfate aerosols are particles that can

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

5. Nitrogen oxides have numerous adverse effects on health and welfare. Nitrogen oxides react with other pollutants and sunlight to form ground-level ozone, which scientists have long recognized as being harmful to human health and causing environmental damage. Ozone causes decreases in lung function (especially among children who are active outdoors) and respiratory problems leading to increased hospital admissions and emergency room visits. Ozone may inflame and possibly cause permanent damage to people's lungs. In addition, ozone damages vegetation. Nitrogen dioxide ("NO₂"), one type of NO_x, is a dangerous pollutant that can cause people to have difficulty breathing by constricting lower respiratory passages; it may weaken a person's immune

system, causing increased susceptibility to pulmonary and other forms of infections. While children and asthmatics are the primary sensitive populations, individuals suffering from bronchitis, emphysema, and other chronic pulmonary diseases have a heightened sensitivity to NO₂ exposure.

6. Sulfur dioxide and nitrogen oxides interact in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. Acid rain, which also comes in the form of snow, sleet or fog, "acidifies" lakes and streams rendering them uninhabitable by aquatic life, and it damages trees at high elevations. Acid precipitation accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. Sulfur dioxide and NO_x gases and their particulate matter derivatives, sulfates and nitrates, contribute to visibility degradation and impact public health. In this civil action, and in other civil actions filed concurrent with the original complaint, the United States intends to reduce dramatically, the amount of SO₂ and NO_x that certain electric utility plants have been illegally releasing into the atmosphere. If the injunctive relief requested by the United States in this

action is imposed, and in others filed concurrent with the original complaint, many acidified lakes and streams will improve so that they may once again support fish and other forms of aquatic life. Visibility will improve, allowing for increased enjoyment of scenic vistas throughout the eastern half of our country including several national parks and wilderness areas. Stress to our forests from Maine to Florida will be reduced. Deterioration of our historic buildings and monuments will be slowed. In addition, reductions in SO₂ and NO_x will reduce sulfates, nitrates, and ground level ozone, leading to improvements in public health.

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

materials. Reductions in PM illegally released into the atmosphere by the defendants and others will significantly reduce the serious health and environmental effects caused by PM in our atmosphere.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action and the defendants 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.

9. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the Defendants reside in this District, the Defendants have their principal places of business in this district, violations occurred and are occurring in this District, and one facility is located in this District.

NOTICES

10. On November 3, 1999, EPA issued Notices of Violation to Defendants for Defendants' violations of the Act and the Georgia SIP. Pursuant to 42 U.S.C. §§ 7413(a)(1) and (b)(1), EPA provided a copies of the Notices of Violation to the State of Georgia.

11. 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.

12. The United States provided notice of the commencement of this action to the State of Georgia as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

THE DEFENDANTS

13. Defendants Georgia Power Company ("Georgia Power"), and Savannah Electric and Power Company ("Savannah Power") are Georgia corporations doing business in Georgia and other states. Both are wholly owned subsidiaries of The Southern Company ("Southern"), a Delaware corporation with headquarters in Atlanta, Georgia.

14. At all times relevant to this Complaint, Defendant Georgia Power owned and operated Plant Bowen, a coal-fired electric generation plant in Bartow County, Georgia. Plant Bowen generates electricity from four steam generating boilers which are designated as Plant Bowen Units 1 through 4.

15. At all times relevant to this Complaint, Defendant Georgia Power owned and operated Plant Scherer, a coal-fired electric generation plant in Monroe County, Georgia. Plant

Scherer generates electricity from four steam generating boilers which are designated as Plant Scherer Units 1 through 4.

16. At all times relevant to this Complaint, Defendant Savannah Power owned and operated Plant Kraft, a coal-fired electric generation plant in Chatham County, Georgia. Plant Kraft generates electricity from four steam generating boilers which are designated as Plant Kraft Units 1 through 4.

