

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

FILED

DEC 01 2006

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

No. W06 CA 355

**CleanCOALition and Robertson County:
Our Land, Our Lives,
Plaintiffs,**

V.

**TXU Power, a d/b/a of TXU Generation
Company LP, Oak Grove Management
Company LLC, and TXU Corporation,

Defendants.**

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ORIGINAL COMPLAINT

1. This citizen suit is brought pursuant to the federal Clean Air Act (42 U.S.C. §§ 7401, *et seq.*, referred to herein as the “Act”), including 42 U.S.C. § 7604. Plaintiffs seek declaratory, injunctive relief and the assessment of civil penalties for the repeated and continuing violations of emission standards and limitations under the Act, alleging and stating as follows:

I. JURISDICTION AND VENUE

2. This court has subject matter jurisdiction under the Act (42 U.S.C. § 7604) and 28 U.S.C. § 1331, providing for federal question jurisdiction. The relief requested is authorized under the Act (42 U.S.C. § 7604) and 28 U.S.C. §§ 2201 and 2202.

3. The violations arose and continue to arise from the permit sought for the Oak Grove Steam Electric Station in Robertson County, Texas, approximately 12 miles east of Bremond, Texas, and 12 miles north of Franklin, Texas ("Oak Grove Plant"). Venue is therefore proper in the Western District of Texas pursuant to the Act (42 U.S.C. § 7604(c)(1)) and 28 U.S.C. § 1391(b)(2) and (c).

4. In compliance with the Act (42 U.S.C. § 7604(b)), on September 26, 2006, Plaintiffs gave written notice to Defendants, the Administrator of the U.S. Environmental

Protection Agency ("EPA"), and the Texas Commission on Environmental Quality ("TCEQ") of the violations alleged herein and of Plaintiffs' intent to sue. More than sixty days have passed since the written notice was given. Defendants have violated and remain in violation of the Act. Neither EPA nor TCEQ has commenced and diligently prosecuted a lawsuit to remedy these violations.

5. Generally, Plaintiffs seek, *inter alia*, declaratory relief that Defendants are in violation of the Act as set forth herein; temporary and permanent injunctive relief prohibiting the construction or operation of the Oak Grove Plant pursuant to the Permit Application; an order that the Defendants comply with the requirements of BACT, cumulative impacts analysis, mercury, modeling, "cause" or "contribute," NOx impacts, permitting, and Texas SIP requirements prior to engaging in any construction or operation of the Oak Grove Plant. Plaintiffs also seek the assessment of a civil penalty against Defendants of \$27,500.00 per day for each violation of the Clean Air Act and related statutes and regulations, as well as an award of Plaintiffs' costs of litigation and attorneys' fees.

6. Pursuant to the Act (42 U.S.C. § 7604(c)(3)), a copy of this Complaint is being served on the Attorney General of the United States and the EPA Administrator.

II. PARTIES

7. Plaintiff CleanCOALition is a nonprofit corporation organized under Texas law. CleanCOALition monitors coal-fired energy plants and their compliance with federal, state and local requirements, especially requirements that relate to the reduction of air pollution in connection with the use of fossil fuels such as coal. CleanCOALition's goals include public education on use of coal to provide energy and on non-compliance with the aforementioned requirements, and pursuit of citizen rights to remedy such non-compliance. CleanCOALition currently has approximately 10 members in Texas and is growing.

8. Plaintiff Robertson County: Our Land, Our Lives ("Our Land Our Lives") is a nonprofit corporation organized under Texas law. Our Land Our Lives is a non-profit, non-partisan organization of concerned Texans that seek to protect their families, properties, agriculture and natural resources, and those of their descendants from pollution caused by emissions from power plants in Texas. Our Land Our Lives currently has approximately 100 members in Robertson County, Texas, in towns that include Bremond, Wheelock, Marquez, and Calvert.

9. Members of Our Land Our Lives reside, visit, work, and recreate in Robertson County. Our Land Our Lives members also visit, work, and recreate in the counties adjacent to Robertson County (the "Immediate Impact Area"). The aesthetic, recreational, environmental, spiritual, economic, and health-related interests of Our Land Our Lives' members are diminished by Defendants' violations. These interests include, but are not limited to, the interest in: (a) breathing air in Robertson County free from violative pollution discharges from the Oak Grove Plant; (b) breathing air in the Immediate Impact Area free from violative pollution discharges from the Oak Grove Plant; (c) breathing air in Robertson County without the excessive negative health effects and concerns about such effects from violative pollution discharges from the Oak Grove Plant; (d) breathing air in the Immediate Impact Area without the excessive negative health effects and concerns about such effects from violative pollution discharges from the Oak Grove Plant; (e) enjoying outdoor recreation in Robertson County that is unimpaired by violative pollution discharges from the Oak Grove Plant; (f) enjoying outdoor recreation in the Immediate Impact Area that is unimpaired by violative pollution discharges from the Oak Grove Plant; (g) using and enjoying property in Robertson County unimpaired by violative pollution discharges from the Oak Grove Plant; (h) using and enjoying property in the Immediate Impact Area unimpaired by violative pollution discharges from the Oak Grove Plant; (i) viewing and enjoying

natural scenery, wildlife, and a sky in Robertson County unimpaired by violative pollution discharges from the Oak Grove Plant; (j) viewing and enjoying natural scenery, wildlife, and a sky in the Immediate Impact Area unimpaired by violative pollution discharges from the Oak Grove Plant; (k) protecting the natural ecology of Robertson County from violative pollution discharges from the Oak Grove Plant; (l) protecting the natural ecology of the Immediate Impact Area from violative pollution discharges from the Oak Grove Plant; and (m) enjoying the right to compel regulated entities to adhere to clean air laws, regulations, and requirements in a region where Plaintiffs' members live, work, and visit.

10. In addition to Robertson County and the Immediate Impact Area, emissions from the Oak Grove Plant will affect the Dallas/Fort Worth ozone nonattainment area (as classified by the EPA and recognized by TCEQ) through the natural transport of air. Such area is referred to herein as the "Transport Impact Area." Members of CleanCOALition reside, work, and recreate in the Transport Impact Area. The aesthetic, recreational, environmental, spiritual, economic, and health-related interests of CleanCOALition's members are diminished by Defendants' violations. These interests include, but are not limited to, the interest in: (a) breathing air in the Transport Impact Area free from violative pollution discharges from the Oak Grove Plant; (b) breathing air in the Transport Impact Area without the excessive negative health effects and concerns about such effects from violative pollution discharges from the Oak Grove Plant; (c) enjoying outdoor recreation in the Transport Impact Area that is unimpaired by violative pollution discharges from the Oak Grove Plant; (d) using and enjoying property in the Transport Impact Area unimpaired by violative pollution discharges from the Oak Grove Plant; (e) viewing and enjoying natural scenery, wildlife, and a sky in the Transport Impact Area unimpaired by violative pollution discharges from the Oak Grove Plant; (f) protecting the natural ecology of the Transport Impact Area from violative pollution discharges from the Oak Grove Plant; (g)

enjoying the right to compel regulated entities to adhere to clean air laws, regulations, and requirements in a region where Plaintiffs' members live, work, and visit; (h) not having an additional, unlawful obstacle imposed against efforts to reach compliance with federal and state requirements regarding the D/FW ozone nonattainment area; (i) maintaining the ability to foster and sustain economic growth and an improved transportation system by remaining in conformity under the Act; (j) maintaining federal funding that will be lost if federal and state requirements regarding the D/FW ozone nonattainment area are not met; and (k) avoiding further punitive restrictions that arise should air quality in the DFW ozone nonattainment area deteriorate further.

