IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	**Civil Action No.**
MICHIGAN SUGAR COMPANY,	)	
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"), alleges:

NATURE OF THE ACTION

1. This is a civil action brought against the Michigan Sugar Company ("the Defendant" or "Michigan Sugar") pursuant to Sections 113 and 167 of the Clean Air Act ("the Act"), 42 U.S.C. § 7413, 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. §§ 7470-7492, the Plan Requirements for Nonattainment Areas ("New Source Review" or "NSR") of the Act, 42 U.S.C. §§ 7501-7515, and the federally approved and enforceable Michigan State Implementation Plan ("Michigan SIP"). The Defendant commenced construction of a Pulp Dryer (Pulp Dryer No. 3) at its Bay City, Michigan, sugar beet processing and refining facility ("Facility" or "Bay City Facility"), in 1984, resulting in significant net

emissions increases of carbon monoxide ("CO"), without obtaining a PSD permit for the Bay City Facility that addressed CO emissions as required by Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21(i), and the Michigan SIP. The Defendant commenced construction of Pulp Dryer No. 3 at its Bay City Facility in 1984, resulting in significant net emissions increases of volatile organic compounds ("VOC"), without obtaining an NSR permit for the Bay City Facility that addressed VOC emissions as required by Section 173 of the Act, 42 U.S.C. § 7503, and R 336.1201 of the Michigan Air Pollution Control Rules, approved on May 6, 1980, as part of the federally enforceable Michigan SIP. Further, the Defendant increased its annual hours of operation in 1995 beyond its federally enforceable permit conditions without considering significant net emissions increases of CO and VOC for Pulp Dryers Nos. 1, 2, and 3, at its Bay City Facility; without obtaining a PSD permit for the Bay City Facility that addressed CO emissions, as required by Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21(i), and the Michigan SIP; and, without obtaining an NSR permit for the Bay City Facility that addressed VOC emissions, as required by Section 173 of the Act, 42 U.S.C. § 7503, and R 336.1201 of the Michigan Air Pollution Control Rules, approved on May 6, 1980 as part of the federally enforceable Michigan SIP.

JURISDICTION AND VENUE

2. 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.

3. 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 the Defendant resides in this

District, the violations which constitute the basis of this Complaint occurred in this District, and Defendant's sugar beet processing and refining Facility is located in this District.

NOTICES

4. On June 1, 2005, EPA issued a Notice of Violation ("NOV") to the Defendant, and on September 13, 2005, EPA issued an Amended NOV for Defendant's violations of the Act and the Michigan SIP. Pursuant to 42 U.S.C. §§ 7413(a)(1) and (b)(1), EPA provided copies of the NOV and the Amended NOV to the State of Michigan**.**

5. The 30-day period established in 42 U.S.C. § 7413, between issuance of the NOVs and the filing of this Complaint based upon it has elapsed.

6. Notice of the commencement of this action has been given to the State of Michigan as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

THE DEFENDANT

7. Defendant is a Michigan nonprofit corporation that owns and operates a sugar beet processing and refining facility located at 2600 South Euclid Avenue, Bay County, Bay City, Michigan ("Bay City Facility"). The Bay City Facility produces sugar and related co-products for industrial and consumer markets.

8. The Defendant is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

9. At all times relevant to this Complaint, Defendant Michigan Sugar, or its predecessor entities, was an owner and operator of the stationary sources at the Bay City Facility that are the subject of the claims for relief in this Complaint.

STATUTORY AND REGULATORY BACKGROUND

10. 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

11. 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 CO, 40 C.F.R. § 50.8, and ozone, 40 C.F.R. §§ 50.9 and 50.10, as such pollutants.

12. 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."

13. At times relevant to this Complaint, the Bay City Facility was located in an area, Bay County, Michigan, that had been classified as attainment or unclassifiable for CO. At times relevant to this Complaint, the Bay City Facility was located in an area that had been classified

as nonattainment for ozone.

Prevention of Significant Deterioration Requirements

14. 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 standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are referred to herein as the "PSD program."

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

16. A state may comply with Sections 110(a) and 161 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.

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

18. On February 7, 1980 (45 Fed. Reg. 8299), EPA delegated to Michigan the authority to implement the federal PSD program incorporated into the Michigan SIP. The

regulations appearing at 40 C.F.R. § 52.21 were incorporated into and made a part of Michigan's SIP at all times relevant to this case. 40 C.F.R. § 52.1180.

19. As set forth at 40 C.F.R. § 52.21(i) and at all times relevant to this case, any "major stationary source" in an attainment or unclassifiable area that intends to construct a "major modification" was required to first obtain a PSD permit.