17. Defendants Georgia Power and Savannah Power are "persons" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

18. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

The National Ambient Air Quality Standards

19. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare and the presence of

which results from numerous or diverse mobile or stationary sources. For each such pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards ("NAAQS") requisite to protect the public health and welfare. Pursuant to Sections 108 and 109, EPA has identified and promulgated NAAQS for NO_x, SO₂, PM (now measured in the ambient air as PM-10), and ozone as such pollutants. 40 C.F.R. §§ 50.4 - 50.11.

20. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is "unclassifiable."

21. At times relevant to this complaint Plants Bowen, Kraft, and Scherer were located in areas that had been classified as attainment or unclassifiable for one or more of the following pollutants: NO₂, SO₂, PM-10, and PM.

The Prevention of Significant Deterioration
Requirements

22. Part C 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. These provisions are referred to herein as the "PSD program."

23. 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 unless a permit has been issued that comports with the requirements of Section 165, including the requirement that the facility install and operate the best available control technology for each pollutant subject to regulation under the Act that is emitted from the facility.

24. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates fossil-fuel fired steam electric plants of more

than two hundred and fifty million British thermal units ("BTUs") per hour heat input and that emit or have the potential to emit one hundred tons per year or more of any pollutant to be "major emitting facilities."

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

26. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require states to adopt state implementation plans ("SIPs") that contain emission limitations and such other measures to prevent significant deterioration of air quality in attainment areas.

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

28. If a state does not have a PSD program that has been

approved by EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

29. As set forth at 40 C.F.R. § 52.21(i), construction of any major stationary source or major modification in an area designated as attainment or unclassifiable requires a PSD permit prior to that construction.

30. Construction of a major stationary source or major of modification is deemed to have commenced only if the owner or operator has obtained all necessary preconstruction approvals or permits and either has: "(i) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or (ii) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable period of time." 40 C.F.R. § 52.21(b)(9).

31. A "major stationary source" is defined to include a fossil-fuel fired steam electric plant of more than 250 million BTUs per hour heat input which emits or has the potential to emit one hundred tons per year or more of any

regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a).

32. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act.

33. "Significant" is defined at 40 C.F.R. § 52.21(b)(23)(i) in reference to a net emissions increase of the following pollutants, at a rate of emissions that would equal or exceed any of the following: for SO₂, 40 tons per year; for NO_x, 40 tons per year; and for PM, 25 tons per year. "Net emissions increase" means "the amount by which the sum of the following exceeds zero: (a) Any increase in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] from a particular physical change or change in method of operation at a stationary source; and (b) Any other increases and decreases in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] at the source that are contemporaneous with the particular change and are otherwise creditable." 40 C.F.R. § 52.21(b)(3)(i).

34. As set forth at 40 C.F.R. § 52.21(j), a newly constructed source or a source with a major modification in an

attainment area must install and operate best available control technology ("BACT") for each pollutant subject to regulation under the Act for which the modification would result in a significant net emissions increase.

35. As set forth at 40 C.F.R. § 52.21(k), the PSD program requires a person who wishes to modify a major source in an attainment area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount.

36. As set forth in 40 C.F.R. § 52.21(m), any application for a PSD permit must be accompanied by an analysis of ambient air quality in the area.

37. As set forth in 40 C.F.R. § 52.21(n), the owner or operator of a facility to be constructed or modified must submit all information necessary to make any analysis or make any determination required under 40 C.F.R. § 52.21.

38. As set forth in 40 C.F.R. § 52.21(o), the owner or operator shall provide an analysis of the impairment to visibility, soils, and vegetation resulting from the source or modification.

General Permitting Requirements

39. Under Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), each SIP must include a program to regulate the modification and construction of any stationary source of air pollution, regardless of whether the source is defined as "major," in both attainment and nonattainment areas of the state as necessary to assure that NAAQS are achieved.

New Source Performance Standards

40. Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of U.S. EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

41. Section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of U.S. EPA to promulgate regulations establishing federal standards of performance for new sources of air pollutants within each of the categories identified pursuant to Section 111(b)(1)(A). "New sources" are defined as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations

prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2). These standards are known as New Source Performance Standards ("NSPS").