11. Neither CleanCOALition nor Our Land Our Lives seeks recovery of damages for any of their members in this lawsuit.

12. Defendant TXU Power is a d/b/a of TXU Generation Company LP formed under Texas law. TXU Power has submitted documents on behalf of OGMC in, and has otherwise participated in, seeking permit(s) for the Oak Grove Plant, as well as participating in the planning and implementation of plans for the Oak Grove Plant expansion. The registered agent in Texas for TXU Power is CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

13. Defendant Oak Grove Management Company, LLC ("OGMC"), is a limited liability corporation formed under Delaware law and qualified to do business in Texas. OGMC seeks permit(s) to construct and operate the Oak Grove Plant. OGMC and TXU Power have submitted to the TCEQ a Permit Application regarding the Oak Grove Plant, consisting of: (A) the "Application for a TCEQ Air Permit and a Prevention of Significant Deterioration Permit for the Oak Grove Steam Electric Station," Oak Grove Management Company LLC (July 2005); and (B) the "Air Application Revision" submitted to TCEQ on or about December 16, 2005 by TXU

Power (collectively, the "Permit Application"). The registered agent in Texas for OGMC is CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

14. Defendant TXU Corporation ("TXU") is a corporation formed under Texas law. TXU is coordinating plans for multiple coal-fired power plants across Texas (including the Oak Grove Plant), has had input regarding the Oak Grove Plant, has rendered assistance to OGMC regarding the Oak Grove Plant, is financially interested in the Oak Grove Plant, and is ultimately responsible for the Oak Grove Plant. The registered agent in Texas for TXU is CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

III. STATUTORY BACKGROUND

15. The Act is designed to protect and enhance the quality of the nation's air, so as to promote the public health and welfare in the productive capacity of its population. 42 U.S.C. § 7401(b). The EPA has established National Ambient Air Quality Standards ("NAAQS") to protect human health and the environment from six "criteria pollutants." 42 U.S.C. § 7602(u); *see also* 40 C.F.R. part 50.¹ An area that meets the NAAQS for a particular criteria pollutant is deemed to be in "attainment" for that pollutant. 42 U.S.C. § 7407(d). An area that does not meet the NAAQS is a "non-attainment" area. *Id.* An area that cannot be classified due to insufficient data is "unclassifiable," a designation that allows an area to be treated for regulatory purposes as though it were an attainment area for the particular criteria pollutant in question. *Id.* The Oak Grove Plant is located in an area that has been classified as attainment or unclassified for all criteria pollutants.

16. Pursuant to 42 U.S.C. § 7410, each state must adopt and submit to EPA for approval a State Implementation Plan ("SIP"). Among other things, the SIP provides for the

¹ The six "criteria pollutants" are sulfur dioxide, particulate matter (PM₁₀ and PM_{2.5}), carbon monoxide, ozone, nitrogen oxides, and lead.

attainment and maintenance of the NAAQS. If the EPA approves a state's SIP in whole or part, the approved portions are then deemed incorporated into the state's applicable implementation plan. The applicable implementation plan may be enforced by the state, EPA, or citizens. 42 U.S.C. § 7604(a), (f). Over the years, EPA has approved various portions of the SIP submitted by Texas (collectively, the "Texas SIP").

17. Part C of the Act (42 U.S.C. §§ 7470-7492) sets forth requirements for the Prevention of Significant Deterioration of air quality in those areas designated as either attainment or unclassifiable ("PSD") for purposes of meeting the NAAQS. Among other things, these requirements are designed to protect public health and welfare by maintaining continued compliance with NAAQS and ensuring that economic growth will occur in a manner consistent with the preservation of existing acceptable air quality. The PSD requirements also ensure 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.

18. Under 42 U.S.C. § 7471, each state's SIP must contain emissions limitations and other necessary measures to prevent significant deterioration of air quality, (a "PSD Program"). In 1992, after Texas incorporated by reference the PSD requirements of 40 C.F.R. § 52.21 into the Texas Administrative Code, EPA promulgated federal regulations approving Texas' PSD Program. *See* 57 FED. REG. 28093 (June 24, 1992); 40 C.F.R. §§ 52.2270, 52.2303. Pursuant to its PSD Program, Texas issues permits governing the operation of regulated facilities. Texas has imposed hourly limits on heat input and established maximum emission rates for specific pollutants at facilities like the Oak Grove Plant. In addition, 42 U.S.C. § 7475(a) prohibits the construction and operation of a "major emitting facility" in an area designated as attainment or unclassifiable, unless, *inter alia*: (1) a permit has been issued that comports with 42 U.S.C.

§ 7475(a); and (2) the facility employs the Best Available Control Technology (“BACT”)² for each pollutant (a) subject to regulation under the Act (b) that is emitted from, or which results from, a facility.

19. 42 U.S.C. § 7479(1) designates as “major emitting facilities” fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input and that emit or have the potential to emit 100 tons per year or more of any air pollutant. According to the Permit Application, the Oak Grove Plant will have two supercritical cycle pulverized coal steam boilers, each with a maximum heat input of 8,970 million BTUs per hour, and will emit, or have the potential to emit, over 100 tons per year of nitrogen oxides, carbon monoxide, sulfur dioxide, volatile organic compounds, sulfuric acid mist, and PM₁₀.

20. Applicable provisions in the federal PSD regulations incorporated by the Texas SIP have at all relevant times prohibited a “major stationary source” from being constructed in an area designated as attainment without, among other things, first obtaining a PSD permit, undergoing a new, complete and sufficient BACT determination, and applying BACT pursuant to that determination for each relevant pollutant. *See* 40 C.F.R. § 52.21(a)(2). The definitions contained in the PSD regulations incorporated in the Texas SIP for the PSD Program have at all relevant times defined “major stationary source” to include fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input. *See* 40 C.F.R. § 52.21(b)(1)(i)(a).

21. In the Permit Application, OCMG acknowledges that PSD permitting requirements apply to the application for the Oak Grove Plant.

22. Title V of the Act (42 U.S.C. §§ 7661-7661f) establishes an operating permit program for certain sources, including “major sources.” The purpose of Title V is to ensure that

² *See also* 42 U.S.C. § 7479(3); 40 C.F.R. § 52.21(b)(12); 40 C.F.R. § 51.166(b)(12); 40 C.F.R. § 51.165(a)(1)(xl) (reiterating and defining the BACT requirement).

all “applicable requirements” for compliance with the Act, including PSD requirements, are collected in one place. Texas implements the Title V program pursuant to EPA-approved regulations in 30 Texas Administrative Code Chapter 122 (the “Texas Title V Operating Permit Program”). At all relevant times, the Texas Title V Operating Permit Program and Section 502(a) of the Act (42 U.S.C. § 7661a(a)) made it unlawful for any person to violate any requirement of a permit issued under Title V or to operate a “major source” except in compliance with a permit issued by a permitting authority under Title V. At all relevant times, the Texas Title V Operating Permit Program and Section 504(a) of the Act (42 U.S.C. § 7661a(c)) in implementing 40 C.F.R. part 70 required that each Title V permit include, among other things, enforceable emission limitations (including BACT) and such other conditions as are necessary to ensure compliance with applicable requirements of the Clean Air Act and the requirements of the applicable implementation plan.

23. 42 U.S.C. § 7604 authorizes any person to commence a civil action against any person who is alleged to have violated or to be in violation of an emission standard or limitation under the Act. In addition, any person may commence a civil action “against any person who proposes to construct or constructs any new or modified major emitting facility” that is not properly permitted under Part C of Subchapter 1 of the Act. *See* 42 U.S.C. § 7604(a)(1)(3). Defendants propose to construct a new major emitting facility in violation of emissions standards or limitations as set forth herein and without a permit that satisfies the requirements of the PSD Program as found in 42 U.S.C. § 7475. Pursuant to § 7604(a), exclusive jurisdiction lies in federal court without regard to amount in controversy. Venue is proper in the Western District of Texas, Waco Division, because it is the “judicial district in which such source is located.” *See* 42 U.S.C. § 7604(c)(1).

24. Requirements of the applicable implementation plan include any applicable PSD Program provision requiring compliance with an emissions rate that meets BACT standards. Each violation of the Texas SIP constitutes a separate violation of the Act.

IV. OAK GROVE PLANT BACKGROUND

25. OGMC seeks permit(s) to construct and operate the Oak Grove Plant. TXU Power has submitted documents on behalf of OGMC in, and otherwise participated in, seeking permit(s) for the Oak Grove Plant, as well as participating in the planning and implementation of plans for the Oak Grove Plant expansion. TXU is coordinating plans for multiple coal-fired power plants across Texas (including the Oak Grove Plant), has had input regarding the Oak Grove Plant, has rendered assistance to OGMC regarding the Oak Grove Plant, and is financially interested in the Oak Grove Plant.

26. Through their participation in the permitting process, OGMC, TXU Power, and TXU are responsible for the violations of the Act, as set forth below.

V. CLAIMS

FIRST CLAIM FOR RELIEF

(Best Available Control Technology Violations)

27. OGMC, TXU Power, and TXU are responsible for the violations of 42 U.S.C. § 7475(a)(4) and Texas Health and Safety Code § 382.0518(b)(1) described in this First Claim for Relief. OGMC and TXU Power are responsible for the violations of 30 Texas Administrative Code § 116.111(a)(2)(C) described in this First Claim for Relief.

