



Pennsylvania Department of Environmental Protection

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August 17, 2010

Bureau of Regulatory Counsel

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Honorable Rosemary Chiavetta, Secretary
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Joint Application of West Penn Power Company, D/B/A
Allegheny Power, Trans-Allegheny Interstate Line Company and
FirstEnergy Corporation for a Certificate of Public Convenience
under Section 1102(a)(3) of the Public Utility Code Approving a
Change of Control of West Penn Power Company and Trans-
Allegheny Interstate Line Company
PUC Docket No. A-2010-2176520
A-2010-2176732

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Dear Secretary Chiavetta:

In accordance with the June 23, 2010 Scheduling and Briefing Order in this matter, and 52 Pa.Code § 5.412, enclosed is the Direct Written Testimony on behalf of the Pennsylvania Department of Environmental Protection. Copies of this document have been served in accordance with the attached Certificate of Service. The attached Certificate of Service was filed electronically with the Commission today.

Thank you for your assistance.

Sincerely,

Kurt E. Klapkowski
Assistant Counsel

cc: Certificate of Service
Honorable Wayne Weisman, PUC ALJ, w/enc.
Honorable Mary D. Long, PUC ALJ, w/enc.



BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of West Penn Power Company :
d/b/a Allegheny Power, Trans-Allegheny Interstate :
Line Company and FirstEnergy Corp. for a : A-2010-2176520
Certificate of Public Convenience under Section : A-2010-2176732
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and Trans-Allegheny Interstate Line Company :

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DIRECT TESTIMONY

OF

KEVIN A. HALLORAN

**Describing the Proposed Merger's Potential Impacts
on the Commonwealth of Pennsylvania's Statutory Requirements to
Regulate Water Pollution from Allegheny Energy and First Energy Facilities**

Dated: August 17, 2010

1 **Q. Please state your name and work address.**

2 A. My name is Kevin Halloran. My work address is Pennsylvania Department of
3 Environmental Protection, Bureau of Water Management, 400 Waterfront Drive,
4 Pittsburgh, PA 15222-4745.

5
6 **Q. Please summarize your professional background and your experience with the
7 Department.**

8 A. I am currently employed as the Acting Water Management Operations Section Chief with
9 the PA Department of Environmental Protection. I have been in this position since June
10 2010. Prior to this, I was employed at DEP as a Water Quality Specialist Supervisor
11 from February 2008 to June 2010, as an Environmental Protection Compliance Specialist
12 from September 2006 to February 2008, an Environmental Protection Specialist from
13 May 2000 to August 2006, as a Water Quality Specialist from September 1996 to April
14 2000, and as a Water Supply Specialist from April 1994 to September 1996.

15 I received a bachelor's degree in environmental science from Edinboro University
16 of PA in 1993 and a Masters Degree in Environmental Science and Management from
17 Duquesne University in 2004.

18 During my sixteen years with DEP and specifically in my roles as Operations
19 Chief, Water Quality Specialist Supervisor, Environmental Protection Compliance
20 Specialist, and Water Quality Specialist, I have gained first hand knowledge of facilities
21 owned and operated by Allegheny Energy and FirstEnergy within the southwest region of
22 PADEP in regards to water management issues.

1 **Q. What is the purpose of your testimony in this proceeding?**

2 A. It is my understanding that in order for the Public Utility Commission to approve this
3 merger, the Commission must find that the merger is necessary and proper for the
4 service, accommodation, convenience or safety of the public. Such a finding is
5 predicated on a demonstration by the Joint Applicants that the merger will affirmatively
6 benefit the public in some substantial way. I also understand that environmental matters
7 are appropriate to consider when evaluating whether a merger affirmatively promotes the
8 public interest.

9 The purpose of my testimony is to identify and examine the water quality
10 considerations or concerns that arise as a consequence of the Joint Applicants' proposed
11 merger. The Department is concerned that the proposed merger may adversely affect
12 compliance with Clean Streams Law requirements thereby adversely affecting the health,
13 safety and welfare of the citizens of the Commonwealth.

14

15 **Q. What are the known potential water quality issues at FirstEnergy and Allegheny**
16 **Energy facilities involved in the proposed merger?**

17 A. The specific known water quality issues at FirstEnergy and Allegheny Energy are as
18 follows:

19 1. **FirstEnergy Bruce Mansfield Power Station**, Shippingport Borough,
20 Beaver County. At this facility, FirstEnergy operates and maintains a petroleum
21 distribution system that consists of approximately 6,770 linear feet of piping located four
22 to six feet below the ground surface that supplies #2 fuel oil throughout the Facility. Fuel
23 oil is distributed to various underground and above ground storage tanks at the Facility.
24 On at least three separate occasions, discharges of oil to ground and/or surface waters

1 occurred from the system due to broken or leaking piping. A significant amount of
2 groundwater contaminated with waste oil remains under the facility. FirstEnergy needs
3 to implement a groundwater control and cleanup plan to prevent further releases to
4 surface waters and pay civil penalties. A draft consent order and agreement was sent to
5 FirstEnergy in June 2010 but no final resolution is in place to date.

6 2. **Allegheny Energy Mitchell Power Station**, Union Township,
7 Washington County. Allegheny Energy owns a closed ash disposal facility at this power
8 station. The NPDES permit for the power station authorizes the discharge of leachate
9 and storm water from the closed ash landfill through Outfall 006. The discharge at
10 Outfall 006 routinely contains boron in excess of the water quality based effluent
11 limitations. Allegheny Energy needs to submit a plan to evaluate and provide appropriate
12 available treatment for the removal of boron and to pay civil penalties.

13 3. **Allegheny Energy West Penn Power Springdale Ash Disposal Site**,
14 Frazer Township, Allegheny County. Allegheny Energy owns a closed ash disposal
15 facility at this site. The NPDES Permit for the landfill authorizes the discharge of
16 leachate and storm water from the site through Outfalls 001 and 002. The discharge at
17 Outfall 001 routinely contains boron in excess of the water quality based effluent
18 limitations. In addition, Allegheny Energy has allowed overflows of untreated leachate
19 from the leachate collection system to waters of the Commonwealth. Allegheny Energy
20 and the Department signed a Consent Order and Agreement (“COA”) on March 28, 2008
21 to address the above conditions. The requirements of the March 28, 2008 West Penn
22 COA are ongoing.

23 4. **Allegheny Energy Armstrong Power Station**, Washington Township,
24 Armstrong County. No known water quality related concerns.

1 5. **FirstEnergy Beaver Valley Power Station**, Shippingport Borough,
2 Beaver County. The NPDES Permit for this facility authorizes the discharge of industrial
3 waste and storm water from the site through various outfalls. The discharge at Outfall
4 211 has exceeded the permitted limit for pH on two occasions. FirstEnergy may need to
5 take additional actions to ensure that discharges from Outfall 211 are between 6 and 9 pH
6 at all times.

7 6. **Allegheny Energy Hatfield's Ferry Power Station**, Monongahela
8 Township, Greene County. The NPDES Permit for the facility authorizes the discharge
9 of industrial waste and storm water from the site through various outfalls. The discharges
10 at Outfalls 001, 002, 004, 006, 007, 014, 102, 302, 314, and 414 have exceeded the
11 permitted limits. In addition, Allegheny Energy has failed to properly operate and
12 maintain its coal pile runoff collection system at the facility. Allegheny Energy and the
13 Department signed a Consent Order and Agreement ("COA") on March 28, 2008 to
14 address the above conditions (note – this is a separate COA from the Springfield Ash
15 Disposal COA discussed earlier). The requirements of the March 28, 2008 Allegheny
16 Energy COA are ongoing.

17 In addition, on December 30, 2008, the Department issued an amended NPDES
18 Permit to Allegheny Energy authorizing the discharge of industrial wastewater associated
19 with the installation of three air scrubbers. Wastewater from the scrubbers will be treated
20 at a Flue Gas Desulfurization Wastewater Treatment Plant ("FGD WWTP"), which will
21 discharge industrial waste via Outfall 006 to the Monongahela River. Prior to the
22 issuance of the Amended NPDES Permit in October, November and December of 2008,
23 the Monongahela River exceeded regulatory water quality criteria for total dissolved
24 solids ("TDS") and Sulfate. The regulatory water quality criteria for TDS is 500

1 milligrams per liter (mg/l) as an average monthly concentration and 750 mg/l as a
2 maximum concentration. The regulatory water quality criterion for sulfate is 250 mg/l as
3 a maximum concentration. Water with concentrations of TDS and sulfate in excess of
4 these concentrations tastes poorly, smells bad and is undrinkable. Also, water in excess
5 of these criteria can cause spotting on dishes and silverware run through dishwashers.
6 There are also reports of gastrointestinal distress as the result of drinking water with
7 concentrations in excess of these levels.

