

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
ALABAMA ENVIRONMENTAL COUNCIL, INC.)	)	
	)	
Plaintiff-Intervenor	)	
	)	
v.	)	Civil Action No.
	)	
ALABAMA POWER COMPANY,	)	01-B-152-S
	)	
a subsidiary of the	)	
Southern Company,	)	
	)	
Defendant.	)	
	)	
	)	

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**COMPLAINT OF PLAINTIFF-INTERVENOR**

Plaintiff-Intervenor Alabama Environmental Council, Inc.  
(hereinafter referred to as "Plaintiff-Intervenor") alleges as  
follows:

NATURE OF THE ACTION

1. This is a civil action brought by the United States  
against 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 for violations of the State Implementation Plan ("SIP") approved under the Act for the state of Alabama. Plaintiff intervenor is a citizen group whose members live downwind of aging coal-fired power plants owned and operated by defendant, in violation of the Act, in Alabama.

2. Defendant is in violation of the Act because it constructed or modified its electric generating units at Barry, Gaston, Gorgas, Greene County, and Miller, located in Mobile, Shelby, Walker, Greene, and Jefferson Counties, Alabama, without installing appropriate pollution control technology to control emissions of nitrogen oxides ("NO<sub>x</sub>"), sulfur dioxide ("SO<sub>2</sub>"), and particulate matter ("PM") and, with respect to all but one of the foregoing plants, without first obtaining appropriate permits authorizing the construction, as required by the Act.

3. Emissions of NO<sub>x</sub> contribute to the production of ground-level ozone. Severe health problems in humans, including breathing constrictions and lung damage in healthy persons and dangerous aggravations of severe respiratory diseases such as asthma, emphysema, and chronic bronchitis, are associated with exposure to ground-level ozone. NO<sub>x</sub> emissions are also transformed into nitrogen dioxide ("NO<sub>2</sub>"). Severe health problems in humans, including constriction of breathing passages, weakening of the immune system, and increased susceptibility to

pulmonary and other infections, are associated with exposure to NO<sub>2</sub>. NO<sub>x</sub> emissions also interact with sunlight and other pollutants to form photochemical smog, which in turn contributes to haze and reduces visibility. Power plants account for approximately 30 percent of annual NO<sub>x</sub> emissions in the United States.

4. Emissions of SO<sub>2</sub> lead to the formation of sulfate aerosols. Illness and mortality from lung disorders, such as asthma and bronchitis, are associated with exposure to sulfate aerosols. Emissions of SO<sub>2</sub> and its particulate matter derivatives also contribute to haze and reduce visibility. Coal-fired power plants account for approximately 70 percent of annual SO<sub>2</sub> emissions in the United States.

5. Emissions of NO<sub>x</sub> and SO<sub>2</sub> lead to the creation of fine nitrate and sulfate particles. Inhalation of these acid particles is associated with respiratory distress, cardiovascular disease, and premature mortality.

6. Emissions of NO<sub>x</sub> and SO<sub>2</sub> interact in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. Acid rain and other acid deposition can impair the water quality of freshwater bodies, rendering them uninhabitable for aquatic life, both by directly acidifying the water body and by increasing the bioavailability of mercury,

lead, and other toxic metals. Acid deposition also contributes to the damage of trees and accelerates the decay of buildings and other outdoor structures.

7. PM is the term for solid or liquid particles found in the air. PM with a diameter of 10 micrometers or less is referred to as "PM-10." Breathing PM or PM-10 at levels above existing ambient air standards may increase the chances of premature death, respiratory disease, and lung damage. The elderly, children, and people with chronic lung disease, influenza, or asthma, tend to be especially sensitive to the effects of PM and PM-10. PM may also exacerbate the effects of acid deposition. Electric utility power plants are a major source of PM and PM-10 in the environment.

8. As a direct result of defendant's violations of the Act associated with the illegal construction or modifications to power plants described herein, individual members of Plaintiff-Intervenor who live in the vicinity of and farther downwind of these non-complying power plants are exposed to excess emissions of SO<sub>2</sub>, NO<sub>x</sub>, PM, and PM-10 and, as a result, are particularly subject to the adverse health and environmental impacts described in paragraphs 3 - 7 above. Health, environmental, recreational, aesthetic, and other interests of these individuals are thus impaired by defendant's illegal actions and will continue to be

impaired without an order of this Court directing defendant to comply with the Act. Such an order would redress the harm to Plaintiff-Intervenor's members resulting from defendant's violations of the Act.

#### JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action and the defendant 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.

10. 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 Defendant resides in this District, has its principal places of business in this district, violations occurred and are occurring in this District, and four of the five facilities at issue are located in this District.