28. The violations described in this First Claim for Relief occurred during the planning of, and the process of seeking air permits for, the Oak Grove Plant, and are continuing.

29. The Act (42 U.S.C. § 7475(a)(4)) requires that a major emitting facility on which construction is proposed is subject to the best available control technology for each pollutant

subject to regulation under this chapter emitted from, or which results from, such facility. The Act contemplates that the states will implement statutes and regulations to implement the BACT requirement. *See, e.g.*, 42 U.S.C. § 7411. Indeed, Texas has promulgated statutes and regulations to govern the implementation of BACT required by the Act, including but not limited to Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C). *See also* TEX. HEALTH & SAFETY CODE §§ 382.0173(a), 382.0515(2).

30. The Oak Grove Plant is subject to the BACT requirements of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C). Rather than make a full and objective BACT determination, OGMC, TXU Power, and TXU have proposed emission limits that are less stringent than BACT. Once an emission unit is subject to BACT, the PSD program does not allow the imposition of an emission limit that is less stringent than that required by BACT. OGMC's, TXU Power's, and TXU's continued efforts to permit the Oak Grove Plant at emission limits less stringent than required by BACT constitute continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1) and 30 Texas Administrative Code § 116.111(a)(2)(C).

31. Lignite is proposed as the fuel source for the Oak Grove Plant. Lignite contains higher concentrations of pollutants (e.g., nitrogen oxide (NO_x) and mercury) than other fuels, such as sub-bituminous coal and petroleum coke. Regardless of the control technologies that might be used at the Oak Grove Plant to reduce NO_x and mercury emissions, the emissions will substantially exceed those that could be realized if the same controls were used in a sub-bituminous coal-fired or petroleum coke fueled plant. In addition, the mercury emissions from Texas lignite will require advanced control technology in order to attempt to meet mercury emissions limits and caps, none of which technology has been shown to be as effective on Texas lignite as other types of fuel.

32. There has been and continues to be a failure to analyze fully and determine objectively whether alternative fuel sources would achieve lower NO_x, SO_x, PM, and mercury emissions than lignite at the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

33. There has been and continues to be a failure to use alternative fuel sources to lignite to accomplish BACT at the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

34. “[E]nergy environmental and economic impacts and other costs” are required to be analyzed and taken into account when determining the benefit of alternative fuel sources in a proper BACT analysis. There has been and continues to be a failure to do so regarding the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

35. A proper, common and sufficient BACT analysis for the Oak Grove Plant requires that any other TXU facilities whose emissions or reductions are proposed to offset new emissions from the Oak Grove Plant must themselves be BACT compliant. Absent BACT compliance by the facilities used to offset, the offsets are not allowed under the Act or by BACT, nor do they achieve the degree of reduction that would result if all of the sources were subject to a BACT determination. To the extent the Permit Application uses other sources to offset emissions from the Oak Grove Plant, those other sources become a part of the production-expansion project and are subject to the BACT requirement.

36. There has been and continues to be a failure to analyze fully and determine objectively BACT for either the Oak Grove Plant or any of the other sources whose emissions or reductions are included to offset emissions from the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code Section 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

37. There has been and continues to be a failure to analyze fully and determine objectively whether Integrated Gasification Combined Cycle ("IGCC") technology is BACT at any of the plants whose emissions or reductions are included to offset emissions from the Oak Grove Plant. Nor has IGCC been implemented at BACT at such other facilities. Each of these failures constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

38. A proper, complete and sufficient BACT analysis for the Oak Grove Plant requires consideration of IGCC. IGCC technology is inherently lower emitting than pulverized coal technology, even when control technology such as that proposed for the Oak Grove Plant is used.³

39. There has been and continues to be a failure to analyze fully and determine objectively whether BACT requires using IGCC at the Oak Grove Plant. Such failure constitutes

³ By way of example only, and without limitation, the proposed BACTs to control the emissions of NO_x at the Oak Grove Plant are primarily selective catalytic reduction ("SCR"), low-NO_x burners, and overfire air for NO_x. Collectively, this technology will purportedly achieve NO_x emissions of 0.08 pounds per million British Thermal Units (lb/MMBtu). (The Oak Grove Plant originally projected NO_x rates of 0.10 lb/MMBtu. For reasons not entirely clear, nor supported by the proposed control technologies or fuel source for Oak Grove, OGMC has lowered the projection to 0.08 lb/MMBtu.) IGCC plants burning sub-bituminous coal, like Powder River Basin coal, could reduce NO_x emissions to 0.01 lb/MMBtu with selective-catalytic reduction ("SCR"), and 0.044 lb/MMBtu without any added NO_x controls, both of which are far below the emissions proposed by TXU for the Oak Grove Plant.

continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

40. There has been and continues to be a failure to implement IGCC as BACT at the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

41. “[E]nergy environmental and economic impacts and other costs” are required to be analyzed fully and taken into account when determining the benefit of using IGCC as BACT. There has been and continues to be a failure to do so regarding the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

42. A proper BACT analysis for the Oak Grove Plant requires consideration of circulating fluidized bed (“CFB”) technology.⁴

43. There has been and continues to be a failure to analyze fully and determine objectively whether BACT requires using CFB at the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

44. There has been and continues to be a failure to implement CFB as BACT for the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

⁴ By way of example only, and without limitation, proposed BACT for the Oak Grove Plant to control the emissions of sulfur dioxide (SO₂) from the new pulverized coal-fired boiler is alkali wet scrubbing, commonly referred to as wet flue gas desulfurization (wet FGD). This technology is proposed to achieve SO₂ emissions of 0.20 lb/MMBtu. CFB can achieve controlled SO₂ emission at a rate of 0.038 lb/MMBtu.

45. “[E]nergy environmental and economic impacts and other costs” are required to be analyzed fully and taken into account when determining the benefit of using CFB as BACT. There has been and continues to be a failure to do so regarding the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

46. A proper BACT analysis for the Oak Grove Plant requires consideration of dry sorbent injection technology.

47. There has been and continues to be a failure to analyze fully and determine objectively whether BACT requires using dry sorbent injection technology at the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

48. There has been and continues to be a failure to implement dry sorbent injection as BACT for the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

49. “[E]nergy environmental and economic impacts and other costs” are required to be analyzed fully and taken into account when determining the benefit of using dry sorbent injection as BACT. The failure to do so regarding the Oak Grove Plant constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

50. A proper BACT analysis for the Oak Grove Plant requires consideration of spray dryer absorption technology.

51. There has been and continues to be a failure to analyze fully and determine objectively whether BACT requires using spray dryer absorption technology at the Oak Grove

Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

52. There has been and continues to be a failure to implement spray dryer absorption as BACT for the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

53. “[E]nergy environmental and economic impacts and other costs” are required to be analyzed fully and taken into account when determining the benefit of using spray dryer absorption as BACT. The failure to do so regarding the Oak Grove Plant constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

54. A proper BACT analysis for the Oak Grove Plant requires consideration of fuel blending, cleaning or treatment.

55. There has been and continues to be a failure to analyze fully and determine objectively whether BACT requires using fuel blending, cleaning or treatment technology at the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

56. There has been and continues to be a failure to implement fuel blending, cleaning or treatment as BACT. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

57. “[E]nergy environmental and economic impacts and other costs” are required to be analyzed fully and taken into account when determining the benefit of using fuel blending,

cleaning or treatment as BACT. The failure to do so regarding the Oak Grove Plant constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

58. A proper BACT analysis for the Oak Grove Plant requires consideration of newer power boilers. OGMC, TXU Power, and TXU propose using old pressure parts of the Unit 1 and Unit 2 boilers, which were fabricated years ago in connection with a previously permitted project. *See* Permit Application at 4-1. OGMC, TXU Power, and TXU further propose using old turbine generators that were fabricated years ago in connection with the previously permitted project. *Id.* at 4-1, 4-2. OGMC and TXU Power acknowledge that upgrades are necessary to use the old power boiler components (*id.* at 4-2) but there is no information or BACT analysis regarding alternative power boiler components currently available. Furthermore, OGMC, TXU Power, and TXU have not provided any information regarding the quality, performance condition, or design parameters of the old, stored power boiler components.