8 The Monongahela River is the source of drinking water for 850,000 people. The
9 Potable Water Supplies that use the Monongahela River as their drinking water source do
10 not currently possess treatment technology to treat the river water to reduce
11 concentrations of TDS and Sulfate. Although such technology exists, it is very expensive
12 to install and operate.

13 In addition, water with concentrations of TDS and Sulfate in excess of regulatory
14 water quality criteria causes scaling of industrial equipment, resulting in increased costs
15 for industrial users for maintenance, repairs or replacement of equipment. To avoid these
16 costs, several industries that use intake water from the Monongahela River were forced to
17 treat their intake water to reduce concentrations of TDS and Sulfate. For example, during
18 the fall of 2008, USX at its Clairton Facility, and Allegheny Energy at its Hatfield's Ferry
19 Power Plant, treated intake water from the Monongahela River. The reported cost for
20 additional treatment at each facility was hundreds of thousands of dollars. In 2008 the
21 average monthly concentration of TDS in the Monongahela River was as high as 864
22 mg/l. The highest maximum concentration of TDS in the Monongahela River was 908
23 mg/l. During this time period the highest maximum concentration of sulfate in the river
24 was 467 mg/l.

1 In its permit application Allegheny Energy reported that the discharges from its
2 FGDWWTP via Outfall 306 would contain wastewater with an average monthly TDS
3 concentration of 33,000 mg/l and a maximum TDS concentration of 66,000 mg/l. Also
4 the company reported that it would discharge sulfate with a maximum concentration of
5 4,000 mg/l.

6 Outfall 306 conveys wastewater to Outfall 006 at the Hatfield's Ferry Power
7 Station. On December 30, 2008, when the Department issued the Amended NPDES
8 Permit to Allegheny Energy, there was no assimilative capacity in the river for additional
9 loads of TDS and Sulfate. Accordingly, the Department included effluent limitations at
10 Outfall 006 in the Amended NPDES Permit for TDS at 500 mg/l as a monthly average
11 concentration, and 750 mg/l as a maximum concentration and for Sulfate at 250 mg/l as a
12 maximum concentration. These limitations were included in the Amended Permit so that
13 the company would not cause or contribute to additional exceedances of water quality
14 criteria of TDS and Sulfate in the Monongahela River.

15 In January 2009, Allegheny Energy appealed the Amended NPDES Permit to the
16 Environmental Hearing Board, challenging, *inter alia*, the inclusion of effluent
17 limitations for TDS and Sulfate. During the pendency of the hearing, Allegheny Energy
18 agreed to reduce the concentrations of TDS and Sulfate in its discharges from Outfall 006
19 to some degree but has not agreed to install facilities that would treat the discharge to
20 achieve the effluent limitations for TDS and Sulfates at Outfall 006. Despite reducing
21 concentrations of TDS and Sulfate, since the complete installation of all units that
22 contribute wastewater to the FGD WWTP in November 2009, Allegheny Energy has
23 discharged TDS and Sulfate in amounts greater than the water quality criteria for both

1 parameters. These discharges caused or contributed to exceedances of water quality
2 criteria TDS in the Monongahela River in the summer of 2009 and fall of 2009.

3
4 **Q. How will this merger affect the Commonwealth's waters?**

5 A. There are environmental obligations at each of the facilities listed above which if left
6 unattended will adversely impact the waters of the Commonwealth to the detriment of
7 the public, public health and the environment. The Joint Applicants have not provided
8 any indication for how they will address these environmental obligations if the merger is
9 approved.

10
11 **Q. Are there ways to mitigate the potential impacts to waters of the Commonwealth?**

12 A. Yes. Conditions should be included in any merger that would require the new company
13 to comply with state law, current COAs and the effluent limitations for TDS and Sulfate
14 at Outfall 006 in the Amended NPDES Permit for the Hatfield's Ferry Power Station.
15 Especially, as to this latter condition, installation of treatment to achieve effluent
16 limitations for TDS and Sulfate will help protect the source of drinking water for 850,000
17 people in southwestern Pennsylvania. In addition, source water with lower
18 concentrations of TDS and Sulfate will assist industries that use water from the
19 Monongahela River maintain their equipment and maintain or improve their competitive
20 position relative to similar businesses outside the Commonwealth.

21
22 **Q. Does this conclude your testimony?**

23 A. Yes it does.

Table 1

Regional ranking in annualized emissions per megawatt of capacity (Tons/mw):

<u>Plant / Owner</u>	<u>NOX</u>	<u>SOX</u>	<u>PM10</u>	<u>Total</u>
Armstrong Allegheny Energy	11.5	101.0	0.7	113.2
Hatfield's Ferry Allegheny Energy	16.4	71.8	3.0	91.2
Keystone Reliant Energy	2.9	86.8	0.6	90.3
Homer City Edison Mission	5.8	56.3	1.3	63.4
AES Beaver Valley AES	18.5	24.5	2.0	45.0
El Rama Reliant Energy	16.8	12.3	1.0	30.1
Conemaugh Reliant Energy	11.7	4.5	0.5	16.7
Mitchell Allegheny Energy	9.1	3.6	1.4	14.1
Bruce Mansfield First Energy	3.0	7.2	0.3	10.5

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Table 2

2009 Emissions, Allegheny Energy Plants, in tons.

<u>Plant</u>	<u>Rated Capacity</u>	<u>NOX</u>	<u>SOX</u>	<u>PM10</u>	<u>PM2.5</u>
Hatfield's Ferry	1602	21,200	92,753	3,858	2,647
Armstrong	296	915	8,976	146	73
Mitchell	277	1,381	543	216	112

Table 3

2009 Emissions, First Energy, in tons.

<u>Plant</u>	<u>Rated Capacity</u>	<u>NOX</u>	<u>SOX</u>	<u>PM10</u>	<u>PM2.5</u>
Bruce Mansfield	2550	7,455	17,709	736	192

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC UTILITY COMMISSION**

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DIRECT TESTIMONY

OF

DAN M. HANEY

**Describing the Proposed Merger's Potential Impacts
on the Commonwealth of Pennsylvania's Statutory
Requirements to Regulate Air Pollution from Electric Generation Units**

Dated: August 17, 2010

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1 **Q. Please state your name and work address.**

2 A. My name is Dan M. Haney. My work address is Pennsylvania Department of
3 Environmental Protection ("DEP"), Bureau of Air Quality, 400 Waterfront Drive,
4 Pittsburgh, PA 15222.

5 **Q. Please summarize your professional background and your experience with the**
6 **Department.**

7 A. I have seventeen years of experience in the air quality field. My current position with the
8 DEP is Chief of Operations, Southwest Regional Office, in which I am responsible for
9 compliance and enforcement activities of DEP's Air Quality program for a nine county
10 area in Southwestern Pennsylvania. Prior to beginning work for DEP, I obtained twelve
11 years of experience in the institutional chemical field, and four years of experience as a
12 Naval meteorologist. The focus of my current work has been the implementation of
13 Pennsylvania's Air Permitting Program to meet the requirements of Pennsylvania Air
14 Pollution Control Act, the federal Clean Air Act as amended in 1990 and the regulations
15 promulgated thereunder.

16 **Q. What is the purpose of your testimony in this proceeding?**

17 A. It is my understanding that in order for the Public Utility Commission to approve this
18 merger, the Commission must find that the merger is necessary and proper for the
19 service, accommodation, convenience or safety of the public. Such a finding is
20 predicated on a demonstration by the Joint Applicants that the merger will affirmatively
21 benefit the public in some substantial way. I also understand that environmental matters
22 are appropriate to consider when evaluating whether a merger affirmatively promotes the
23 public interest.

1 The purpose of my testimony is to identify and examine the air quality
2 environmental considerations or concerns that arise as a consequence of the Joint
3 Applicants' proposed merger with regard to three power stations, primarily consisting of
4 three coal-fired electric generating units (“EGUs”) owned and operated by Allegheny
5 Energy, and one power station with three coal-fired EGUs, owned and operated by First
6 Energy, in the Southwestern Pennsylvania.

7 The federal Clean Air Act, 42 U.S.C. §§ 7410-7671, *et seq.*, the Pennsylvania Air
8 Pollution Act, 35 P.S. §§ 4000.1 *et seq.* and the regulations promulgated thereunder
9 establish various requirements to prevent or reduce the emission of air contaminants from
10 air contamination sources including facilities that generate electricity. DEP is concerned
11 that design and emission issues for the Joint Applicants' electric generating units in
12 Southwestern Pennsylvania are currently and will continue to affect the health, safety and
13 welfare of the citizens of the Commonwealth, and that the proposed merger will allow
14 these concerns to continue unless actions are taken to address them.