#### NOTICES

11. On November 3, 1999, EPA issued a Notice of Violation to Defendant for violations of the Act and the Alabama SIP. Pursuant to 42 U.S.C. §§ 7413(a)(1) and (b)(1), EPA provided a copy of the Notice of Violation to the State of Alabama.

12. The 30-day period established in 42 U.S.C. § 7413, between issuance of the Notice of Violation and commencement of a

civil action, has elapsed.

#### THE PARTIES

##### Plaintiff-Intervenor

13. Plaintiff-Intervenor is a "person," within the meaning of section 302(e) of the Act, 42 U.S.C. § 7602(e), who may commence a civil action under section 304(a) of the Act, 42 U.S.C. § 7604(a), and may intervene as a matter of right under section 304(b) of the Act, 42 U.S.C. § 7604(b), in any civil action brought by the Administrator in a Court of the United States to enforce the provisions of the Act. Plaintiff-Intervenor sues on behalf of itself and its individual members who live in the vicinity of and downwind of the coal-fired power plants that are the subject of this action. Plaintiff-Intervenor and its members are adversely affected by the power plants' excess emissions of sulfur dioxide, nitrogen oxides, and particulate matter -- in violation of the Act -- that have deleterious impacts on the air, water, land, flora, and fauna in the areas where they live, work, and recreate.

14. Plaintiff-Intervenor Alabama Environmental Council, Inc. ("AEC") is an Alabama non-profit organization with over 1,000 members state-wide. AEC was formed in 1967 and is dedicated to environmental protection, preserving natural habitat, and working

to protect Alabama's air and water quality. AEC has been actively involved in Alabama air quality issues for the past 30 years.

#### THE DEFENDANT

15. Defendant Alabama Power Company ("Alabama Power" or "Defendant"), is a wholly owned subsidiary of The Southern Company ("Southern"), a Delaware corporation with headquarters in Atlanta, Georgia, and doing business in the state of Alabama. Defendant is an operating affiliate of Southern.

16. Defendant is an Alabama corporation and does business within the state by, among other things, operating electric generating facilities in Alabama and by providing electric capacity and energy to a shared Southern system which is distributed within the states of Alabama, Georgia, Florida, and Mississippi.

17. At all times relevant to this Complaint, Defendant owned and operated Plant Barry, a coal fired electric generation plant in Mobile County, Alabama. Plant Barry generates electricity from five steam generating boilers which are designated as Plant Barry Units 1 through 5.

18. At all times relevant to this Complaint, Defendant and its Operating Affiliate, Georgia Power Company, through SEGCO, owned Plant E.C. Gaston ("Plant Gaston"), a coal fired electric

generation plant in Shelby County, Alabama. At all times relevant to this Complaint, Defendant operated Plant Gaston. Plant Gaston generates electricity from five steam generating boilers which are designated as Plant Gaston Units 1 through 5.

19. At all times relevant to this Complaint, Defendant owned and operated Plant Gorgas, a coal fired electric generation plant in Walker County, Alabama. Plant Gorgas generates electricity from five steam generating boilers which are designated as Plant Gorgas Units 6 through 10.

20. At all times relevant to this Complaint, Defendant, with its Operating Affiliate, Mississippi Power Company, owned Plant Greene County, an electric generation plant in Greene County, Alabama. At all times relevant to this Complaint, Defendant operated Plant Greene County. Plant Greene County generates electricity from ten steam generating boilers, two of which are coal fired units designated as Plant Greene County Units 1 and 2.

21. At all times relevant to this Complaint, Defendant owned and operated Plant James H. Miller, Jr. ("Plant Miller"), a coal fired electric generation plant in Jefferson County, Alabama. Plant Miller generates electricity from four steam generating boilers which are designated as Plant Miller Units 1 through 4.

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

STATUTORY AND REGULATORY BACKGROUND

23. 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

24. 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<sub>x</sub>, SO<sub>2</sub>, PM (now measured in the ambient air as PM-10), and ozone as such pollutants. 40 C.F.R. §§ 50.4 - 50.11.

25. 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."

26. At times relevant to this complaint Plants Barry, Gorgas and Greene County were located in areas that had been classified as attainment or unclassifiable for one or more of the following pollutants: NO<sub>2</sub>, SO<sub>2</sub>, PM-10, and PM.

27. At times relevant to this complaint, Gaston and Miller were located in areas that had been classified attainment or unclassifiable for NO<sub>2</sub>, SO<sub>2</sub>, PM-10, and PM and as nonattainment for Ozone.

The Prevention of Significant Deterioration Requirements

28. 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 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."

29. 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. 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." 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."

30. 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.

31. 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.

32. 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).

33. 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.