42. Pursuant to Sections 111 and 114 of the Act, 42 U.S.C. §§ 7411, 7414, U.S. EPA promulgated 40 C.F.R. Part 60, Subpart A, §§ 60.1 - 60.19, which contains general provisions regarding NSPS.

43. Section 60.1 states that the provisions of 40 C.F.R. Part 60 apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility. 40 C.F.R. § 60.1.

44. Section 60.2 defines "affected facility" as any apparatus to which a standard is applicable. 40 C.F.R. § 60.2.

45. Pursuant to Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), EPA has identified electric utility steam generating units as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or

welfare.

46. Pursuant to Section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), EPA has promulgated NSPS for electric utility steam generating units. NSPS requirements for electric utility steam generating units for which construction or modification is commenced after September 18, 1978, are codified at 40 C.F.R. Part 60, Subpart Da, §§ 60.40a-49a.

47. The "affected facilities" to which Subpart Da applies are each "electric utility steam generating unit" that is capable of combusting more than 73 megawatts (250 million Btu/hour) heat input of fossil fuel (either alone or in combination with any other fuel) and for which construction or modification is commenced after September 18, 1978. 40 C.F.R. § 60.40a.

48. Under Subpart Da, "steam generating unit" means any furnace, boiler, or other device, other than nuclear steam generators, used for combusting fuel for the purpose of producing steam, including fossil-fuel-fired steam generators associated with combined cycle gas turbines. 40 C.F.R. § 60.41a.

49. Under Subpart Da, an "electric utility steam generating unit", means any steam electric generating unit

that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts ("MW") electrical output to any utility power distribution system for sale. 40 C.F.R. § 60.41a.

50. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source after the effective date of that NSPS. Thus, a violation of an NSPS is a violation of Section 111(e) of the Act.

51. Pursuant to 40 C.F.R. § 60.7(a), any owner or operator of an affected facility subject to NSPS must furnish written notification to EPA of, among other things, the date of construction or modification of an affected facility no later than 30 days after such date.

52. Pursuant to 40 C.F.R. § 60.8, the owner or operator of an affected facility that is an electric utility steam generating unit must conduct a performance test in accordance with 40 C.F.R. § 60.48a within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility, and furnish EPA a written report of the results of such performance test.

53. An owner and operator of an affected facility under subpart Da is required to install, calibrate, maintain and operate a continuous monitoring system, and record the output of the system for measuring SO₂ and NO_x emissions. 40 C.F.R. § 60.47a(b) and (c).

54. Pursuant to 40 C.F.R. §§ 60.49a(b) and (i), the owner or operator of an electric utility steam generating unit subject to Subpart Da must submit quarterly reports to EPA containing certain emissions information.

55. Pursuant to 40 C.F.R. § 60.2, "commenced" construction means "that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification."

56. Pursuant to 40 C.F.R. §§ 60.43a(a) and 60.44a(a), the owner or operator of an electric utility steam generating unit subject to Subpart Da, may not discharge into the atmosphere from the affected facility any gases which contain SO₂ or NO_x in excess of the applicable limitations.

GEORGIA REGULATORY PROVISIONS

PSD Permitting

57. Georgia's PSD program is set forth at Section 7 of Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7), "Prevention of Significant Deterioration of Air Quality" (PSD) (hereafter "DNR 391-3-1-.02(7)"). DNR 391-3-1-.02(7) was approved as part of the Georgia SIP on February 18, 1979. 44 Fed. Reg. 54047. On February 10, 1982, EPA approved as a revision to the Georgia SIP an amendment to DNR 391-3-1-.02(7). 47 Fed. Reg. 6017. Through this revision, the Georgia SIP incorporated by reference certain EPA Part 52 regulations promulgated through August 7, 1980. The regulations set forth at 40 C.F.R. §§ 52.21(b) and 52.21(i) through (r), among others, have been incorporated by reference into the Georgia SIP. DNR 391-3-1-.02(7).