15 **Q. Please describe the electric generating units that are owned and operated by**
16 **Allegheny Energy in Southwestern Pennsylvania.**

17 **A.** Allegheny Energy owns and operates three power stations in Southwestern Pennsylvania:
18 Hatfield's Ferry located in Greene County, Mitchell located in Washington County, and
19 Armstrong located in Armstrong County.

20 The Hatfield's Ferry plant has three coal-fired boilers, installed between 1969 and
21 1971. Each boiler has a peak heat input of 5,160 million British Thermal Units (BTUs),
22 which collectively generate approximately 1665 megawatts of electricity. In 2009, the
23 plant added Wet Flue Gas De-sulfurization units (commonly known as “scrubbers”),

1 which have substantially reduced emissions of oxides of sulfur (“SOx”). However, the
2 plant has only internal controls for Nitrogen Oxides (NOx), and lacks modern external
3 NOx controls. The plant also uses an electrostatic precipitator for particulate control.

4 The Armstrong Station has two 176 megawatt generating units, each powered by
5 a coal-fired boiler, installed in 1958-1959. This plant uses combustion modification to
6 reduce NOx, has no scrubbers for SOx reductions and uses an electrostatic precipitator
7 for particulate control.

8 The Mitchell Station is the oldest of the three Allegheny Energy stations in
9 Southwestern Pennsylvania. The plant was originally activated in the late 1940s, with
10 three large oil-fired boilers. Currently, the plant uses a single coal-fired 2,988 million
11 BTU unit installed in 1963, which is capable of producing 277 megawatts of electricity.
12 This unit uses combustion modification for NOx reduction, scrubbers for SOx reduction,
13 and an electrostatic precipitator for particulate control.

14 I have attached a table to my testimony which describes the ranking of these three
15 Allegheny Energy plants on a tons of pollutants per megawatt of electricity generated,
16 compared with other similar plants in Southwestern Pennsylvania, including the
17 FirstEnergy Bruce Mansfield plant (“Table 1”). I have also attached a table to my
18 testimony which describes the amount of NOx, SOx and Particulate emissions from these
19 three plants for 2009 (“Table 2”).

20 Q. **Was any pollution control equipment recently installed at Allegheny Energy’s**
21 **Hatfield’s Ferry Plant?**

22 A. Yes, scrubbers for the reduction of SOx were installed at the Hatfield’s Ferry Plant in
23 2009.

1 Q. **Are any EGUs in Southwestern Pennsylvania still lacking scrubbers to control SOx**
2 **emissions?**

3 A. Two units that are located at Allegheny Energy's Armstrong Plant, and two at the EME
4 Homer City station, located in Indiana County.

5 Q. **Do any of Allegheny Energy's EGUs in Southwestern Pennsylvania have modern**
6 **external NOx controls?**

7 A. No. None of Allegheny Energy's plants in the region have modern Selective Catalytic
8 Reduction ("SCR") NOx controls.

9 Q. **Please summarize any other design and emission issues relating to Allegheny**
10 **Energy's plants.**

11 A. Allegheny Energy's Armstrong Plant is causing nearby communities to be deemed in
12 non-attainment of National Ambient Air Quality Standards ("NAAQS") by the United
13 States Environmental Protection Agency ("EPA") for Sulfur Dioxide ("SO2"). In
14 addition, DEP and four other states have filed suit in the U.S. District Court for the
15 Western District of Pennsylvania regarding permitting violations at the Armstrong,
16 Hatfield's Ferry, and Mitchell Plants.

17 Q. **Please explain in more detail the issues relating to Sulfur Dioxide non-attainment**
18 **regarding the Armstrong Plant owned by Allegheny Energy.**

19 A. The EPA has determined that the Armstrong Plant is the main cause for five townships in
20 Armstrong County (Madison Township, Mahoning Township, Boggs Township,
21 Washington Township and Pine Township) to be designated as non-attainment areas for
22 SO2 under the NAAQS. The federal designation of non-attainment can be found in the
23 Code of Federal Regulations at 40 CFR Section 81.339. EPA's findings that the

1 Armstrong Plant is the primary cause of this non-attainment are set forth in the Federal
2 Register, at 52 FR 3646. Allegheny Energy's smoke stack at the Armstrong Plant
3 exceeds the permissible height for dispersion modeling allowed under federal
4 requirements that DEP has adopted. Air quality modeling performed using the
5 appropriately sized stack demonstrates SO2 NAAQS violations for these nearby
6 communities, which are the only areas within Pennsylvania that do not meet EPA's
7 primary NAAQS for SO2. DEP believes that Allegheny Energy's installation of
8 scrubbers at the Armstrong Plant is the most viable approach to addressing EPA's
9 findings of non-attainment, and would substantially reduce the SO2 emissions from the
10 plant.

11 **Q. What are the design and emission issues relating to the three Allegheny Energy**
12 **plants as asserted in the federal court proceeding?**

13 A. On June 28, 2005, DEP, together with the states of New York, New Jersey, Maryland
14 and Connecticut, filed a civil action in the U.S. District Court for the Western District of
15 Pennsylvania, docketed at No. 2:05 CV 0885, against Allegheny Energy and its related
16 companies. I have attached a copy of the Amended Complaint to this testimony. The
17 case is scheduled for trial in September of this year. In summary, the case concerns
18 emissions of NOx and SOx from the Armstrong, Hatfield's Ferry and Mitchell power
19 plants.

20 The Complaint states, first, that Allegheny Energy re-constructed a substantial
21 portion of the Armstrong plant; specifically, the plant's boilers, and has failed to meet the
22 applicable sulfur dioxide (SO2) emission limits that were triggered by the reconstruction.
23 The Complaint states that Allegheny Energy thereby violated federal New Source

1 Performance Standards (“NSPS”), and Pennsylvania’s best available technology
2 (“BAT”) requirements for new or reconstructed sources.

3 Secondly, the Complaint maintains that Allegheny Energy performed numerous
4 physical changes at the Armstrong, Hatfield’s Ferry, and Mitchell Plants (including
5 replacement of worn out boiler components with brand new and improved boiler
6 components) that would result in significant net emissions increases of SO₂ and/or NO_x.
7 As such, the Complaint asserts that Allegheny Energy was required to obtain Prevention
8 of Significant Deterioration (“PSD”) and/or Non-Attainment New Source Review
9 (“NNSR”) permits before performing these projects, which would have required
10 substantial emission control improvements and consequent emission reductions. The
11 Complaint requests the Court to order Allegheny Energy to comply with its emission
12 control responsibilities, and to pay substantial civil penalties for its previous violations of
13 law.

14 **Q. Please describe the EGU that is owned and operated by First Energy in**
15 **Southwestern Pennsylvania.**

16 A. The Bruce Mansfield plant, located in Beaver County, has three 850 megawatt units, for
17 a combined capacity of 2550 megawatts. The units were installed between 1976 and
18 1979, and employ scrubbers to control SO_x. All three units now utilize selective
19 catalytic reduction (“SCR”) for control of NO_x. I have attached a table showing
20 emission levels and ranking for the Bruce Mansfield plant (“Table 3”).

21 **Q. Please describe the design and emission issues relating to the Bruce Mansfield Plant**
22 **owned by First Energy.**

1 A. The Bruce Mansfield plant experienced two “rain out” events over the past few years. In
2 the first event, un-combusted carbon was emitted through the scrubber and settled upon
3 surrounding homes and properties. The second episode involved scrubber sludge
4 deposition. These episodes were attributed to overly high levels of water in the scrubber,
5 resulting in the rainout of foul scrubber water. First Energy was fined the maximum
6 statutory amount for each of these events.

7 First Energy has also experienced many years of opacity exceedances at the Bruce
8 Mansfield plant, beginning at least in the 1990s. First Energy has paid over One Million
9 Dollars in civil penalties for these exceedances, and has implemented corrective actions
10 and equipment (including injection of limestone and dolomite into the process, use of
11 combustion optimization procedures, and other measures) which appear to have resolved
12 the opacity exceedances.

13 **Q. How will this merger affect the Commonwealth’s air quality?**

14 A. Nothing I have been provided with relating to the proposed merger identifies how the
15 new entity will address the significant compliance issues I have identified in my
16 testimony.

17 **Q. Does this conclude your testimony?**

18 A. Yes it does.

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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DIRECT TESTIMONY

OF

DANIEL GRIFFITHS

**ON BEHALF OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

August 17, 2010

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Q. PLEASE STATE YOUR NAME AND OCCUPATION.

A. My name is Daniel Griffiths and I am Special Assistant to the Secretary, Pennsylvania Department of Environmental Protection (DEP). My business address is 400 Market Street, Harrisburg, PA, 17101.