20. Under the PSD program, "major stationary source" is defined, *inter alia*, as any stationary source which emits, or has the potential to emit, 250 tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(b). A major stationary source that is major for VOCs shall be considered major for ozone. 40 C.F.R. § 52.21(b)(1)(ii).

21. Under the PSD program, "Construction" means "any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions." 40 C.F.R. § 52.21(b)(8). See also 42 U.S.C. § 7479(2)(C) ("construction" includes the "modification" of the source or facility).

22. Under the PSD program, a "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 emissions increase . . . of a regulated NSR pollutant . . . and a significant net emissions increase of that pollutant from the major stationary source." 40 C.F.R. § 52.21(b)(2). "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). "Significant" means a rate of emissions for CO that would equal or exceed 100 tons per year and a rate of emissions for VOCs that would equal or exceed 40 tons per year. 40 C.F.R. § 52.21(b)(23)(i).

23. The PSD regulations at 40 C.F.R. § 52.21(j) also require a source with a major modification in an attainment or unclassifiable area to install and operate best available control technology ("BACT"), as defined in 40 C.F.R. § 52.21(b)(12) and 42 U.S.C. § 7479(3), for each pollutant regulated under the Act for which the modification would result in a significant net emissions increase. 42 U.S.C. § 7475(a)(4).

24. 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.

25. Section 165(a) of the Act, 42 U.S.C. § 7475(a), and the implementing regulations at 40 CFR §§ 52.21(i) and (k), require the owner or operator to obtain a permit prior to construction of a major stationary source or of a major modification so that such a source can demonstrate, *inter alia*, that the construction or modification, taken together with other increases or decreases of air emissions, will not violate applicable air quality standards.

26. As set forth in 40 C.F.R. § 52.21(n) the owner or operator of a proposed source or modification must submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21.

Nonattainment New Source Review Requirements

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

28. Under Section 172(c)(5) of the Nonattainment NSR provisions of the 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 to conform to the requirements of Section 173 of the Act, 42 U.S.C. § 7503. Section 173 of the Act, 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.

29. Section 173 of the Act, 42 U.S.C. § 7503, provides that construction and operating permits may only be issued if: (a) sufficient offsetting emission reductions have been obtained to reduce existing emissions to the point where "reasonable further progress" toward meeting the ambient air quality standards is maintained; and, (b) the pollution controls to be employed will reduce emissions to the "lowest achievable emission rate" ("LAER").

30. Effective June 30,1979, EPA's Nonattainment NSR regulations at 40 C.F.R. § 52.24, prohibited the construction or modification of major stationary sources in any

nonattainment area to which any SIP applies, if the emissions from such stationary source will cause or contribute to concentrations of any pollutant for which a NAAQS is exceeded in such area unless such SIP meets the requirements of Part D, Title I of the Act, 42 U.S.C. § 7501-7515.

31. On May 6, 1980, EPA approved Michigan's Nonattainment NSR regulations for new or modified major stationary sources in nonattainment areas as part of the federally enforceable SIP for Michigan ("Michigan Nonattainment NSR Rules"). 45 Fed. Reg. 29790 (May 6, 1980). In response to the 1990 Amendments of the Act, Michigan submitted six revisions to meet the requirements of the Nonattainment NSR in the Act. On November 9, 1999, EPA proposed to disapprove all six revisions submitted by Michigan. 64 Fed. Reg. 61046 (November 9, 1999). To date, final action has not been taken by EPA on the Michigan SIP revisions to the Michigan Nonattainment NSR Rules. At all times relevant to this Complaint, the Michigan Nonattainment NSR Rules approved by EPA on May 6, 1980 have governed stationary sources in areas designated as nonattainment for purposes of meeting the NAAQS standards under the Act.

32. The provisions of R 336.1112(c) of the Michigan Nonattainment NSR Rules define LAER to mean, for any source, that rate of emission which reflects either of the following: (i) The most stringent emission limitation that is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; and, (ii) The most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent. The provisions of R 336.1114(g) of the Michigan Nonattainment NSR Rules defines "nonattainment area" to mean an area designated by the Michigan Air

Pollution Control Commission as not having attained full compliance with all national ambient air quality standards. Such designation shall be pollutant specific and shall not mean that an area is a nonattainment area for any other pollutant unless so specified.