58. Through modifications to the Georgia SIP subsequently approved by EPA on December 14, 1992, (57 Fed. Reg. 58989) and February 2, 1996, (61 Fed. Reg. 3817), the Georgia SIP now incorporates EPA Part 52 (Approval and Promulgation of Implementation Plans) regulations promulgated through June 3, 1993.

59. At all relevant times, the Georgia SIP has prohibited the construction, major modification, or operation of a major emitting facility in any area in Georgia which has

attained the NAAQS unless a permit has been issued for such facility (PSD permit) and the other requirements of DNR 391-3-1-.02(7) have been satisfied.

General Permitting Requirements

60. Georgia's general air permitting regulations are promulgated at Georgia DNR Air Quality Control Rule 391-3-1-.03 (hereinafter "DNR 391-3-1-.03"). DNR 391-3-1-.03 provides that any person constructing or modifying any equipment which may emit any air pollutant shall, prior to such construction or modification, obtain a permit authorizing such construction, modification, or operation. DNR 391-3-1-.03 was originally approved by EPA as part of the Georgia SIP on August 20, 1976 (41 Fed. Reg. 35184). Revisions to DNR 391-3-1-.03 were approved as part of the Georgia SIP on September 18, 1979 (44 Fed. Reg. 54047) and on March 8, 1995 (60 Fed. Reg. 12688).

61. The Georgia SIP currently defines "modification" as any change in or alteration of fuels, processes, operation or equipment which affects the amount of any air pollutant emitted. DNR 393-3-1.01(pp).

ENFORCEMENT PROVISIONS

62. Section 113(a)(1) of the Act, 42 U.S.C. §

7413(a)(1), provides that:

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may . . .

* * *

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

63. Section 113(a)(3) of the Act, 42 U.S.C. §

7413(a)(3), provides that "[e]xcept for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter . . . the Administrator may . . . bring a civil action in accordance with subsection (b) of this section"

64. Section 113(b)(1) of the Act, 42 U.S.C. §

7413(b)(1), and 40 C.F.R. § 52.23, authorize the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day of violation for violations occurring on or

before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit.

65. Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, requirements of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1), including violations of Section 165(a), 42 U.S.C. § 7475(a) and Section 111, 42 U.S.C. § 7411.

66. 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, modification or operation of a major emitting facility which does not conform to the PSD requirements.

67. At all times pertinent to this civil action, Plants Bowen, Kraft and Scherer, were each a "major emitting facility" and a "major stationary source" within the meaning of the Act and the Georgia SIP for NO_x, SO₂, PM-10, and PM.

68. Any owner or operator who constructs or operates a source or modification subject to 40 C.F.R. Part 52 regulations who commences construction after the effective date of those regulations without applying for and receiving approval thereunder, or operates the source without complying with the applicable regulations, shall be subject to appropriate enforcement action. 40 C.F.R. § 52.21(r).

69. Pursuant to Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. § 52.23, upon EPA approval, SIP requirements are federally enforceable under Section 113. 40 C.F.R. § 52.23.

FIRST CLAIM FOR RELIEF

(PSD Violations: Modifications at Plant Bowen)

70. Paragraphs 1 through 69 are realleged and incorporated herein by reference.

71. At various times, Defendant Georgia Power commenced

construction of major modifications, as defined in the Act and the Georgia SIP, at Plant Bowen. These modifications included, but are not limited to: installation of a new economizer in Unit 2 in 1992. Defendant Georgia Power constructed additional major modifications to the Bowen plant other than those described in this paragraph.