Q. PLEASE SUMMARIZE YOUR QUALIFICATIONS.

A. I have over 30 years of experience with state and federally regulated utilities, particularly electric utilities. In regard to energy efficiency (EE), I developed and implemented the Commission's Low Income Usage Reduction Program and developed programs for the Energy Cooperative Association of Pennsylvania. In regard to programs involving both EE and demand-side management (DSM), I participated in the development of policy and programs under PJM, LLC's Demand-Side Response Working Group, I lead the DEP team involved in drafting Act 129, and I managed DEP's interventions in Act 129 cases at the Commission. I have also been responsible for management of the work of the Pennsylvania Sunshine and Pennsylvania Energy Development Authority programs and for the Department's investments in the Keystone HELP program.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. My testimony will address three concerns with these Companies' performance in three areas. First, these companies have failed to take significant action to ensure an adequate supply of Tier I and solar energy resources as required under the Alternative Energy Portfolio Act of 2004, as amended in 2007. I recommend that they procure at least 40% of their annual Tier I obligation using long-term contracts of at least 10 years. Second, the direction established by First Energy with respect to smart meters and the

apparent rethinking of smart meter deployment by Allegheny Power will deny for years the opportunity for customers to secure the benefits of demand response. While denying individual customers the ability to secure lower prices through time of use and real-time prices, this will also prevent downward pressure to be applied to wholesale market prices. I recommend that the companies complete deployment of smart meters by December 31, 2018. Third, in order to demonstrate a clear merger benefits, the Companies should be investing more broadly in alternative energy and significant EE and DSR programs. I recommend specific programmatic investments that will benefit the Companies' customers.

Q. WHAT IS YOUR TESTIMONY REGARDING ALTERNATIVE ENERGY?

A. The AEPS amendments under HB 1203 in 2007 expanded the responsibilities of electric distribution companies (EDCs) to an affirmative requirement that each EDC take steps to assure the availability to them of AEPS-eligible resources. The definition of "force majeure" was modified in that bill to establish an affirmative responsibility, on the behalf of EDCs, to make "a good faith effort to acquire sufficient alternative energy to comply with their obligations." This definition goes further to indicate specific measures as follows: "Such good faith efforts shall include, but are not limited to, banking alternative energy credits during their transition periods, seeking alternative energy credits through competitive solicitations and seeking to procure alternative energy credits or alternative energy through long-term contracts." This clearly creates an obligation to take all reasonable steps to ensure a future supply of alternative energy and credits. In addition to the importance of proactive steps toward compliance, the substantial

environmental benefits of most Tier I resources, particularly solar energy, make it doubly important to ensure adequate supply.

Q. WHAT MEASURES ARE YOU PROPOSING?

A. In order to ensure that the customers of the merged companies secure a positive benefit from this merger, I recommend that the Companies, individually or separately, procure 40% of their total annual obligations regarding all Tier I requirements using long-term contracts in each year through the 2020 – 2021 compliance year. In light of the annual increment in obligations set forth in the Act, this would necessitate an annual process so that additional credits can be procured to meet 40% of the following year's obligation.

Q. WHY SHOULD THESE COMPANIES PROCURE AEPS REQUIREMENTS THROUGH LONG-TERM CONTRACTS?

A. Almost no energy projects can currently be financed unless they either have an external subsidy or a long-term power purchase agreement. In regard to solar credits, current spot market prices exceed SREC auction results in Pennsylvania. Regarding other Tier I credits, it appears that long-term contracts will result in prices that are more affordable than spot market purchases. I conclude that consumers will benefit financially from long-term procurement.

Importantly, Allegheny's currently filed application to procure a small number of solar renewable energy credits through long-term contracts includes the option for bidders to make offers based on aggregation of small systems. This measure has the potential to support work by the hundreds of small solar installation companies in

Pennsylvania. This will result in continued employment for workers in many new companies.

This means that the use of long term contracts will both lower consumer costs and promote jobs.

Q. WHY 40%?

A. I selected this level of long-term purchases based on the recent history of market penetration by competitive energy supply. The July 2010 survey by the Pennsylvania Office of Consumer Advocate reflects competitive supply at the following levels: Duquesne Light – 52.2%, Penn Power – 56.8%, and PPL – 62.8%. I conclude that the “competitive risk” that the level at which an EDC will not need to procure alternative portfolio resources is about 60%. While PPL’s competitive access exceeds 60%, this is an unusual situation caused by a post-rate cap procurement strategy for all energy that resulted in prices well in excess of the wholesale market. That Company’s default service rates will decline in 2011 and it is reasonable to expect that competitive supply will decline as well because the price advantage of switching will shrink. From this perspective, long-term contracts for at least 40% of each company’s obligation will stimulate the projects needed to supply AEPS obligations while not resulting in procurement of credits that are not needed for compliance.

Q. WHAT IS YOUR TESTIMONY REGARDING SMART METERS?

A. I recommend that the Companies complete deployment of smart meters by December 31, 2018. This is less than the time permitted under the statute but provides eight years for the completion of a network that will give all consumers in First Energy’s expanded service territory the opportunity to significantly control their electricity costs.

Further, this time frame is consistent with Allegheny's originally-filed plan, verifying the feasibility of completing deployment throughout the combined service territory by the end of 2018.

Q. WHAT IS YOUR ASSESSMENT OF THE CURRENT FIRST ENERGY PLAN?

A. I regard First Energy's current plan for smart meters as a failure. This is because it defers significant roll-out of metering technology until at least 2016 with completion in 2022. The plan filed by Allegheny Power was more reasonable because it achieves complete deployment within eight years. However, the review of Allegheny's filing has been paused to give the Company an opportunity to consider how the merger may impact its plan. This is understandable but I am concerned that the outcome will be that Allegheny will move to or toward the current First Energy plan. The result of adding delay to Allegheny's plan is that most of its current customers will be denied the opportunity to save through time of use pricing. This is a particular concern because I anticipate that economic recovery will lead to wholesale electricity prices returning to levels seen in 2008. If nothing else, this will be driven by static capacity resources in the face of rising demand. However, there are also reasons to be concerned that continued strong demands for coal in export markets may put upward pressure on the price of baseload energy. In other words, there will be general upward pressures on electricity prices. The general availability of smart meters gives consumers the tools to control energy costs.

Q. WHAT ADDITIONAL TESTIMONY ARE YOU OFFERING?

A. In order to provide a positive public benefit for these Companies' consumers, I recommend that each distribution company in the merged service territories provide funds to alternative energy and energy efficiency projects. These are projects that promote environmental quality as well as economic development and jobs. These projects can be supported through well-established, quality-driven funding programs and market-based lenders.

First, I recommend that the Companies support the Pennsylvania Sunshine program with a contribution from merger savings of \$10 million for projects within the merged service territory. This program, established under the Alternative Energy Investment Act of 2008, provides rebates for installation of solar energy systems for home owners and owners of small businesses. With 17.6 megawatts of capacity completed and another 38 megawatts under development, the environmental benefits of the program are substantial. I estimate that the avoided pollution from these projects will be 28,986 metric tons (MT) of CO₂, 182 MT of sulfur dioxide, and 42 MT of oxides of nitrogen. In addition, the program has encouraged at least 600 companies to establish a business presence in Pennsylvania with the majority located here with many hundreds of new jobs created in a depressed economy. Finally, these solar projects result in about 52,000 megawatt-hours of avoided energy costs. Thus, the Companies' support for the Sunshine program will have substantial benefits to its consumers.

Second, I recommend that the Companies support the Keystone Home Energy Loan Program (HELP) with a contribution from merger savings of \$10 million for the write-down of interest rates for loans within the merged service territory. Over the past several years, HELP has provided over \$35 million in loans to home owners for energy

efficient heating and water heating equipment and for building efficiency measures in the borrowers' homes. These measures improve efficiency, thus saving energy costs, but also improve comfort for thousands of borrowers. Having offered over \$20 million in loans at reduced interest rates, the program puts significant energy savings within reach of thousands of Pennsylvania home owners. In addition, the program is delivered through a network of trained, registered contractors so that employment is created and quality is ensured. The Companies' commitment to support HELP within their service territories will create substantial benefits for customers.