33. The provisions of R 336.1113(a) of the Michigan Nonattainment NSR Rules define "Major Offset Source," with respect to nonattainment areas, as any "new equipment or accumulation of new equipment at a geographical site owned or operated by the same person which has potential emissions of 100 or more tons per year of particulates, sulfur dioxide, oxides of nitrogen, carbon monoxide or volatile organic compounds." For purposes of this definition, the provisions of R 336.1113(a) of the Michigan Nonattainment NSR Rules define"new equipment" to mean any process or process equipment for which a permit to install was approved after December 21, 1976. New equipment:

> includes all modifications and equipment replacements or accumulations of modifications and replacements which have the potential emissions of 100 or more tons per year, even if accompanying reductions from the same or other sources lead to a net emissions decrease or increase of less than 100 tons per year. It does not include the following: (i) Parts replacement considered by the Michigan Air Pollution Control Commission to be minor. (ii) Repair or maintenance considered by the Michigan Air Pollution Control Commission to be routine for that source category. (iii) Increase in emissions due to increases in hours of operation unless limited by permit conditions or Michigan Air Pollution Control Commission order. (iv) Use of alternative fuels or raw materials if the equipment was designed to accommodate such alternative use prior to the effective date of this rule. [and] (v) changes in ownership.

34. The provisions of R 336.1201(1) of the Michigan Nonattainment NSR Rules provide that a "person shall not install, construct, reconstruct, relocate, or alter any process, fuel-burning, or refuse-burning equipment, or control equipment pertaining thereto, which may be the source of an air contaminant, until a permit is issued by the Michigan Air Pollution Control

Commission. This "permit" is known as a permit to install and covers construction, reconstruction, relocation, and alteration of such equipment.

35. The provisions of R 336.1220 of the Michigan Nonattainment NSR Rules provide:

> [u]nless the following conditions are met, the Michigan Air Pollution Control Commission shall deny a permit to install for a Major Offset Source of VOCs proposed for location within an ozone nonattainment area: (a) The proposed equipment shall comply with LAER for volatile organic compounds. (b) All existing sources in the state owned or controlled by the owner or operator of the proposed source shall be in compliance with all applicable local, state, and federal air quality regulations or shall be in compliance with a consent order or other legally enforceable agreement specifying a schedule and timetable for compliance. (c) Prior to start-up of the proposed equipment, a reduction (offset) of the total hourly and annual volatile organic compounds emissions from existing sources equal to 110% of allowed emissions for the proposed equipment shall be provided. (d) Subdivisions (a) and (c) do not apply if the allowable emission rates for the proposed equipment are less than 50 tons per year, 1,000 pounds per day, and 100 pounds per hour.

ENFORCEMENT PROVISIONS

36. 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 . . .
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> * * *
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> (C) bring a civil action in accordance with subsection (b) of this section.

37. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides, "except 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 . . . ."

38. 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 penalties of up to $25,000 per day for each violation prior to January 30, 1997; up to $27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to $32,500 per day for each such violation occurring after March 15, 2004, 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.

39. 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 civil penalties of up to $25,000 per day for each violation prior to January 30, 1997; up to $27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to $32,500 per day for each such violation occurring after March 15, 2004, 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.

40. 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.

41. On June 1, 2005, EPA issued a Notice of Violation ("NOV"), and on September 13, 2005, an Amended Notice of Violation to Michigan Sugar pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), alleging violations of Part C of the Act, 40 C.F.R.§ 52.21, Part D of the Act, and the Michigan SIP adopted under the Act, *inter alia*, at the Bay City Facility.

FIRST CLAIM FOR RELIEF

(PSD Violations: Modifications at the Bay City Facility)

42. Paragraphs 1 through 41 are realleged and incorporated herein by reference.

43. At various times, Defendant commenced construction of major modifications and/or otherwise effected major modifications, as defined in the Clean Air Act, at the Bay City Facility. These major modifications included, but are not limited to: (1) the construction of Pulp Dryer No. 3 at the Bay City Facility on or about November 1984; and, (2) the increase in the annual hours of operation beyond its federally enforceable permit conditions without considering significant net emissions increases of CO and VOCs at Pulp Dryers Nos. 1, 2 & 3 at the Bay City Facility on or about October 1995. At the time of the construction of Pulp Dryer No. 3, and at the time of the increase in annual hours of operation affecting all three Pulp Dryers, the Bay City Facility was a Major Stationary Source as defined in 40 C.F.R. 52.21(b)(1)(i). These major modifications at the Bay City Facility resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(23)(i), of the following pollutants: CO and VOCs.

44. Defendant violated and continues to violate Section 165(a) of the Act, 42

U.S.C. § 7475(a), and the PSD regulations set forth in 40 C.F.R. § 52.21 that are incorporated and made a part of the Michigan SIP, by among other things, undertaking these major modifications and continuing to operate the Bay City Facility without obtaining a PSD permit as required by the Act and the PSD regulations. In addition, Defendant has not installed and operated BACT for control of CO and VOCs, as applicable, as required by the PSD regulations at 40 C.F.R. § 52.21(b)(12), 42 U.S.C. § 7479(3), and the Michigan SIP, for each pollutant for which these major modification resulted in a significant net emissions increase. 42 U.S.C. § 7475(a)(4). Defendant, Michigan Sugar, failed and continues to fail to: (1) demonstrate, *inter alia*, that these major modifications taken together with other increases or decreases of air emissions, will not violate applicable NAAQS as required by 40 C.F.R. § 52.21(i) and (k), and the Michigan SIP; (2) perform an analysis of the ambient air quality in the area as required by 40 C.F.R. § 52.21(m), and the Michigan SIP; and (3) submit to EPA and Michigan all information necessary to perform any analysis or make those determinations required by 40 C.F.R. § 52.21(n), and the Michigan SIP.