59. There has been and continues to be a failure to analyze and determine objectively whether BACT for the Oak Grove Plant requires using newer power boiler components than those fabricated approximately a decade ago for a previously permitted project ("Newer Boiler Components"), and power boiler components that have not been in storage for approximately a decade ("Unstored Boiler Components"). Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

60. There has been and continues to be a failure to use Newer Boiler Components and Unstored Boiler Components as BACT for the Oak Grove Plant. Such failure constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

61. “[E]nergy environmental and economic impacts and other costs” should have been analyzed and taken into account when determining the benefit of using Newer Boiler Components and Unstored Boiler Components as BACT. The failure to do so regarding the Oak Grove Plant constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

62. A proper BACT analysis requires, among other things, the provision of design parameters for the control technology reviewed. The BACT analysis for the Oak Grove Plant does not include sufficient design parameter information for SCR (*e.g.*, Permit Application at 4-7) or the proposed carbon injection system (*e.g.*, Permit Application (supplemental) at 4-20). Design parameters needed for the BACT analysis of SCR include, *inter alia*, space velocity, ammonia to NO_x molar ration, pressure drop, and catalyst life. Design parameters needed for the BACT analysis of carbon injection systems include, among other technologies, injection concentration of the sorbent measured in lb/MMacf, expected flue gas conditions (including temperature and concentrations of HCl and SO₃, the air pollution control configuration, the characteristics of the sorbent, and the method of injecting the sorbent). The omission of this information from the BACT analysis constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

63. The annual “potential to emit” calculations regarding the Oak Grove Plant do not take into account, and there is no information concerning, Oak Grove Plant emissions from: (a) a start-up, shutdown or maintenance activity; or (b) a malfunction event. A proper BACT analysis requires consideration of such omitted emissions and their impact on emissions calculations. Without the omitted information, it is not possible to determine whether the Oak Grove Plant could or will comply with BACT emission limits. The omission of the information

from the calculations constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

64. In addition to the violation described in the immediately preceding paragraph, the concomitant failure to demonstrate compliance with short-term and long-term emission limits during start-up, shutdown, maintenance, or malfunctions also constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C) because, *inter alia*, it fails to demonstrate that the Oak Grove Plant is subject to BACT regarding the source and control and/or reduction of such emissions.

65. OGMC, TXU Power, and TXU have not provided any information regarding environmental impacts and the other costs associated with emissions of carbon dioxide (CO₂) from the Oak Grove Plant. A proper BACT analysis requires consideration of the energy, environmental, and economic impacts and other costs. 42 U.S.C. § 7479(3); *see also* 30 TEX. ADMIN. CODE § 116.10(3) (incorporating meaning for BACT generally ascribed to it in field of air pollution control). By failing to consider the environmental and economic impacts and other costs associated with CO₂ emissions, with the technology and emissions proposed for the Oak Grove Plant, the BACT analysis is defective and incomplete. The BACT analysis also is defective and incomplete because of the failure to compare CO₂ emissions associated with the technology and emissions proposed for the Oak Grove Plant with the CO₂ emissions associated with alternative control technologies and related emissions calculations. Each of these failures constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

66. OGMC, TXU Power, and TXU have not provided any information regarding health costs associated with the technology and emissions proposed for the Oak Grove Plant. A

proper BACT analysis requires consideration of the energy, environmental, and economic impacts and other costs. 42 U.S.C. § 7479(3); *see also* 30 TEX. ADMIN. CODE § 116.10(3). By failing to consider health costs associated with the technology and emissions proposed for the Oak Grove Plant, the BACT analysis is defective and incomplete. The BACT analysis also is defective and incomplete because of the failure to compare health costs associated with the technology and emissions proposed for the Oak Grove Plant with health costs associated with alternative control technologies and related emissions calculations. Each of these failures constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

67. OGMC, TXU Power, and TXU have not provided any information regarding additional "other costs," such as regional air quality compliance or non-compliance costs. A proper BACT analysis requires consideration of the energy, environmental, and economic impacts and other costs. 42 U.S.C. § 7479(3); *see also* 30 TEX. ADMIN. CODE § 116.10(3). By failing to consider other costs associated with the technology and emissions proposed for the Oak Grove Plant, the BACT analysis is defective and incomplete. The BACT analysis also is defective and incomplete because of the failure to compare other costs associated with the technology and emissions proposed for the Oak Grove Plant with other costs associated with alternative control technologies and related emissions calculations. Each of these failures constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

68. When considering economic factors in a BACT analysis, incremental cost effectiveness between control options should be used. *See Evaluating Best Available Control Technology (BACT) in Air Permit Applications* at 3-4, Draft RG-383, Texas Commission on

Environmental Quality (April 2001) ("TCEQ BACT Report").⁵ Instead of using incremental cost effectiveness, the BACT analysis performed for the Oak Grove Plant judged BACT according to which control technology was less expensive in itself.⁶ The use of cost instead of incremental cost effectiveness and other proper economic reasonableness factors in the BACT analysis results in continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

69. The three-tier BACT analysis espoused and employed by the TCEQ is in violation of the Act. There is no indication that the required top-down BACT analysis was performed at the Oak Grove Plant. OGMC's, TXU Power's, and TXU's use and reliance on the three-tier BACT analysis for the Oak Grove Plant constitutes a continuing violation of 42 U.S.C. § 7475(a)(4), and is contrary to the express language of 42 U.S.C. § 7479(3).

a) Tier I review purports to accept as BACT control technologies approved for recent permits for the same processes. Such an analysis does not constitute BACT, rather it constitutes "Last Used Control Technology." The temporal propinquity of other permits is irrelevant to a consideration of what currently constitutes BACT. The Tier I review used at the Oak Grove Plant does not satisfy the requirements of 42 U.S.C. § 7479(3) in that it does not result in the maximum degree of reduction of each pollutant subject to regulation, does not constitute a case-by-case analysis, fails to take into account energy, environmental and economic impacts and other costs, and does not include an analysis of available methods, systems and techniques.

⁵The TCEQ BACT Report is available online at <http://www.tceq.state.tx.us/assets/public/permitting/air/Guidance/NewSourceReview/bactdoc.pdf>

⁶ By way of example only, and without limitation, wet limestone was chosen over wet lime for use in the proposed wet FGD control technology because "the higher cost of lime makes wet limestone scrubbing the more attractive option." Permit Application at 4-9.

b) Tier II review purports to accept as BACT control technologies approved for recent permits issued for similar, but different, processes. As with Tier I, such an analysis does not constitute BACT, rather it constitutes "Last Used Control Technology." The temporal propinquity of other permits is irrelevant to a consideration of what currently constitutes BACT. The Tier II review used at the Oak Grove Plant does not satisfy the requirements of 42 U.S.C. § 7479(3) in that it does not result in the maximum degree of reduction of each pollutant subject to regulation, does not constitute a case-by-case analysis, fails to take into account energy, environmental and economic impacts and other costs, and does not include an analysis of available methods, systems and techniques.

c) Only Tier III requires use of a top-down methodology. Applicants who forego top-down methodology violate 42 U.S.C. §§ 7475(a)(4) and 7479(3). The top-down process provides that all available control technologies be ranked in descending order of control effectiveness. *EPA New Source Review Workshop Manual* at B.2 (Draft Oct. 1990).⁷ The applicant first examines the most stringent (*i.e.*, top) alternative. *Id.* That alternative is established as BACT unless the applicant demonstrates, and the permitting authority in its informed judgment agrees, that technical considerations or energy, environmental, or economic impacts justify a conclusion that the most stringent technology is not "achievable" in that case. *Id.* If the most stringent technology is eliminated in this fashion, then the next most stringent alternative is considered, and so on. *Id.*; *see also TCEQ BACT Report* at 3-4 (regarding Tier III requirements).

⁷ The New Source Review Workshop Manual is available online at <http://www.epa.gov/ttn/nsr/gen/wkshpman.pdf>.

70. Alternatively, OGMC, TXU Power, and TXU failed to properly implement the three-tier BACT analysis espoused and employed by the TCEQ with regard to the Oak Grove Plant.

71. OGMC's, TXU Power's, and TXU's use of Tier I review in the Permit Application process constitutes continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C):

a) A Tier I review would be appropriate, if at all, only if the TCEQ has approved a permit application using the same controls for the same type of process. *TCEQ BACT Report* at 3. At the time of the Permit Application, TCEQ had not approved any of the permits referenced in the Permit Application using the same controls for the same type of process. *See, e.g., Permit Application* § 4. Therefore, the BACT portion of the Permit Application required Tier II or Tier III analyses. *See TCEQ BACT Report* at 3-4.

b) Alternatively, even if a Tier I analysis had been permitted, BACT from previously approved permits for the same type of process in the same industry requires evaluation of whether any new technological developments are economically or technically reasonable. *TCEQ BACT Report* at 3. The Permit Application does not provide information regarding new technological developments or whether they are economically or technically reasonable.