Third, I recommend that the Companies contribute \$7 million from merger savings to the Pennsylvania Energy Development Agency (PEDA) for projects within the Companies service territories. By the end of August 2010, PEDA will have distributed approximately an additional \$20 million to dozens of energy, energy efficiency and manufacturing projects around the state. PEDA-sponsored projects have provided substantial benefits to Pennsylvania. Past years have seen similar strong levels of investment with \$20 million provided in the 2009 – 2010 round and \$15 million in the 2008 – 2009 round. As an example of impacts, in 2009 PEDA's investment of \$15 million was matched by \$137 million in private investment and created 897 new jobs. Energy savings of 531 megawatt-hours results in these projects are expected to offset the emissions of 295,455 metric tons of carbon dioxide per year; 414 metric tons of nitrogen oxides per year; and 1,973 metric tons of sulfur oxides per year. Thus, support for PEDA projects will confer significant benefits on the Companies' customers.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. It does.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, STATE OF CONNECTICUT,
STATE OF MARYLAND, STATE OF
NEW JERSEY, and STATE OF NEW YORK,

Plaintiffs,

v.

ALLEGHENY ENERGY, INC.,
ALLEGHENY ENERGY SERVICE
CORPORATION, ALLEGHENY ENERGY
SUPPLY COMPANY, LLC, MONONGAHELA
POWER COMPANY, THE POTOMAC EDISON
COMPANY, and WEST PENN POWER
COMPANY,

Defendants.

Civil Action No. 2:05cv0885

District Judge Terrence F. McVerry
Magistrate Judge Robert C. Mitchell

Electronically Filed

FIRST AMENDED COMPLAINT

The Commonwealth of Pennsylvania, Department of Environmental Protection (“Pennsylvania”) and the States of Connecticut, Maryland, New Jersey and New York (collectively with Pennsylvania, the “Plaintiff States”), each represented by, and by authority of, its respective Attorney General or, in the case of Pennsylvania, the Chief Counsel of its Department of Environmental Protection, allege:

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NATURE OF THE ACTION

1. The Plaintiff States commence this civil action against Allegheny Energy, Inc. (“Allegheny Energy”) and its wholly owned or nearly wholly owned subsidiaries Allegheny Energy Service Corporation (“Allegheny Service”), Allegheny Energy Supply Company, LLC (“Allegheny Supply”), Monongahela Power Company d/b/a Allegheny Power (“Monongahela”), the Potomac Edison Company d/b/a Allegheny Power (“Potomac”) and West Penn Power Company d/b/a Allegheny Power (“West Penn”) (Allegheny Energy, Allegheny Service, Allegheny Supply, Monongahela, Potomac and West Penn are collectively referred to herein as “Allegheny”). The Plaintiff States bring this action pursuant to 42 U.S.C. § 7604(a) based on the following violations of law: (a) Allegheny’s modification and operation of major emitting facilities without obtaining permits and without abiding by emission limitations required under the prevention of significant deterioration (“PSD”) provisions in Part C of Title I of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. §§ 7470-7479, and its implementing regulations, including those at 40 C.F.R. § 52.21; (b) Allegheny’s reconstruction and operation of two units at a major emitting facility without abiding by emissions limitations required under the new source performance standards (“NSPS”) provision of the CAA, 42 U.S.C. § 7411, and its implementing regulations, 40 C.F.R. Part 60, Subpart Da; and (c) Allegheny’s operation of major emitting facilities without obtaining operating permits containing PSD and NSPS emissions limitations and without abiding by such limitations, as required under Title V of the CAA, 42 U.S.C. §§ 7661-7661f.

2. In addition, the Commonwealth of Pennsylvania brings this action pursuant to the Pennsylvania Air Pollution Control Act (“APCA”), 35 P.S. § 4001 *et seq.*, and its implementing regulations at 25 Pa. Code, Subpart C, Article III (related to air resources), based on the

following violations of law: (a) Allegheny's modification, reconstruction and operation of modified major emitting facilities without obtaining plan approvals and permits and without abiding by emissions limitations required under the PSD and nonattainment new source review ("nonattainment NSR") regulations under Pennsylvania law, 25 Pa. Code, Chapter 127, Subchapters B, D, E & F; (b) Allegheny's reconstruction and operation of two units at a major emitting facility without abiding by emissions limitations required under the NSPS provisions of Pennsylvania law, 25 Pa. Code, Chapter 122; (c) Allegheny's reconstruction and operation of major emitting facilities without obtaining preconstruction approval, including the establishment of "best available technology" ("BAT") emission and technology standards for the facilities, and without abiding by such BAT standards, as required under Pennsylvania law, 25 Pa. Code, Chapter 127, Subchapters B and F; and (d) Allegheny's operation of major emitting facilities without obtaining Title V operating permits containing PSD, nonattainment NSR, NSPS and BAT emissions limitations and without abiding by such limitations, as required under Pennsylvania law, 25 Pa. Code, Chapter 127, Subchapters F and G.

3. Through its subsidiaries, including defendants Allegheny Service, Allegheny Supply, Monongahela, Potomac and West Penn, defendant Allegheny Energy owns and operates several coal-fired power plants in Pennsylvania, including:

<u>Plant</u>	<u>Location</u>	<u>Number of Coal-Fired Generating Units</u>	<u>Total Nameplate Capacity for Coal- Fired Units</u>	<u>Date Units Placed into Service</u>
Armstrong	Washington Township, Armstrong County	2	326	1958, 1959
Hatfield's Ferry	Greene County	3	1,728	1969, 1970, 1971
Mitchell	Courtney, Washington County	1	299	1963

4. At these three plants (the "Facilities"), Allegheny has undertaken capital projects that have had the effect of increasing the plants' emissions. Allegheny undertook many of these construction projects in order to extend the operational lives of the Facilities' electricity generating units at a time when the units at issue were nearing the end of their normal operational lives.

5. At no time did the defendants apply for or obtain the preconstruction and/or operating permits required under the relevant PSD and/or nonattainment NSR provisions of federal and/or Pennsylvania law. To date, defendants operate the Facilities without complying with emission limitations based on use of the best available control technology ("BACT") or meeting the lowest achievable emission rate ("LAER") for both sulfur dioxide ("SO₂") and nitrogen oxides ("NO_x"), and without obtaining emission offsets at the Facilities, as required by the relevant PSD and nonattainment NSR requirements under federal and/or Pennsylvania law.

6. In addition, since completing reconstruction of the two units at the Armstrong facility, defendants have operated those units without complying with NSPS emissions limitations under federal and Pennsylvania law, which are based on the best system of emission reduction that EPA determines has been adequately demonstrated.

7. Defendants also failed to apply for preconstruction plan approval and/or operating permit containing BAT emission and technology standards for each of the capital projects at the Armstrong plant, as required under Pennsylvania law. To date, defendants operate that plant without complying with the BAT standards in violation of Pennsylvania law.

8. Finally, at no time did the defendants apply for or obtain Title V operating permit containing emissions limitations reflecting BACT or, with respect to the Armstrong facility, BACT, LAER, NSPS or BAT, as required under federal and/or Pennsylvania law. Defendants continue to operate the plants without complying with those standards, in violation of the operating permit requirements of federal and Pennsylvania law.

9. Emissions of NO_x and SO_2 from coal-fired power plants contribute extensively to damages to public health and the environment. The NO_x emissions from these sources contribute to the formation and transport of ozone pollution. In the presence of sunlight, NO_x reacts with volatile organic compounds (“VOCs”) in a complicated reaction that leads to the creation of ozone, a major component of urban smog. Ozone contributes to many respiratory health problems, including chest pains, shortness of breath, coughing, nausea, throat irritation, and increased susceptibility to respiratory infections such as asthma. Elevated ozone levels jeopardize the health of residents of each of the Plaintiff States, especially children, those suffering from respiratory illnesses, and people who work or exercise outdoors. The adverse health effects of ozone pollution are particularly severe in the Plaintiff States, and other northeastern urban areas, where thousands of children suffer the debilitating effects of asthma.

10. The Facilities’ emission of ozone-creating pollutants contributes to the formation of ozone in the Plaintiff States. Each of the Plaintiff States suffers from the results of ozone transport, which directly contribute to continued difficulty in attaining and maintaining the

National Ambient Air Quality Standards (“NAAQS”) for ozone. Air quality modeling demonstrates that much of the ozone in the northeastern states is attributable to transport from power plants in upwind areas. In recognition of this phenomenon, Congress singled out the migration of ozone and its precursors for special emphasis in the 1990 amendments to the CAA:

The bill reflects an increasing understanding of how ozone pollution is formed and transported. Because ozone is not a local phenomenon but is formed and transported over hundreds of miles and several days, localized control strategies will not be effective in reducing ozone levels.

Senate Report No. 101-228, *reprinted in* 1990 U.S.C.C.A.N. at 3389, 3399.