72. Defendant Georgia Power did not obtain a PSD permit as required by the Georgia SIP, DNR 391-3-1-.02(7), prior to constructing or operating the major modifications at Plant Bowen identified in paragraph 71. Defendant Georgia Power subsequently has operated Plant Bowen without installing or operating BACT for control of NO_x, SO₂ and PM, as applicable, as required by the Georgia SIP, DNR 391-3-1-.02(7), at the Bowen Plant. In addition, Defendant Georgia Power has failed and continues to fail to comply at Plant Bowen with the requirements of the Georgia SIP, DNR 391-3-1-.02(7)(b)(6, 7, 9, 10).

73. Defendant Georgia Power has violated Section 165(a) of the Act, 42 U.S.C. § 7475(a), and the Georgia SIP, DNR 391-3-1-.02(7), at Plant Bowen, and continues to operate Plant Bowen in violation of these provisions. Unless restrained by an order of this Court, these and similar violations of the

Act will continue.

74. 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 Georgia Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SECOND CLAIM FOR RELIEF

(Georgia SIP General Permit Violations at Plant Bowen)

75. Paragraphs 1 through 69 are realleged and incorporated herein by reference.

76. Each of the modifications at Plant Bowen identified in paragraph 71 is a modification as defined by DNR 393-3-1.01(pp).

77. Defendant Georgia Power failed to obtain a permit pursuant to DNR 391-3-1-.03 prior to construction or operation of the modifications of the Bowen Plant identified in paragraph 71.

78. Defendant Georgia Power has violated the Act and the Georgia SIP, DNR 391-3-1-.03, at Plant Bowen, and continues to operate Plant Bowen in violation of these provisions. Unless

restrained by an order of this Court, these and similar violations of the Act and the Georgia SIP will continue.

79. 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 Georgia Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRD CLAIM FOR RELIEF

(PSD Violations: Construction at Plant Scherer Unit 3)

80. Paragraphs 1 through 69 are realleged and incorporated herein by reference.

81. Defendant Georgia Power commenced construction of major modifications, as defined in the Act and the Georgia SIP, at Plant Scherer. These "major modifications" included, but are not limited to: construction of Scherer Unit 3 on or after June 1, 1975. Defendant Georgia Power did not undertake prior to June 1, 1975, a continuous program of construction at Unit 3, or complete construction of Unit 3 within a reasonable time. Unit 3 is thus subject to the PSD provisions of the CAA and/or the Georgia SIP. After a reasonable opportunity for

further investigation or discovery, it is likely the evidence will show that Defendant Georgia Power constructed additional major modifications to the Scherer plant other than those described in this paragraph, and such major modifications are therefore so alleged.

82. Defendant Georgia Power did not obtain a PSD permit as required by Section 165 of the Act, 42 U.S.C. § 7475, or, following February 18, 1979, DNR 391-3-1-.02(7) of the Georgia SIP, prior to constructing or operating the major modifications at Plant Scherer identified in paragraph 81. Defendant Georgia Power has operated Plant Scherer Unit 3 without installing and operating BACT for control of NO_x, SO₂, and PM, as applicable, as required by Section 165 of the Act, 42 U.S.C. § 7475 or DNR 391-3-1-.02(7) of the Georgia SIP.

83. Defendant Georgia Power has violated Section 165(a) of the Act, 42 U.S.C. § 7475(a), and DNR 391-3-1-.02(7) of the Georgia SIP at Plant Scherer, and continues to operate Plant Scherer in violation of these provisions. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

84. 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 Georgia Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FOURTH CLAIM FOR RELIEF

(NSPS Violations: Construction at Plant Scherer Unit 3)

85. Paragraphs 1 through 69 are realleged and incorporated herein by reference.

86. Defendant Georgia Power is an "owner" and "operator" of Plant Scherer Unit 3 within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of an electric utility steam generating unit within the meaning of 40 C.F.R. §§ 60.40a and 60.41a, designated Scherer Unit 3.

87. Defendant Georgia Power commenced construction of Scherer Unit 3 after September 18, 1978. Hence, Scherer Unit 3 was and is subject to NSPS Subpart Da requirements.