72. OGMC, TXU Power, and TXU did not perform a step-by-step BACT analysis for the portions of the analysis arguably subject to Tier II and Tier III analysis under TCEQ guidance, policy, and regulations regarding BACT.

73. The Permit Application references only one permit application previously approved by TCEQ: TCEQ Air Permit No. 48437 (Alcoa Rockdale Permit). Permit Application

at 4-6. The only portions of the BACT analysis that could possibly have fallen under Tier II review are those directly relating to the Alcoa Rockdale Permit.⁸ This permit is for a different industry (*i.e.*, aluminum) and different boiler type (*i.e.*, CFB). Other differences also exist. Even if the Alcoa Rockdale Permit could trigger Tier II as to portions of the BACT analysis which plaintiffs deny, it would not have supported treating the entire BACT analysis for the Oak Grove Plant as Tier II.

74. Tier II requires a more detailed analysis to demonstrate that a technology previously approved by the TCEQ for a different type of process can be (*i.e.*, a different industry or different type of coal) transferred to the type of process for which the permit is sought. *TCEQ BACT Report* at 3. Among the information necessary to conduct the more detailed analysis required at Tier II are design parameters and operational information for the control technologies, stream comparison, an analysis of differences in overall performance of a particular emission reduction option, and technical differences between the processes and the industries at issue (*i.e.*, the processes/industries subject to a referenced TCEQ-approved permit and the processes/industry relevant to the Oak Grove Plant). *See id.*

75. On the other hand, Tier III requires a detailed study of various control options. *TCEQ BACT Report* at 3-4. A Tier III analysis requires a top-down analysis that identifies all emission control options, eliminates technically infeasible options, ranks remaining emission reduction options by emissions reduced, performs a quantitative cost analysis to determine cost-effectiveness (using incremental cost analysis), and selects BACT based on cost-effectiveness

⁸ It is questionable whether this permit may be used at all for purposes of invoking a Tier II analysis, since the permit resulted from the compromises and special process created by a July 2003 Consent Decree. *See Consent Decree*, No. 01-cv-00881-SS, U.S. District Court, Western District of Texas, Austin Division (July 28, 2003).

and performance. *TCEQ BACT Report* at 4; *see also EPA New Source Review Workshop Manual* B.2 (Draft Oct. 1990) (describing top-down methodology).

76. No Tier II or Tier III or top down BACT analysis was conducted as to control technology at the Oak Grove Plant for auxiliary boilers, material handling, emergency engines, generator cooling tower, fuel oil storage tanks, and ammonia handling and storage facilities. The “analysis” performed regarding control technology at the Oak Grove Plant for power boiler emissions of SO₂, PM₁₀, CO and VOC, HCl, HF, H₂SO₄, lead, mercury (Hg), and ammonia does not provide either the detailed analysis or the step-by-step analysis required by either Tier II or Tier III. Such failures constitute continuing violations of 42 U.S.C. § 7475(a)(4), Texas Health and Safety Code § 382.0518(b)(1), and 30 Texas Administrative Code § 116.111(a)(2)(C).

77. As provided in 42 U.S.C. §§ 7604(a) and 7413(b), 40 C.F.R. § 19.4, and 28 U.S.C. § 2461 (as amended by 31 U.S.C. § 3701), the violations set forth above in this First Claim for Relief subject OGMC, TXU Power, and TXU to declaratory, injunctive relief and civil penalties of up to \$27,500 per day for each violation.

SECOND CLAIM FOR RELIEF

(Cumulative Impacts Violations)

78. The violations described in this Second Claim for Relief occurred during the process of seeking air permits for the Oak Grove Plant and are continuing through the present day.

79. Prior to obtaining permits from TCEQ, OGMC and TXU Power are required to perform a cumulative impacts analysis that demonstrates allowable emissions increases from the Oak Grove Plant in conjunction with all other applicable emissions increases or reductions (including secondary emissions from other sources). The required cumulative impacts analysis also must demonstrate that emissions increases at the Oak Grove Plant and other facilities will

not cause or contribute to air pollution in violation of any NAAQS or any applicable maximum allowable increase over baseline concentrations in any area.

80. OGMC and TXU Power failed to perform a cumulative impacts analysis that makes these demonstrations. These failures violate 42 U.S.C. § 7475(a)(1), (2), (3), (6), (7), and (8), 42 U.S.C. § 7475(e), 40 C.F.R. § 52.21(k), 30 Texas Administrative Code § 116.160(c)(2)(B) (which incorporates and implements 40 C.F.R. § 52.21(k)), and 30 Texas Administrative Code §116.161 (enforcing NAAQS standards).

81. As provided in 42 U.S.C. §§ 7604(a) and 7413(b), 40 C.F.R. § 19.4, and 28 U.S.C. § 2461 (as amended by 31 U.S.C. § 3701), the violations set forth above in this Second Claim for Relief subject OGMC and TXU Power to declaratory, injunctive relief and civil penalties of up to \$27,500 per day for each violation.

THIRD CLAIM FOR RELIEF

(Mercury Violations)

82. The violations described in this Third Claim for Relief occurred during the planning of, and the process of seeking air permits for, the Oak Grove Plant, and are continuing.

83. The proposed permit for the Oak Grove Plant has not been subject to a review of mercury usage and emissions in accordance with 42 U.S.C. § 7475, as contemplated by 40 C.F.R. § 60.45a and 40 C.F.R. part 60 subpart HHHH (the EPA's Clean Air Mercury Rule), including but not limited to 40 C.F.R. §§ 60.4106, 60.4120, 60.4121-60.4124, 60.4140-60.4142, 60.4151, and 60.4154. As required by Texas Health & Safety Code § 382.0173(a), the TCEQ adopted and requires compliance with 40 C.F.R. part 60 subpart HHHH in 30 Texas Administrative Code § 101.602. The failure to conduct the required review constitutes continuing violations of 42 U.S.C. § 7475(a)(2) and 30 Texas Administrative Code § 101.602.

OGMC's, TXU Power's, and TXU's plans to construct and operate the Oak Grove Plant without such review constitutes continuing violations of 42 U.S.C. § 7475(a)(2).

84. OGMC and TXU Power failed to establish an accurate and complete mercury budget for the Oak Grove Plant in order to satisfy mercury emission requirements. This failure constitutes continuing violations of 40 C.F.R. §§ 60.4106(a),(b), and (c), 60.4121, and 60.4122; and 30 Texas Administrative Code § 101.602.

85. OGMC and TXU Power failed to provide a complete certificate of representation for a mercury designated representative for the Oak Grove Plant. This failure constitutes continuing violations of 40 C.F.R. §§ 60.4110 and 60.4113, and 30 Texas Administrative Code § 101.602.

86. There has not been a proper analysis of air quality impacts from mercury projected for the area as a result of the growth associated with the Oak Grove Plant, which constitutes continuing violations of 42 U.S.C. § 7475(a)(6), 40 C.F.R. § 52.21(m) (incorporated by reference through 30 TEX. ADMIN. CODE § 116.160(c)(2)(C)), and 30 Texas Administrative Code § 116.160(c)(2)(C).. OGMC, TXU Power, and TXU are responsible for the violations described in this paragraph.

87. OGMC, TXU Power, and TXU failed to conduct such monitoring as necessary to determine the effects mercury emissions will have on air quality in those areas affected by mercury emissions from the Oak Grove Plant, including but not limited to the DFW non-attainment areas, the Central Texas Compact area, and East Texas. This failure constitutes continuing violations of 42 U.S.C. § 7475(a)(6), 40 C.F.R. § 52.21(m), and 30 Texas Administrative Code § 116.160(c)(2)(C) (which incorporates and implements 40 C.F.R. § 52.21(m)).

88. As provided in 42 U.S.C. §§ 7604(a) and 7413(b), 40 C.F.R. § 19.4, and 28 U.S.C. § 2461 (as amended by 31 U.S.C. § 3701), the violations set forth above in this Third Claim for Relief subject OGMC, TXU Power, and TXU to declaratory, injunctive relief and civil penalties of up to \$27,500 per day for each violation.

FOURTH CLAIM FOR RELIEF

(Modeling Violations)

89. The violations described in this Fourth Claim for Relief occurred during the planning of, and the process of seeking air permits for, the Oak Grove Plant, and are continuing.