11. NO_x and SO₂ emissions from the Facilities also contribute to the formation of acid deposition, which has caused the acidification of hundreds of lakes and ponds in certain of the Plaintiff States. For example, 28 percent of streams located in the area of Moshannon State Forest in Pennsylvania are deemed acidic due, in part, to SO₂ emissions from coal-fired power plants. The percentage of lakes in New York’s Adirondack Park that are chronically acidic (*i.e.*, corresponding to a pH of 5.28 or lower, a level at which many species of fish can no longer survive) now approaches 20 percent. Many lakes, particularly those in the western Adirondacks, that were favored destinations of anglers just two generations ago, are now devoid of fish.

12. Particulate matter consisting of sulfates (from SO₂ emissions) and nitrates (from NO_x emissions) falls in the Plaintiff States in the form of wet deposition (snow, sleet and rain) and dry deposition. The Plaintiff States’ annual snowfall locks up large amounts of pollutants in the snow covering fields and forests. Spring runoff from snow melt creates an annual pulse of acidified water that enters lakes and streams in huge volumes, creating a phenomenon known as acid shock. Acid shock can be particularly harmful to aquatic communities because it occurs during spawning or the early life stages of many aquatic animals. Additionally, some naturally

occurring levels of nutrients, such as calcium, become less available to aquatic life because they are chemically bound up buffering the effects of the incoming acids.

13. The health of northeastern high altitude forests in certain of the Plaintiff States has deteriorated and is continuing to deteriorate as a result of the weakening effect of acid deposition on trees. Acid deposition mobilizes and washes away calcium in the soil that is necessary to the survival and growth of trees. Levels of calcium in the soils of these high altitude forests have been measurably dropping over the years, with a concomitant drop in tree growth rates and decreased resistance to stress and disease. For example, stands of sugar maples in northern Pennsylvania are in decline due to low levels of soil-available calcium from acid deposition.

14. NO_x emissions also cause eutrophication of coastal waters in the Plaintiff States and elsewhere, including Chesapeake Bay and the Long Island Sound, and contribute to nutrient loading in other waters, reducing the diversity of fish and other life in these essential waters.

15. Emissions of NO_x and SO_2 from the Facilities also lead to the creation of fine nitrate and sulfate particles, which, like ozone, are transported by prevailing winds to the Plaintiff States located downwind. Inhalation of fine particulate matter causes respiratory distress, cardiovascular disease and premature mortality. One study estimated that emissions of fine particulate matter from power plants will cause over 6,400 premature deaths in the Plaintiff States alone in 2007. Fine nitrate and sulfate particles are also toxic to aquatic life and vegetation.

16. The Clean Air Act affords special protection to federal "Class I" areas such as certain national parks and wilderness areas. *See, e.g.*, 42 U.S.C. §§ 7473(b)(1) & 7475(d). The National Park Service has conducted vegetation damage surveys in New Jersey's Class I area, the Edwin

B. Forsythe National Wildlife Refuge. These surveys have revealed ozone injury to a wide variety of species.

17. Congress has declared visibility impairment prevention in federal Class I areas to be a national goal. *See, e.g.*, 42 U.S.C. §§ 7491 & 7492. Sulfates resulting from power plant emissions contribute to impaired visibility, harming Class I areas including, but not limited to, the Edwin B. Forsythe National Wildlife Refuge located in New Jersey.

18. Particulate matter ("PM") is a generic term for the complex mixture of particles suspended in the air that people breathe, including ashes, soot, and aerosols formed through chemical reactions in the atmosphere involving SO₂ and NO_x. Exposure to even relatively low levels of PM has been linked to premature death due to cardiac or respiratory illness. PM is also harmful to people with lung disease, as it can trigger asthma attacks and cause wheezing, coughing, and respiratory irritation in individuals with sensitive airways. PM emissions from Allegheny's Pennsylvania plants blow downwind into the Plaintiff States and thus, along with other PM sources, contribute to health problems there.

19. In light of the extensive environmental harm attributable to the emissions from the Facilities, the Plaintiff States seek, among other things, (a) an injunction prohibiting further operation of the Facilities until defendants implement BACT and, with respect to the Armstrong plant, BACT, LAER, NSPS and BAT, and obtain emission offsets, as required, and otherwise comply with the CAA, the Pennsylvania APCA, and the federal and state regulations promulgated thereunder; (b) civil penalties for defendants' past and ongoing violations of federal law; and (c) mitigation of the harm caused by the defendants' illegal emissions.

JURISDICTION AND VENUE

20. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 7604(a) and 7477, and 28 U.S.C. §§ 1331, 1355 and 1367.

21. With respect to all claims, venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1395(a), because defendant Allegheny Energy and several of its subsidiaries, including defendants Allegheny Service, Allegheny Supply, Monongahela, Potomac and West Penn, may be found in this District, all of the property that is the subject of this action is situated in this District, and a substantial part, if not all, of the events or omissions giving rise to the claims asserted herein arose in this District.

22. With respect to claims 4, 10, 13, 21, and 25, venue is also proper in this District pursuant to 42 U.S.C. § 7604(c)(1), because the stationary sources at which the violations of emission standards or limitations that are the subject of these claims took place are located in this District.

ALLEGATIONS COMMON TO ALL CLAIMS

The Defendants

23. Allegheny Energy is a corporation organized under the laws of the State of Maryland, with a principal place of business located at 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601. Formerly known as Allegheny Power Systems, Inc., Allegheny Energy is a public utility holding company that owns all outstanding common stock of its domestic electric utility subsidiaries, including Monongahela, Potomac and West Penn. Allegheny Energy also owns all outstanding common stock of its service company, Allegheny Service, and approximately 98.26 percent of the outstanding common stock of its generating company, Allegheny Supply.

Allegheny Energy and its subsidiaries own and operate the Facilities that are the subject of this action.

24. Allegheny Service is a corporation organized under the laws of the State of Maryland, with a principal place of business located, upon information and belief, at 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601. Allegheny Service is a wholly-owned subsidiary of Allegheny Energy, providing, upon information and belief, management and professional services to, among others, Allegheny Energy, Allegheny Supply, Monongahela, Potomac, and West Penn, including accounting, administrative, information systems, environmental, engineering, financial, legal, maintenance and other services. Upon information and belief, Allegheny Service is an operator of the Facilities that are the subject of this action.

25. Allegheny Supply is a limited liability corporation organized under the laws of the State of Delaware, with a principal place of business located at 4340 Northern Pike, Monroeville, Pennsylvania 15146-2841. Allegheny Supply is a public utility holding company that is a 98.26 percent-owned subsidiary of Allegheny Energy and is engaged in the development, ownership, operation and management of electric generating facilities. Allegheny Supply participates in the operation of, and completely or partially owns, the Facilities.

26. Monongahela is a corporation organized under the laws of the State of Ohio, with a principal place of business located at 1310 Fairmont Avenue, Fairmont, West Virginia 26554. Monongahela, a wholly-owned electric utility subsidiary of Allegheny Energy doing business as Allegheny Power, is engaged in the generation, sale, purchase, transmission and distribution of electric power to customers in West Virginia and Ohio. Monongahela participates in the operation of, and partially owns, the Hatfield's Ferry facility in Pennsylvania.

27. Potomac is a corporation organized under the laws of the States of Maryland and Virginia, with a principal place of business located at 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601. Potomac, a wholly-owned electric utility subsidiary of Allegheny Energy doing business as Allegheny Power, is engaged in the sale, purchase, transmission and distribution of electric power to customers in Maryland, Virginia and West Virginia. Until August 1, 2000, Potomac participated in the operation of, and partially owned, the Hatfield's Ferry facility in Pennsylvania. At that time, Potomac transferred its ownership interest in that plant to Allegheny Supply, and subsequent to that time, Potomac has leased and participated in the operation of some of the generating capacity of Allegheny Supply's facilities.

28. West Penn is a corporation organized under the laws of the Commonwealth of Pennsylvania, with a principal place of business located at 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601. West Penn, a wholly-owned electric utility subsidiary of Allegheny Energy doing business as Allegheny Power, is engaged in the sale, purchase, transmission and distribution of electric power to customers in Pennsylvania. Until November 1999, West Penn operated and owned the Armstrong facility and the Mitchell facility. Until November 1999, West Penn participated in the operation of, and partially owned, the Hatfield's Ferry facility. At that time, West Penn transferred its ownership interest in those plants to Allegheny Supply, and subsequent to that time, West Penn has leased and participated in the operation of some of the generating capacity of Allegheny Supply's facilities.

29. Allegheny Energy, Allegheny Service, Allegheny Supply, Monongahela, Potomac and West Penn are each a "person" within the meaning of 42 U.S.C. § 7602(e).

The Integrated Allegheny Electric System

30. As Allegheny explained in its form 10-K Annual Report for 2004, “Allegheny is an integrated energy business that owns and operates electric generation facilities” Although each of the three Allegheny electric utility subsidiaries, Monongahela, Potomac and West Penn (the “Distribution Companies”), is separately incorporated, they operate under the same trade name – Allegheny Power.