88. Defendant Georgia Power has operated and continues to operate Plant Scherer without complying with Subpart Da requirements at Plant Scherer Unit 3. Georgia Power has failed to comply with Subpart Da requirements at Plant Scherer

Unit 3 by, including but not limited to, failing to conduct a performance test in accordance with 40 C.F.R. § 60.48a within 60 days after achieving the maximum production rate at the facility or furnishing EPA a written report of the results of such performance test.

89. Each day that Defendant Georgia Power fails to comply with NSPS requirements at Plant Scherer Unit 3 is a violation of Section 111(e) of the Act, 42 U.S.C. § 7411(e).

90. Defendant Georgia Power has been in violation of the Act and the Georgia SIP at Plant Scherer, and continues to operate Plant Scherer in violation of the Act and the Georgia SIP. Unless restrained by an order of this Court, these and similar violations of the Act and the Georgia SIP will continue.

91. 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 Georgia Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FIFTH CLAIM FOR RELIEF

(PSD Violations: Construction at Plant Scherer Unit 4)

92. Paragraphs 1 through 69 are realleged and incorporated herein by reference.

93. Defendant Georgia Power commenced construction of major modifications, as defined in the Act and the Georgia SIP, at Plant Scherer. These "major modifications" included, but are not limited to" construction of Scherer Unit 4 on or after June 1, 1975. Defendant Georgia Power did not undertake prior to June 1, 1975, a continuous program of construction at Unit 4, or complete construction of Unit 4 within a reasonable time. Unit 4 is thus subject to the PSD provisions of the CAA and/or the Georgia SIP. After a reasonable opportunity for further investigation or discovery, it is likely the evidence will show that Defendant Georgia Power constructed additional major modifications to the Scherer plant other than those described in this paragraph, and such major modifications are therefore so alleged.

94. Defendant Georgia Power did not obtain a PSD permit as required by Section 165 of the Act, 42 U.S.C. § 7475, or, following February 18, 1979, DNR 391-3-1-.02(7) of the Georgia SIP, prior to constructing or operating the major modifications at Plant Scherer identified in paragraph 93.

Defendant Georgia Power has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Section 165 of the Act, 42 U.S.C. § 7475 or DNR 391-3-1-.02(7) of the Georgia SIP at Plant Scherer.

95. Defendant Georgia Power has violated Section 165(a) of the Act, 42 U.S.C. § 7475(a), and DNR 391-3-1-.02(7) of the Georgia SIP at Plant Scherer, and continues to operate Plant Scherer in violation of these provisions. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

96. 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 Georgia Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SIXTH CLAIM FOR RELIEF

(NSPS Violations: Construction at Plant Scherer Unit 4)

97. Paragraphs 1 through 69 are realleged and incorporated herein by reference.

98. Defendant Georgia Power is an "owner" and

"operator," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of an electric utility steam generating unit within the meaning of 40 C.F.R. §§ 60.40a and 60.41a, designated Plant Scherer Unit 4.

99. Defendant Georgia Power commenced construction of Plant Scherer Unit 4 after September 18, 1978. Hence, Plant Scherer Unit 4 was and is subject to NSPS Subpart Da requirements.

100. Defendant Georgia Power has operated and continues to operate Plant Scherer without complying with Subpart Da requirements at Plant Scherer Unit 4. Georgia Power has failed to comply with Subpart Da requirements at Plant Scherer Unit 4 by, including but not limited to, failing to conduct a performance test in accordance with 40 C.F.R. § 60.48a within 60 days after achieving the maximum production rate at the facility or furnishing EPA a written report of the results of such performance test.

101. Each day that Defendant Georgia Power fails to comply with NSPS requirements at Plant Scherer Unit 4 is a violation of Section 111(e) of the Act, 42 U.S.C. § 7411(e).

102. Defendant Georgia Power has been in violation of

the Act and the Georgia SIP at Plant Scherer, and continues to operate Plant Scherer in violation of the Act and the Georgia SIP. Unless restrained by an order of this Court, these and similar violations of the Act and the Georgia SIP will continue.