45. Based upon the foregoing, Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21. Unless restrained by an order of this Court, this and similar violations of the Act will continue.

46. 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 civil penalties of up to $25,000 per day for each violation prior to January 30, 1997; up to $27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to $32,500 per day for each such violation occurring after March 15, 2004,

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

(Nonattainment NSR Violations: Modifications at the Bay City Facility)

47. Paragraphs 1 through 46 are realleged and incorporated herein by reference.

48. At various times, Defendant Michigan Sugar, commenced construction of major modifications, or otherwise effected major modifications, as defined in the Act and the Michigan SIP at the Bay City Facility. These major modifications include, but are not limited to the modifications described in Paragraph 43, above. Some of these major modifications occurred during time periods when the Bay City Facility was located in a nonattainment area for ozone as defined by R 336.1114(g) of the Michigan Nonattainment NSR Rules. At the time these major modifications occurred, the Bay City Facility was a Major Offset Source as defined by R 336.1113(a) of the Michigan Nonattainment NSR Rules.

49. Defendant violated and continues to violate the Act and the Michigan Nonattainment NSR Rules by, among other things, undertaking these major modifications as identified in Paragraph 43, above, and operating the Bay City Facility after undertaking these major modifications, without obtaining a NSR permit for all applicable Pulp Dryers that addressed VOC emissions, as required by Section 173 of the Act, 42 U.S.C. § 7503, and R 336.1201(1) of the Michigan Nonattainment NSR Rules. In addition, as required by the Act, and R 336.1220 of the Michigan Nonattainment NSR Rules, Defendant did not meet the conditions

for approval of an NSR permit because Defendant failed to demonstrate that: (a) the major modifications identified in Paragraph 43, above, comply with LAER, as defined by R 336.1112(c) of the Michigan Nonattainment NSR Rules, for VOCs; (b) all existing sources in Michigan owned or controlled by Defendant are in compliance with all applicable local, state, and federal air quality regulations or are in compliance with a consent order or other legally enforceable agreement specifying a schedule and timetable for compliance; and, (c) prior to start-up of the major modifications identified in Paragraph 43, above, Defendant achieve a reduction (offset) of the total hourly and annual volatile organic compounds emissions from existing sources equal to 110% of allowed emissions for the major modifications. Defendant did not meet the allowable emissions rates for the major modifications specified by R 336.1220(d) of the Michigan Nonattainment NSR Rules.

50. Based upon the foregoing, Defendant has violated the Nonattainment NSR provisions of Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, and the Michigan Nonattainment NSR Rules. Unless restrained by an order of the Court, these and similar violations of the Act will continue.

51. 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 civil penalties of up to $25,000 per day for each violation prior to January 30, 1997; up to $27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to $32,500 per day for each such violation occurring after March 15, 2004, 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 50 above, the United States of America requests that this Court:

1. Permanently enjoin the Defendant from operating the Pulp Dryers at the Bay City Facility, including undertaking the construction of future major modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;

2. Order Defendant to remedy its past violations by, among other things, requiring Defendant to install, as appropriate, the best available control technology or lowest achievable emissions rate technology on the Pulp Dryers at the Bay City Facility for each pollutant subject to regulation under the Clean Air Act;

3. Order Defendant to apply for, and comply with, permits for its stationary sources at the Bay City Facility that are in conformity with the requirements of the Act, the applicable Michigan SIP, and the general permit provisions of the applicable Michigan SIP;

4. Order Defendant to perform all ambient air quality analyses and demonstrations required under the PSD provisions of the Act, PSD regulations and the Michigan SIP;

5. Order Defendant to obtain, as appropriate, emissions offsets, and comply with all other permit approval conditions of the Nonattainment NSR provisions of the Act and Michigan SIP, including additional offsets or emission reductions to mitigate the environmental harm caused by Defendant's years of excess emissions;

6. Assess a civil penalty against Defendant of up to $25,000 per day for each such

violation prior to January 30, 1997; up to $27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004; and up to $32,500 for each such violation occurring after March 15, 2004;

7. Award Plaintiff its costs of this action; and,

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

Respectfully Submitted,

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