90. Models 3 CMAQ and CAMx that replicate photochemical reactions occurring in the atmosphere should have been, but were not, performed regarding the Oak Grove Plant. Photochemical grid models have been used for more than three decades to model ozone in urban non-attainment areas, and for more than twenty years to model ozone over regional scale domains that include rural areas. Recent versions of these models are currently being used in attainment demonstrations for ozone in numerous urban areas, including areas in Texas. Photochemical grid models represent the current state-of-the-art models, and are BACT, for the purpose of predicting expected ozone concentrations that will result from adding new sources of NO_x and VOCs to the regional air shed.

91. Rather than a photochemical model, the modeling for the Oak Grove Plant used a screening source that does not satisfy the requirements for modeling. The failure to properly and completely perform modeling regarding the Oak Grove Plant in a representative manner constitutes a continuing violation of 40 C.F.R. § 52.21(m). OGMC, TXU Power, and TXU are responsible for the violations described in this paragraph.

92. 30 Texas Administrative Code §§ 116.160(c)(2)(C) and 116.161 incorporate and implement 40 C.F.R. § 52.21(m) and NAAQS standards. Therefore, the violation described in

the immediately preceding paragraph also constitutes a violation of 30 Texas Administrative Code §§ 116.160(c)(2)(C) and 116.161, for which OGMC, TXU Power and TXU are responsible.

93. The modeling performed for the Oak Grove Plant violates 40 C.F.R. § 51.166(l) in that the model used for air impacts analysis did not comply with either that section or 40 C.F.R., part 51, Apdx.W. The modeling performed for the Oak Grove Plant was not approved by EPA and there was no opportunity for public comment. *See generally* 42 U.S.C. §§ 7410 (a)(2)(B)(i), 7471. OGMC, TXU Power, and TXU are responsible for the violations described in this paragraph.

94. As provided in 42 U.S.C. §§ 7604(a) and 7413(b), 40 C.F.R. § 19.4, and 28 U.S.C. § 2461 (as amended by 31 U.S.C. § 3701), the violations set forth above in this Fourth Claim for Relief subject OGMC, TXU Power, and TXU to declaratory, injunctive relief and civil penalties of up to \$27,500 per day for each violation.

FIFTH CLAIM FOR RELIEF

(Violations Regarding “Cause or Contribute” Requirements)

95. The violations described in this Fifth Claim for Relief occurred during the planning of, and the process of seeking air permits for, the Oak Grove Plant, and are continuing.

96. OGMC, TXU Power, and TXU failed to determine that increases in NO_x, mercury, SO₂, PM_{2.5}, PM₁₀, CO₂, and ozone resulting from the Oak Grove Plant, in conjunction with all other applicable emissions increases, will not cause or contribute to air pollution in violation of NAAQS, applicable maximum allowable increases over baseline concentrations, national ambient air quality standards or any other applicable emissions standard or standard of performance. This failure constitutes continuing violations of 42 U.S.C. § 7475(a)(3) and 40 C.F.R. § 52.21(k).

97. OGMC and TXU Power failed to demonstrate in their Permit Application or otherwise that increases in NO_x, mercury, SO₂, PM_{2.5}, PM₁₀, and CO₂ resulting from the Oak Grove Plant, in conjunction with all other applicable emissions increases, will not cause or contribute to air pollution in violation of NAAQS or applicable maximum allowable increases over baseline concentrations. This failure constitutes continuing violations of 42 U.S.C. § 7475(a)(3), 40 C.F.R. § 52.21(k), and 30 Texas Administrative Code § 116.160(c)(2)(B) (which incorporates by reference 40 CFR §52.21(k)).

98. As provided in 42 U.S.C. §§ 7604(a) and 7413(b), 40 C.F.R. § 19.4, and 28 U.S.C. § 2461 (as amended by 31 U.S.C. § 3701), the violations set forth above in this Fifth Claim for Relief subject OGMC, TXU Power, and TXU to declaratory, injunctive relief and civil penalties of up to \$27,500 per day for each violation.

SIXTH CLAIM FOR RELIEF

(NO_x Impacts Violations)

99. The violations described in this Sixth Claim for Relief occurred during the planning of, and the process of seeking air permits for, the Oak Grove Plant, and are continuing.

100. With the addition of NO_x as an ozone precursor under the 8-Hour Phase I Regulations (*EPA Final Rule*, “Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas with Deferred Effective Dates,” at 9 (April 15, 2004))⁹ and the promulgation of the 8-Hour Phase II Regulations (70 Fed. Reg. 71612-71705), an ozone impact analysis is required when NO_x, as an ozone precursor, is greater than 100 tons per year. *See* 40 C.F.R. §§ 51.166(i)(5)(i), 52.21(i)(5)(i). No such analysis was performed for the Oak Grove Plant. This failure constitutes

⁹ Available online at <http://www.epa.gov/ozonedesignations/nfr41604.pdf>.

continuing violations of 42 U.S.C. § 7475(a)(6) and 40 C.F.R. § 52.21(i)(5)(i), for which OGMC, TXU Power, and TXU are responsible.

101. OGMC, TXU Power, and TXU failed to evaluate the impacts on ozone by NO_x emitted from the Oak Grove Plant. This failure constitutes a continuing violation of 42 U.S.C. § 7475(a)(6).

102. OGMC and TXU Power failed to provide in their Permit Application or otherwise an evaluation of the impacts on ozone by NO_x emitted from the Oak Grove Plant. This failure constitutes continuing violations of 42 U.S.C. § 7475(a)(6) and 30 Texas Administrative Code § 116.160(c)(2)(A) (which incorporates by reference 40 CFR §52.21(i)).

103. As provided in 42 U.S.C. §§ 7604(a) and 7413(b), 40 C.F.R. § 19.4, and 28 U.S.C. § 2461 (as amended by 31 U.S.C. § 3701), the violations set forth above in this Sixth Claim for Relief subject OGMC, TXU Power, and TXU to declaratory, injunctive relief and civil penalties of up to \$27,500 per day for each violation.

SEVENTH CLAIM FOR RELIEF

(Permitting Violations)

104. OGMC and TXU Power – both of whom have participated in the process of applying to the TCEQ for permits for the Oak Grove Plant – are responsible for the violations described in this Seventh Claim for Relief.

105. The violations described in this Seventh Claim for Relief occurred during the process of seeking air permits for the Oak Grove Plant and are continuing.

106. The Act (42 U.S.C. § 7275) requires permitting and delegates permitting functions to each state. Texas has promulgated statutes and regulations to govern permitting required by the Act, including but not limited to Texas Health and Safety Code § 382.0515 (“Section 382.0515”) and 30 Texas Administrative Code §116.111(a).

107. The annual "potential to emit" calculations in the Permit Application do not take into account, and there is no showing that they take into account or include, emissions from: (a) a start-up, shutdown or maintenance activity; or (b) a malfunction event. Section 382.0515 requires the submission of copies of all plans and specifications necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations and the intent of chapter 382 of the Texas Health and Safety Code. Without the information omitted from the calculations, it is not possible to determine whether the Oak Grove Plant will comply with applicable federal and state air control statutes, rules, and regulations and the intent of chapter 382 of the Texas Health and Safety Code. The omitted information results in continuing violations of Section 382.0515 and 30 Texas Administrative Code §§ 116.111(a)(2)(C) and (I).

108. OGMC and TXU Power failed to provide information regarding health costs associated with the technology and emissions proposed for the Oak Grove Plant. Without the omitted information, it is not possible to determine whether the Oak Grove Plant will comply with applicable federal and state air control statutes, rules, and regulations and the intent of chapter 382 of the Texas Health and Safety Code. The omitted information results in continuing violations of Section 382.0515 and 30 Texas Administrative Code §§ 116.111(a)(2)(C) and (I).

109. OGMC and TXU Power failed to provide information regarding additional "other costs," such as, without limitation, regional air quality compliance or non-compliance costs. Without the omitted information, it is not possible to determine whether the Oak Grove Plant will comply with applicable federal and state air control statutes, rules, and regulations and the intent of chapter 382 of the Texas Health and Safety Code. The omitted information results in continuing violations of Section 382.0515 and 30 Texas Administrative Code §§ 116.111(a)(2)(C) and (I).

110. OGMC and TXU Power failed to provide information regarding newer power boiler components than those fabricated approximately a decade ago for the Newer Boiler Components and the Unstored Boiler Components. OGMC and TXU Power also failed to provide information regarding the quality, condition, or design parameters of the old, stored power boiler components that they propose to use at the Oak Grove Plant. Without the omitted information, it is not possible to determine whether the Oak Grove Plant will comply with applicable federal and state air control statutes, rules, and regulations, and without limitation, the intent of Chapter 382 of the Texas Health and Safety Code. The omitted information results in continuing violations of Section 382.0515 and 30 Texas Administrative Code §§ 116.111(a)(2)(C) and (I).