103. 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 Georgia Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SEVENTH CLAIM FOR RELIEF

(PSD Violations: Modifications at Plant Kraft)

104. Paragraphs 1 through 69 are realleged and incorporated herein by reference.

105. At various times, Defendant Savannah Power commenced construction of major modifications, as defined in the Act and the Georgia SIP, at Plant Kraft. These major modifications included, but are not limited to: balanced draft conversion of Unit 3 in 1985. Defendant Savannah Power constructed additional major modifications to the Kraft plant

other than those described in this paragraph.

106. Defendant Savannah Power and SCS did not obtain a PSD permit as required by the Georgia SIP, DNR 391-3-1-.02(7), prior to constructing or operating the major modifications at Plant Kraft identified in paragraph 105. Defendant Savannah Power has operated Plant Kraft without installing or operating BACT for control of NO_x, SO₂ and PM, as applicable, as required by the Georgia SIP, DNR 391-3-1-.02(7), at Plant Kraft. In addition, Defendant Savannah Power has failed and continues to fail to comply at Plant Kraft with the requirements of the Georgia SIP, DNR 391-3-1-.02(7)(b)(6, 7, 9, 10).

107. Defendant Savannah Power has violated Section 165(a) of the Act, 42 U.S.C. § 7475(a), and the Georgia SIP, DNR 391-3-1-.02(7), at Plant Kraft, and continues to operate Plant Kraft in violation of these provisions. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

108. 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 Savannah Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per

day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

EIGHTH CLAIM FOR RELIEF

(Georgia SIP General Permit Violations at Plant Kraft)

109. Paragraphs 1 through 69 are realleged and incorporated herein by reference.

110. Each of the modifications at Plant Kraft identified in paragraph 105 is a modification as defined by DNR 393-3-1.01(pp).

111. Defendant Savannah Power failed to obtain a permit pursuant to DNR 391-3-1-.03 prior to construction or operation of any of the major modifications of Plant Kraft identified in paragraph 105.

112. Defendant Savannah Power has violated the Act and the Georgia SIP, DNR 391-3-1-.03, at Plant Kraft, and continues to operate Plant Kraft in violation of these provisions. Unless restrained by an order of this Court, these and similar violations of the Act and the Georgia SIP will continue.

113. 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 Savannah Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 113 above, the United States of America requests that this Court:

1. Permanently enjoin the Defendant Georgia Power from operating Plants Bowen and Scherer, including the construction of future modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;

2. Permanently enjoin the Defendant Savannah Power from operating Plant Kraft, including the construction of future modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;

3. Order Defendants Georgia Power and Savannah Power to remedy its violations by, among other things, requiring it to install, as appropriate, the best available control technology or the lowest achievable emission rate technology, on the

plants that it owns or operates for each pollutant subject to regulation under the Clean Air Act;

4. Order Defendant Georgia Power to apply for permits for Plant Bowen and Plant Scherer that are in conformity with the requirements of the PSD provisions of the Act and the Georgia SIP, and the general permit provisions of the Georgia SIP;

5. Order Defendant Savannah Power to apply for a permit for Plant Kraft that is in conformity with the requirements of the PSD provisions of the Act and the Georgia SIP, and the general permit provisions of the Georgia SIP;

6. Order Defendants Georgia Power and Savannah Power to comply with the NSPS provisions of the Act;

7. Order Defendants Georgia Power and Savannah Power to conduct audits of all of its operations to determine whether any other modifications have occurred that would require it to meet the requirements of PSD, nonattainment New Source Review, 42 U.S.C. §§ 7501-7515, NSPS, the state SIP general permit requirements of the Act, or the state SIPs, and report the results of the audits to the United States;

8. Order Defendants Georgia Power and Savannah Power 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;

9. Assess a civil penalty against each Defendant of up to \$25,000 per day for each violation of the Clean Air Act and applicable regulations, and \$27,500 per day for each such violation after January 30, 1997;

10. Award Plaintiff its costs of this action; and

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

Respectfully Submitted,

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