31. On information and belief, the three Distribution Companies and Allegheny’s electric power plants are all physically interconnected, their operations are coordinated as a single electric utility system, and they are centrally controlled, managed and directed out of the Pennsylvania offices of Allegheny. Allegheny Supply provides power to the Distribution Companies under the terms of power supply agreements with the Distribution Companies. On information and belief, sale of electricity to the Distribution Companies currently consumes a majority of the normal operating capacity of Allegheny Supply generating assets that were previously owned by the Distribution Companies, which includes the Facilities.

32. In its regulatory filings, Allegheny refers to the workforce of its various affiliated entities collectively as “its” workforce. On information and belief, all of Allegheny’s officers and employees are employed by Allegheny Supply.

33. Upon information and belief, the boards of directors of Allegheny Supply, Monongahela, Potomac and West Penn are identical, and all of the directors of those companies are employees of Allegheny Service.

34. Upon information and belief, almost all of the executive officers of Allegheny Energy are directors and/or officers of Allegheny Supply and the Distribution Companies. For example, on information and belief:

a. Paul J. Evanson is Chairman, Director, President and Chief Executive Officer of Allegheny Energy, and is also Chairman, Director and Chief Executive Officer of Allegheny Supply, Monongahela, Potomac and West Penn;

b. Jeffrey D. Serkes is a Senior Vice President and Chief Financial Officer of Allegheny Energy, and is also Vice President and Director of Allegheny Supply, Monongahela, Potomac and West Penn;

c. John P. Campbell is Vice President of Allegheny Energy, and is also President and Director of Allegheny Supply and Director of Monongahela, Potomac and West Penn;

d. Joseph H. Richardson is Vice President of Allegheny Energy, and is also President and Director of Monongahela, Potomac and West Penn and Director of Allegheny Supply; and

e. Thomas R. Gardiner is Vice President and Controller of Allegheny Energy, and is also Controller of Allegheny Supply, Monongahela, Potomac and West Penn.

35. Upon information and belief, Allegheny Energy and Allegheny Service in the past exercised and continue to exercise complete dominion and control over, and have managed and directed the environmental policy of, Allegheny Supply, Monongahela, Potomac and West Penn with respect to the operation of their power plants. Upon information and belief, employees of Allegheny Service communicate directly with state and federal regulators with respect to environmental and other issues involving Allegheny Energy, Allegheny Supply, Monongahela, Potomac and West Penn.

36. As set forth above, Allegheny is essentially one enterprise entity, consisting of several interdependent corporations wholly owned, controlled, operated and managed by a

superior corporate entity – Allegheny Energy – with the goal of accomplishing one general business purpose.

37. Upon information and belief, Allegheny has been aware of the requirements of the environmental statutes and regulations more particularly described below, and was aware of the impact upon downwind locations, such as the Plaintiff States, of the emissions from the electric utility power generation plants owned and/or operated by Allegheny.

38. Upon information and belief, Allegheny Energy and Allegheny Service, through their control over and manipulation of Allegheny Supply, Monongahela, Potomac and West Penn, have made plant upgrades that increased emissions from the electric utility power generation plants owned and/or operated by these subsidiaries without complying with relevant environmental statutes and regulations, and with full awareness of the impacts such increased emissions would have, and the injuries such increased emissions would cause, upon downwind areas, including areas in the Plaintiff States.

STATUTORY AND REGULATORY BACKGROUND RELEVANT TO ALL CLAIMS

39. The Clean Air Act establishes a regulatory scheme 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. 42 U.S.C. § 7401(b)(1).

40. Pursuant to 42 U.S.C. § 7409, the Administrator of the United States Environmental Protection Agency (“EPA”) has promulgated regulations establishing primary and secondary NAAQS for six criteria air pollutants, including SO₂, nitrogen dioxide (“NO₂”), ozone, particulate matter (“PM”), carbon monoxide and lead. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public

welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

41. Pursuant to 42 U.S.C. § 7410, each State must adopt and submit to EPA for approval a State Implementation Plan ("SIP") that provides for the attainment and maintenance of the NAAQS.

42. Under 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area; one that does not is termed a "nonattainment" area. Nonattainment areas for ozone may be further categorized as "severe," "serious," "moderate," "marginal," or "incomplete data."

PSD: Federal Legal Authority

43. Part C of subchapter 1 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 attaining the NAAQS. These PSD program 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 decisionmaking process.

44. Congress intended the PSD program to ensure that emissions from sources in one state will not interfere with efforts to prevent significant deterioration of air quality in another state. 42 U.S.C. § 7470(4). To effectuate these goals, the PSD provisions of the Act provide that any decision to allow increased air pollution in any area be made only after careful evaluation of

all consequences of such a decision, including the interstate effects, and after adequate procedural opportunities for informed public participation in the decision-making process. 42 U.S.C. § 7470(5).

45. The PSD program is also intended “to preserve, protect and enhance the air quality in national parks, national wilderness areas . . . and other areas of special national or regional natural, recreational, scenic or historic value.” 42 U.S.C. § 7470(2). Certain procedures must be followed with regard to potential impact on Class I areas from a proposed source or modification. Under 42 U.S.C. §§ 7475(d)(2)(A)-(C), EPA must provide notice of the PSD permit application to the federal official charged with responsibility for management of any lands within a Class I area that may be affected by emissions from the proposed facility. The notification must include an analysis of the proposed source’s anticipated impacts on visibility in the Class I area.

46. The federal land manager must then make a determination whether the proposed project will adversely impact air quality related values (including visibility) of any lands within the Class I area. In any case where the federal land manager files a notice alleging that emissions from a proposed project may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and SO₂ will not cause or contribute to concentrations that exceed the maximum allowable increases for a Class I area.

47. 42 U.S.C. § 7475(a) prohibits the construction of a major emitting facility in an area designated as attainment unless a PSD permit has been issued. 42 U.S.C. § 7479(1) defines “major emitting facility” as including, among other things, (a) any fossil-fuel fired steam electric plant with a heat input of more than 250 million British thermal units per hour (“Btu/hr”) that

emits or has the potential to emit 100 tons per year (“tpy”) or more of any air pollutant, and
(b) any other source with the potential to emit 250 tpy or more of any air pollutant.

48. In accordance with 42 U.S.C. § 7471, each SIP shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

49. A state may comply with 42 U.S.C. § 7471 either (a) by being delegated by EPA the authority to issue permits under, and/or enforce, the federal PSD regulations set forth at 40 C.F.R. § 52.21, or (b) by promulgating its own PSD regulations that 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.

50. EPA has duly promulgated regulations at 40 C.F.R. § 52.21 to implement the PSD program. As set forth at 40 C.F.R. § 52.21(k), the PSD program generally requires a person who wishes to construct or modify a major emitting facility 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.

51. The provisions of 40 C.F.R. § 52.21(i) prohibit the construction or major modification of a major stationary source in any attainment area unless a PSD permit has been issued that meets the requirements of 40 C.F.R. §§ 52.21(j)-(r). The term “major stationary source” is defined at 40 C.F.R. § 52.21(b)(1)(i) to include, among other things, (a) any fossil-fuel fired steam electric plant of more than 250 million Btu/hr that emits or has the potential to emit 100 tpy or more of any air pollutant subject to regulation under the Act, (b) any other facility that emits, or has the potential to emit, 250 tpy or more of any air pollutant subject to regulation under the Act, or (c) any physical change that would occur at a stationary source not otherwise

qualifying as a major stationary source, if the changes would constitute a major stationary source by itself.

52. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2) as 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.

"Significant" is defined at 40 C.F.R. § 52.21(b)(23)(i), in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, as a rate of emissions that would equal or exceed any of the following: for ozone, 40 tpy of VOCs; for NO_x, 40 tpy; for SO₂, 40 tpy; for particulate matter, 25 tpy.

53. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major modification shall apply best available control technology ("BACT") for each air pollutant subject to a NAAQS that it would have the potential to emit in significant quantities. BACT is the maximum degree of emission reduction achievable for each air pollutant subject to a NAAQS, taking into consideration energy, environmental and economic impacts of the emission reductions. 40 C.F.R. § 52.21(b)(12).

54. Pursuant to 40 C.F.R. § 52.21(k), the owner or operator of the facility to be modified must demonstrate that the modified source would not contribute to violation of (a) any of the NAAQS in any air quality control region (including regions located downwind of the source); or (b) any maximum allowable increase in ambient pollutant concentration in effect in any area.