111. OGMC and TXU Power failed to provide necessary design parameters for the control technology reviewed in the BACT analysis for the Oak Grove Plant. Necessary design parameter information regarding SCR and the proposed carbon injection system is absent. Without the omitted information, it is not possible to determine whether the Oak Grove Plant will comply with applicable federal and state air control statutes, rules, and regulations, and without limitation, the intent of Chapter 382 of the Texas Health and Safety Code. The omitted information results in continuing violations of Section 382.0515 and 30 Texas Administrative Code §§ 116.111(a)(2)(C) and (I).

112. OGMC and TXU Power failed to provide proper detail in the BACT analysis undertaken regarding the Oak Grove Plant. The deficiencies in the BACT analysis regarding the Oak Grove Plant described in the First Claim for Relief are incorporated into this paragraph fully by reference. Without the omitted information, it appears that there has not been a proper BACT analysis, and it is not possible to determine whether the Oak Grove Plant will comply with applicable federal and state air control statutes, rules, and regulations, and without limitation, the

intent of Chapter 382 of the Texas Health and Safety Code. The omitted information results in continuing violations of Section 382.0515 and 30 Texas Administrative Code §§ 116.111(a)(2)(C) and (I).

113. OGMC and TXU Power failed to provide information showing the results of a source impact analysis for the Oak Grove Plant. Without the omitted information, it is not possible to determine whether the Oak Grove Plant will comply with applicable federal and state air control statutes, rules, and regulations and the intent of Chapter 382 of the Texas Health and Safety Code. The omitted information results in continuing violations of Section 382.0515 and 30 Texas Administrative Code §§ 116.111(a)(2)(C) and (I).

114. OGMC and TXU Power failed to provide proper modeling results for the Oak Grove Plant. The modeling results provided use inadequate models that are not representative of air quality conditions resulting from plant operation and that are of insufficient scope, duration and breadth. Without the omitted information, it is not possible to determine whether the Oak Grove Plant will comply with applicable federal and state air control statutes, rules, and regulations and the intent of chapter 382 of the Texas Health and Safety Code. The omitted information results in continuing violations of Section 382.0515 and 30 Texas Administrative Code §§ 116.111(a)(2)(D), (E), and (I).

115. OGMC and TXU Power failed to provide information showing that increases in NO_x, mercury, SO₂, PM_{2.5}, PM₁₀, and CO₂ resulting from the Oak Grove Plant will not cause or contribute to air pollution in violation of NAAQS or applicable maximum allowable increases over baseline concentrations. Without the omitted information, it is not possible to determine whether the Oak Grove Plant will comply with applicable federal and state air control statutes, rules, and regulations and the intent of chapter 382 of the Texas Health and Safety Code. The

omitted information results in continuing violations of Section 382.0515 and 30 Texas Administrative Code §§ 116.111(a)(2)(A)(i) and 116.111(a)(2)(I).

116. OGMC and TXU Power failed to provide information regarding the impacts on ozone by NO_x emitted from the Oak Grove Plant. NO_x is required to be analyzed as a precursor ozone component. Without the omitted information, it is not possible to determine whether the Oak Grove Plant will comply with applicable federal and state air control statutes, rules, and regulations and the intent of chapter 382 of the Texas Health and Safety Code. The omitted information results in continuing violations of Section 382.0515 and 30 Texas Administrative Code §§ 116.111(a)(2)(D), (E), and (I).

117. OGMC and TXU Power failed to provide information regarding an analysis of ambient air quality, in the area affected by emissions from the Oak Grove Plant, that included carbon dioxide. Without the omitted information, it is not possible to determine whether the Oak Grove Plant will comply with applicable federal and state air control statutes, rules, and regulations and the intent of Chapter 382 of the Texas Health and Safety Code. The omitted information results in continuing violations of Section 382.0515 and 30 Texas Administrative Code § 116.111(a)(2)(I).

118. OGMC and TXU Power failed to provide information regarding emissions measuring and monitoring at the Oak Grove Plant. Without the omitted information, it is not possible to determine whether the Oak Grove Plant will comply with applicable federal and state air control statutes, rules, and regulations and the intent of Chapter 382 of the Texas Health and Safety Code. The omitted information results in continuing violations of Section 382.0515 and 30 Texas Administrative Code § 116.111(a)(2)(B).

119. OGMC and TXU Power failed to provide information regarding emissions measuring and monitoring at the Oak Grove Plant. Without the omitted information, it is not

possible to determine whether the Oak Grove Plant will comply with applicable NSPS (40 C.F.R. § 60.47a) and NESHAP (40 C.F.R. § 63.8) regulations regarding emissions monitoring. The omitted information results in continuing violations of Section 382.0515 and 30 Texas Administrative Code §§ 116.111(a)(2)(B), (D), and (E).

120. The TCEQ application for an air permit includes, among other things, TCEQ Form 10181, Table 13 "Scrubbers or Wet Washers." Table 13 requires the submission of additional information on separate sheets. *See* Permit Application, Apdx. A at Table 13. OGMC and TXU Power did not submit the additional information on separate sheets. This omission results in continuing violations of Section 382.0515 and 30 Texas Administrative Code §§ 116.111(a)(2)(C) and (I).

121. As provided in 42 U.S.C. §§ 7604(a) and 7413(b), 40 C.F.R. § 19.4, and 28 U.S.C. § 2461 (as amended by 31 U.S.C. § 3701), the violations set forth above in this Seventh Claim for Relief subject OGMC and TXU Power to injunctive relief and civil penalties of up to \$27,500 per day for each violation.

EIGHTH CLAIM FOR RELIEF

(Texas SIP Violations)

122. The violations described in this Eighth Claim for Relief occurred during the planning of, and the process of seeking air permits for, the Oak Grove Plant, and are continuing.

123. The Act (42 U.S.C. § 7410) requires each state to adopt and submit for approval a SIP. Texas has charged the TCEQ with responsibility for adopting rules to comply with 42 U.S.C. § 7410 (*see* TEX. HEALTH & SAFETY CODE § 382.0173), and portions of the Texas SIP have been approved by the EPA. A violation of a SIP is a violation of the Act. *See* 42 U.S.C. § 42 U.S.C. § 7604(a), (f).

124. Pursuant to 40 C.F.R. § 51.166(j)(2), a SIP is required to provide that a new major stationary source shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts. The Texas SIP includes this requirement. Thus, each of the BACT violations set forth in the First Claim for Relief – which are incorporated fully by reference in this Eighth Claim for Relief – also constitutes a separate violation of the Texas SIP.

125. Pursuant to 40 C.F.R. § 51.166(k), a SIP is required to include source impact analysis requirements. The Texas SIP includes source impact analysis requirements. OGMC and TXU Power failed to perform a cumulative impacts analysis that makes the required demonstrations, in violation of 42 U.S.C. § 7475(a)(1), (2), (3), (6), (7), and (8), 42 U.S.C. § 7475(e), 40 C.F.R. § 52.21(k), 30 Texas Administrative Code § 116.160(c)(2)(B) (which incorporates and implements 40 C.F.R. § 52.21(k)), and 30 Texas Administrative Code § 116.161 (enforcing NAAQS standards). *See also* Second Claim for Relief, *supra*. Thus each of the cumulative impacts analysis violations set forth in the Second Claim for Relief – which are incorporated fully by reference in this Eighth Claim for Relief – also constitutes a separate violation of the Texas SIP.

126. Pursuant to 40 C.F.R. § 51.166(l), a SIP is required to include proper air quality models. The Texas SIP includes modeling requirements. Thus, each of the modeling violations set forth in the Fourth Claim for Relief – which are incorporated fully by reference in this Eighth Claim for Relief – also constitutes a separate violation of the Texas SIP.

127. Pursuant to 40 C.F.R. § 51.166(n), a SIP is required to provide that a permit applicant must submit all information necessary to perform any required analysis or make any required determination. The Texas SIP includes this requirement. Each of the permitting violations set forth in Section II(G) of this Notice – which are incorporated fully by reference in this Section II(H)(4) – is based on information omitted by OGMC and TXU Power that is

necessary to perform required analyses or to make required determinations. Thus, each of the permitting violations set forth in the Seventh Claim for Relief – which are incorporated fully by reference in this Eighth Claim for Relief – also constitutes a separate violation of the Texas SIP.