34. Under EPA's PSD regulations, 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).

35. "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.

36. "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 SO<sub>2</sub>, 40 tons per year; for NO<sub>x</sub>, 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).

37. As set forth at 40 C.F.R. § 52.21(j), 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.

38. 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.

39. 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.

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

41. 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

42. 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.

STATE OF ALABAMA REGULATORY PROVISIONS

PSD Permitting

43. The Alabama PSD program is part of the Alabama SIP and was originally approved by EPA on November 10, 1981, 46 Fed. Reg. 55517, as Alabama Air Pollution Control Commission Rules and Regulations, Chapter 16.4 (hereafter "Rule 16.4"). Effective June 22, 1989, 55 Fed. Reg. 38994, Alabama's PSD program was recodified at the Alabama Department of Environmental Management ("ADEM") Code Chapter 335-3-14 (hereafter "Rule 335-3-14").

44. At all relevant times, the Alabama SIP has prohibited the construction, major modification, or operation of a major stationary source in any area in Alabama which has been designated "attainment" or "unclassifiable" unless a PSD permit has been obtained and the other requirements of the Alabama SIP have been satisfied. Rules 16.1 and 16.4; Rules 335-3-14-.01 (General Provisions) and 335-3-14-.04(8) (Air Permits Authorizing Construction in Clean Air Areas).

45. At all relevant times, the Alabama SIP defined "major stationary source" to include any fossil-fuel fired steam electric plant of 250 million British thermal units (BTUs) per

hour heat input which emits or has the potential to emit, 100 tons per year or more of any regulated air pollutant, or any physical change that would occur at a stationary source not otherwise qualifying as a major stationary source, if the change would constitute a major stationary source by itself. Rule 16.4.2(a)(1); Rule 335-3-14-.04(2)(a)(1).

46. At all relevant times, the Alabama SIP defined "major modification" to mean any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act. Rule 16.4.2(b)(1); Rule 335-3-14-.04(2)(b)(1).

47. At all relevant times, the Alabama SIP required that sources with modifications subject to PSD review apply the best available control technology ("BACT") for each pollutant subject to regulation for which the modification would result in a significant net emissions increase. Rule 16.4.9; Rule 335-3-14-.04(9).

48. At all relevant times, the Alabama SIP required that sources with modifications subject to PSD regulations comply with other requirements of the Alabama SIP, including but not limited to:

- a. a person who wishes to modify a major source

subject to PSD review must 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. Rule 16.4.10; Rule 335-3-14-.04(10);

b. any application for a PSD permit must be accompanied by an analysis of ambient air quality in the area. Rule 16.4.12; Rule 335-3-14-.04(12);

c. the owner or operator of a proposed modification must submit all information necessary to make any analysis or make any necessary determination. Rule 16.4.13; Rule 335-3-14-.04(13); and

d. the owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation resulting from the source or modification. Rule 16.4.14; Rule 335-3-14-.04(14).

#### General Permitting Requirements

49. Alabama's general air permitting requirements are currently promulgated at ADEM Rule 335-3-14-.01. This rule was originally promulgated as Rule 1.12 and approved by EPA as part of the Alabama SIP on May 31, 1972. 37 Fed. Reg. 10842. Through subsequent revisions, the rule was recodified to Alabama Air Pollution Control Commission Chapter 16, Rule 16.1 and the Alabama SIP revision approved November 26, 1979. 44 Fed. Reg.

67375. Through subsequent revisions, Rule 16.1 was recodified, effective June 22, 1989, 55 Fed. Reg. 38994, at Rule 335-3-14-.01.

50. Rule 335-3-14-.01 (formerly Rule 16.1) provides that any person building, erecting, altering or replacing any article, machine, equipment or other contrivance which may cause the issuance of air contaminants shall apply for an Air Permit at least 10 days prior to construction. This rule further provides that an Air Permit shall be obtained before any such article, machine, equipment or other contrivance may be operated or used.

51. Rule 335-3-14-.02 (formerly Chapter 16.2) requires that every application for an Air Permit shall contain all the information necessary to enable the Director to make the determination required by Rule 335-3-14-.03.

ENFORCEMENT PROVISIONS

52. 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.

53. 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 . . . ."

54. 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.

55. 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.

56. 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.

57. At all times pertinent to this civil action, Plants Barry, Gaston, Gorgas, Greene County, and Miller were each a "major emitting facility" and a "major stationary source" within the meaning of the Act and the Alabama SIP for NO<sub>x</sub>, SO<sub>2</sub>, PM-10, and PM.

58. 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, shall be subject to appropriate enforcement action. 40 C.F.R. § 52.21(r).