128. As provided in 42 U.S.C. §§ 7604(a) and 7413(b), 40 C.F.R. § 19.4, and 28 U.S.C. § 2461 (as amended by 31 U.S.C. § 3701), the violations set forth above in this Eighth Claim for Relief subject OGMC, TXU Power, and TXU to declaratory, injunctive relief and civil penalties of up to \$27,500 per day for each violation.

NINTH CLAIM FOR RELIEF

(Failure to Perform Pre-Application Air-Quality Analysis for Carbon Dioxide)

129. The violations described in this Ninth Claim for Relief occurred during the process of seeking air permits for the Oak Grove Plant and are continuing.

130. OGMC and TXU Power were required to include in the Permit Application an analysis of ambient air quality, in the area affected by emissions from the Oak Grove Plant, that included carbon dioxide. *See* 30 TEX. ADMIN. CODE § 116.160(a)(2)(C) (incorporating the requirements of 40 C.F.R. § 52.21(m)). Such analysis should have included the amount of carbon dioxide that the Oak Grove Plant would have the potential to emit (*see* 40 C.F.R. § 52.21(m)(1)(i)(a)), an analysis of carbon dioxide that would result in a significant net emissions increase at the Oak Grove Plant (*see* 40 C.F.R. § 52.21(m)(1)(i)(b)), and because carbon dioxide is not a criteria pollutant, air quality monitoring results necessary to assess ambient air quality for carbon dioxide in the area that the emissions of carbon dioxide from the Oak Grove Plant would affect (*see* 40 C.F.R. § 52.21(m)(ii)). OGMC and TXU Power failed to include such information. Such failures constitute continuing violations of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21(m)(1)(i), and 30 Texas Administrative Code § 116.160(a)(2)(C).

131. As provided in 42 U.S.C. §§ 7604(a) and 7413(b), 40 C.F.R. § 19.4, and 28 U.S.C. § 2461 (as amended by 31 U.S.C. § 3701), the violations set forth above in this Eighth Claim for Relief subject OGMC and TXU Power to declaratory, injunctive relief and civil penalties of up to \$27,500 per day for each violation.

**ADDITIONAL REQUEST FOR TEMPORARY AND
PERMANENT INJUNCTIVE RELIEF**

132. The violations set forth in the First through Ninth Claims for Relief, above, are continuing.

133. The injury and harm from Defendants' continuing violations cannot be remedied by statutory penalties. Such injury and harm includes, but is not limited to, the illegal permitting construction and operation of the Oak Grove Plant, and the illegal discharge of pollutants into the air of Robertson County, the Immediate Impact Area, and the Transport Impact Area. The injury and harm includes damage to non-monetary interests including, but not limited to, the interest in: (a) breathing air in Robertson County, the Immediate Impact Area, and the Transport Impact Area free from violative pollution discharges from the Oak Grove Plant; (b) breathing air in Robertson County, the Immediate Impact Area, and the Transport Impact Area without the excessive negative health effects and concerns about such effects from violative pollution discharges from the Oak Grove Plant; (c) enjoying outdoor recreation in Robertson County, the Immediate Impact Area, and the Transport Impact Area that is unimpaired by violative pollution discharges from the Oak Grove Plant; (d) using and enjoying property in Robertson County, the Immediate Impact Area, and the Transport Impact Area unimpaired by violative pollution discharges from the Oak Grove Plant; (e) viewing and enjoying natural scenery, wildlife, and a sky in Robertson County, the Immediate Impact Area, and the Transport Impact Area unimpaired by violative pollution discharges from the Oak Grove Plant; (f) protecting the natural ecology of Robertson County, the Immediate Impact Area, and the Transport Impact Area from

violative pollution discharges from the Oak Grove Plant; (g) enjoying the right to compel regulated entities to adhere to clean air laws, regulations, and requirements in a region where Plaintiffs' members live, work, and visit; (h) not having an additional, unlawful obstacle imposed against efforts to reach compliance with federal and state requirements regarding the D/FW ozone nonattainment area; (i) maintaining the ability to foster and sustain economic growth and an improved transportation system by remaining in conformity under the Act; (j) maintaining federal funding that will be lost if federal and state requirements regarding the D/FW ozone nonattainment area are not met; and (k) avoiding further punitive restrictions that arise should air quality in the DFW ozone nonattainment area deteriorate further.

134. Under these circumstances, the statutory penalties are insufficient to remedy the harm and injury and do not afford effective legal relief.

135. Without a temporary and then permanent injunction prohibiting the construction and/or operation of the Oak Grove Plant under the defective permit requested in the Permit Application, Plaintiffs will suffer and continue to suffer imminent harm and irreparable injury, without any adequate remedy at law.

136. As provided in 42 U.S.C. §§ 7604(a) and 7413(b), the violations set forth above in the First through Ninth Claims for Relief subject OGMC, TXU Power, and TXU to declaratory and injunctive relief.

VI. PRAYER FOR RELIEF SOUGHT

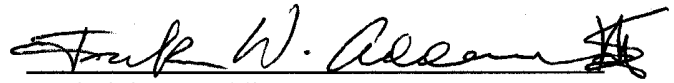
WHEREFORE, based upon all the allegations set forth above, Plaintiffs request that this court:

- A. Temporarily and permanently enjoin Defendants from constructing and operating the Oak Grove Plant pursuant to the Permit Application;

- B. Temporarily and permanently enjoin Defendants from constructing and operating the Oak Grove Plant until the alleged violations are remedied;
- C. Order Defendants to comply with the requirements of BACT, cumulative impacts analysis, mercury, modeling, "cause or contribute," NOx impacts, permitting, and Texas SIP requirements in applying for a permit for the Oak Grove Plant expansion/construction;
- D. Order Defendants to take other appropriate actions to remedy, mitigate, and offset the harm to the public health and environment caused by the violations of the Clean Air Act and related statutes and regulations alleged above;
- E. Declare that Defendants are in violation of those portions of the Act and other applicable laws as set forth herein;
- F. Assess a civil penalty against Defendants of \$27,500 per day for each violation of the Clean Air Act and related statutes and regulations alleged above;
- G. Award Plaintiffs their costs of litigation and attorneys fees related to this citizen suit; and
- H. Grant Plaintiffs such other relief to which Plaintiffs may be entitled at law and in equity.

Filed: December 1, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frederick W. Addison, III", with a stylized flourish at the end.

Frederick W. Addison, III

Nolan Knight

LOCKE LIDDELL & SAPP LLP

2200 Ross Avenue, Suite 2200

Dallas, Texas 75201-6776

(214) 740-8533 – Telephone

(214) 740-8800 – Facsimile

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on the following persons/entities by first-class U.S. mail, certified, return receipt requested, on the 1st day of December, 2006:

Stephen L. Johnson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Glenn Shankle, Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Richard Greene, Region 6 Administrator
Environmental Protection Agency
Fountain Place 12th Floor, Suite 1200
1445 Ross Avenue
Dallas, TX 75202-2733


Frederick W. Addison, III

W06CA355

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CleanCOALition; and
Robertson County: Our Land, Our Lives

(b) County of Residence of First Listed Plaintiff Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Locke Liddell & Sapp LLP; 2200 Ross Avenue, Suite 2200; Dallas, Texas 75201
Telephone: (214) 740-8000 Telecopier: (214) 740-8800

DEFENDANTS

TXU Power, a d/b/a of TXU Generation Company LP; Oak
Grove Management Company, LLC; and TXU Corporation

County of Residence of First Listed Defendant Dallas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

Not known.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 7604

Brief description of cause:
 Citizen suit for Clean Air Act violations

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE n/a

DOCKET NUMBER n/a

DATE

December 1, 2006

SIGNATURE OF ATTORNEY OF RECORD

Frank W. Sapp

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO82
(Rev. 4/90)



ORIGINAL

RECEIPT FOR PAYMENT
UNITED STATES DISTRICT
for the
WESTERN DISTRICT OF TEXAS
at _____

RECEIVED FROM

Locke Liddell
2200 Ross Ave
Dallas, TX

Fund
6855XX
604700

Deposit Funds
Registry Funds
General and Special Funds
Immigration Fees
Attorney Admission Fees
Filing Fees
Sale of Publications
Copy Fees
Miscellaneous Fees
Interest
Recoveries of Court Costs

508800
085000
086900
322340
322350
322360
143500
322380

ACC
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