59. 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 at Plant Barry)

60. Paragraphs 1 through 59 are realleged and incorporated herein by reference.

61. The allegations contained in paragraph 59 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

62. The allegations contained in paragraph 60 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

63. The allegations contained in paragraph 61 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

64. The allegations contained in paragraph 62 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

SECOND CLAIM FOR RELIEF  
(Alabama SIP General Permit Violations at Plant Barry)

65. Paragraphs 1 through 59 are realleged and incorporated herein by reference.

66. The allegations contained in paragraph 64 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

67. The allegations contained in paragraph 65 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

68. The allegations contained in paragraph 66 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

THIRD CLAIM FOR RELIEF  
(PSD Violations at Plant Gaston)

69. Paragraphs 1 through 59 are realleged and incorporated herein by reference.

70. The allegations contained in paragraph 68 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

71. The allegations contained in paragraph 69 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

72. The allegations contained in paragraph 70 of the

Complaint of the United States in this civil action are adopted and incorporated by reference herein.

73. The allegations contained in paragraph 71 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

FOURTH CLAIM FOR RELIEF  
(Alabama SIP General Permit Violations at Plant Gaston)

74. Paragraphs 1 through 59 are realleged and incorporated herein by reference.

75. The allegations contained in paragraph 73 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

76. The allegations contained in paragraph 74 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

77. The allegations contained in paragraph 75 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

FIFTH CLAIM FOR RELIEF  
(PSD Violations at Plant Gorgas)

78. Paragraphs 1 through 59 are realleged and incorporated herein by reference.

79. The allegations contained in paragraph 77 of the Complaint of the United States in this civil action are adopted

and incorporated by reference herein.

80. The allegations contained in paragraph 78 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

81. The allegations contained in paragraph 79 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

82. The allegations contained in paragraph 80 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

SIXTH CLAIM FOR RELIEF

(Alabama SIP General Permit Violations at Plant Gorgas)

83. Paragraphs 1 through 59 are realleged and incorporated herein by reference.

84. The allegations contained in paragraph 82 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

85. The allegations contained in paragraph 83 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

86. The allegations contained in paragraph 84 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

SEVENTH CLAIM FOR RELIEF  
(PSD Violations at Plant Greene County)

87. Paragraphs 1 through 59 are realleged and incorporated herein by reference.

88. The allegations contained in paragraph 86 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

89. The allegations contained in paragraph 87 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

90. The allegations contained in paragraph 88 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

91. The allegations contained in paragraph 89 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

EIGHTH CLAIM FOR RELIEF  
(Alabama SIP General Permit Violations at Plant Greene County)

92. Paragraphs 1 through 59 are realleged and incorporated herein by reference.

93. The allegations contained in paragraph 91 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

94. The allegations contained in paragraph 92 of the

Complaint of the United States in this civil action are adopted and incorporated by reference herein.

95. The allegations contained in paragraph 93 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

NINTH CLAIM FOR RELIEF

(PSD Violations: Construction at Plant Miller Unit 3)

96. Paragraphs 1 through 59 are realleged and incorporated herein by reference.

97. The allegations contained in paragraph 95 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

98. The allegations contained in paragraph 96 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

99. The allegations contained in paragraph 97 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

100. The allegations contained in paragraph 98 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

TENTH CLAIM FOR RELIEF

(PSD Violations: Construction at Plant Miller Unit 4)

101. Paragraphs 1 through 59 are realleged and incorporated herein by reference.

102. The allegations contained in paragraph 100 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

103. The allegations contained in paragraph 101 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

104. The allegations contained in paragraph 102 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

105. The allegations contained in paragraph 103 of the Complaint of the United States in this civil action are adopted and incorporated by reference herein.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 105 above, Plaintiff-Intervenor Alabama Environmental Council joins the United States in requesting that this Court:

1. Permanently enjoin Defendant from operating Plants Barry, Gaston, Gorgas, Greene County, and Miller, including the construction of future modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;

2. Order Defendant 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;

3. Order Defendant to apply for permits for Plants Barry, Gaston, Gorgas, Greene County and Miller that are in conformity with the requirements of the PSD provisions of the Act and the Alabama SIP, and the general permit provisions of the Alabama SIP;

4. Order Defendant 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, the Alabama SIP general permit requirements, or the Alabama SIP, and report the results of the audits to the United States;

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

6. Assess a civil penalty against 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;

7. Award Plaintiff-Intervenor its costs and reasonable attorneys fees; and

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

Respectfully Submitted this \_\_\_\_ of April 2001,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Complaint of Plaintiff-Intervenor was mailed, postage prepaid, to the following on this \_\_\_\_ day of April 2001:

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MARY MACLEAN ASBILL

This \_\_\_\_ day of April, 2001.