55. Pursuant to 40 C.F.R. § 52.21(p), notification of any permit application for a proposed major source or modification, the emissions from which may affect a Class I area, must be provided to the federal land manager for that area. The notification must include an analysis of the proposed source's anticipated impacts on visibility in the Class I area. A permit may not

be issued if certain impacts, including impacts on allowable increments and air quality related values (including visibility) for the Class I area, would occur.

PSD: Pennsylvania Legal Authority

56. In June 1983, Pennsylvania added a provision to its administrative code, 25 Pa. Code § 127.83 (25 Pa. Code, Chapter 127, Subchapter D, relating to prevention of significant deterioration of air quality), to adopt and incorporate by reference the federal PSD regulations promulgated at 40 C.F.R. Part 52. 13 Pa. Bull. 1940 (June 18, 1983). EPA approved this adoption and incorporation by reference, effective October 22, 1984. 49 Fed. Reg. 33127 (Aug. 21, 1984).

57. Accordingly, PSD definitions and requirements under Pennsylvania law are identical to the federal PSD regulatory requirements outlined in paragraphs 43-55 above, and any violation of the federal PSD regulations by a Pennsylvania air emissions facility is also a violation of Pennsylvania law.

Nonattainment NSR: Pennsylvania Legal Authority

58. As of January 15, 1994, as a replacement for its preexisting nonattainment NSR permit regulations, the Commonwealth of Pennsylvania promulgated new nonattainment NSR preconstruction permit regulations at 25 Pa. Code §§ 127.201-.216 (25 Pa. Code, Chapter 127, Subchapter E, relating to new source review). 24 Pa. Bull. 443 (Jan. 15, 1994).

59. The permit requirements set out in these regulations apply in areas designated as nonattainment with the NAAQS. Pursuant to these regulations, nonattainment NSR permits are required for new or modified facilities meeting certain criteria, and are issued only if certain preconstruction requirements are met.

60. Under these regulations, the term “major facility” is defined to mean a facility that has the potential to emit a pollutant in an amount equal to or greater than an applicable annual emissions rate set forth in 25 Pa. Code § 127.203. 25 Pa. Code § 121.1 (definition of “major facility”). The term “major NO_x emitting facility” is defined to mean, among other things, a facility which emits or has the potential to emit NO_x greater than 100 tons per year in an area included in an ozone transport region established under CAA section 184, 42 U.S.C. § 7511c. 25 Pa. Code § 121.1 (definition of “major NO_x emitting facility”).

61. The term “major modification” is defined to mean a physical change or change in the method of operation of a major facility that results in a increase in emissions equal to or exceeding emission rate thresholds or significance levels specified in 25 Pa. Code § 127.203. 25 Pa. Code § 121.1 (definition of “major modification”).

62. The term “new source” is defined to mean a stationary air contamination source that (a) was constructed and commenced operation on or after July 1, 1972, or (b) was modified so that the fixed capital cost of new components exceeded 50 percent of the fixed capital costs that would be required to construct a comparable entirely new source. 25 Pa. Code § 121.1 (definition of “new source”).

63. Under the regulations, an existing NO_x facility that is located in an area that is classified as moderate nonattainment for ozone must meet preconstruction requirements before installing a new source that results in an increase in the facility’s potential to emit NO_x equal to or exceeding 40 tpy, 1,000 pounds per day, or 100 pounds per hour, whichever is more restrictive. 25 Pa. Code §§ 127.201, 127.211(a)(2) & 127.203(b)(1). Such emissions increases are calculated pursuant to the methods set out at 25 Pa. Code § 127.211(b) and §§ 127.207(1), (3)-(7).

64. Similarly, under these regulations, an existing facility with the potential to emit 100 tons per year of SO_x that is located in a nonattainment area for SO₂ must meet preconstruction requirements before undertaking a modification, including the addition of a new source, that results in an increase in the facility's potential to emit SO_x equal to or exceeding 40 tons per year, 1,000 pounds per day, or 100 pounds per hour, whichever is more restrictive. 25 Pa. Code §§ 127.201, 127.211(a)(1) & 127.203(a)(2). Such emissions increases are calculated pursuant to the methods set out at 25 Pa. Code § 127.211(b) and §§ 127.207(1), (3)-(7).

65. The preconstruction requirements that facilities meeting the criteria set out in paragraphs 56 and 57 above must satisfy include, among other things, the following: (a) the proposed modified facility must comply with Pennsylvania's lowest achievable emissions rate ("LAER") standard for emissions control; (b) the owner or operator of the proposed modified facility must demonstrate that all of the other air emissions facilities in Pennsylvania that it owns or operates are in compliance, or on a schedule for compliance, with applicable emissions limitations and standards; and (c) the proposed modified facility must obtain emissions offsets equal to the net increase in potential to emit from the proposed modification. 25 Pa. Code § 127.205; *see also* 25 Pa. Code § 121.1 (definition of "LAER").

NSPS: Federal Legal Authority

66. Section 111 of the Act, 42 U.S.C. § 7411, establishes the CAA's NSPS program, which requires that certain new and modified stationary sources of air pollutants meet strict emission standards. 42 U.S.C. § 7411(e).

67. NSPS requirements apply to certain specific categories of stationary sources designated by EPA. 42 U.S.C. § 7411(b)(1)(A). EPA designates a category if "it causes, or

contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” *Id.*

68. EPA designated electric utility steam generating units (“EUSGUs”) as an NSPS category. EPA regulations define “electric utility steam generating unit” as a “steam electric generating unit that is constructed for the purpose of applying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale.” 40 C.F.R. § 60.2.

69. Once a category is designated, EPA must promulgate regulations establishing NSPS emissions limitations for that category. 42 U.S.C. § 7411(b)(1)(B). NSPS emissions limitations are set to “reflect[] the degree of emission limitation achievable through the application of the best system of emission reduction which . . . the [EPA] Administrator determines has been adequately demonstrated.” 42 U.S.C. § 7411(a)(1).

70. In 1979, EPA established stringent specific NSPS emissions limitations for SO₂, NO_x and PM for EUSGUs. 40 C.F.R. §§ 60.42Da-.44Da.

71. An EUSGU is subject to NSPS if it is a “new source,” which is defined to include any stationary source the “construction *or modification* of which is commenced” after the promulgation of regulations establishing NSPS emissions limitations for that category. 42 U.S.C. § 7411(a)(2) (emphasis added).

72. In particular, an existing facility that undergoes “reconstruction” is subject to NSPS, irrespective of any change in its emissions rate. 40 C.F.R. § 60.15(a). EPA regulations define “reconstruction” to mean:

the replacement of components of an existing facility to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and

(2) It is technologically and economically feasible to meet the applicable [NSPS] standards

40 C.F.R. § 60.15(b).

73. After the effective date of NSPS emission limitations, it is unlawful for a source subject to that NSPS to operate in violation of the NSPS standards. 42 U.S.C. § 7411(e).

NSPS: Pennsylvania Legal Authority

74. Effective as of August 1979, Pennsylvania added provisions to its administrative code, 25 Pa. Code §§ 122.1-.3 (25 Pa. Code, Chapter 122, relating to national standards of performance for new stationary sources), to adopt and incorporate by reference the federal NSPS provisions promulgated at 40 C.F.R. Part 60. 9 Pa. Bull. 1447 (Apr. 27, 1979). In 1985, EPA delegated the authority to implement and enforce those standards to Pennsylvania. 50 Fed. Reg. 34140 (Aug. 23, 1985).

75. Accordingly, NSPS definitions and requirements under Pennsylvania law are identical to the federal NSPS regulatory requirements outlined in paragraphs 66-73 above, and any violation of the federal NSPS regulations by a Pennsylvania air emissions facility is also a violation of Pennsylvania law.

Plan Approval Requirements and BAT: Pennsylvania Legal Authority

76. Separate from PSD, nonattainment NSR or NSPS requirements, Pennsylvania law bars the construction or modification of certain air contamination sources unless the source has received preconstruction approval from Pennsylvania and meets certain emissions and technology standards related to BAT and requirements promulgated by EPA. 25 Pa. Code §§ 127.11-.52 (25 Pa. Code, Chapter 127, Subchapter B, relating to plan approval requirements);

2 Pa. Bull. 383 (Mar. 4, 1972); 19 Pa. Bull. 1169 (Mar. 17, 1989); 24 Pa. Bull. 5899 (Nov. 25, 1994)..

77. “New sources,” as defined in paragraph 62 above, are subject to these preconstruction plan approval requirements. To obtain approval for construction or reconstruction projects, the “new source” must demonstrate that emissions from the source will be limited to the minimum attainable through the use of BAT. 25 Pa. Code § 127.12(a)(5).

78. Pennsylvania law defines BAT as “[e]quipment, devices, methods or techniques as determined by the Department [of Environmental Protection] which will prevent, reduce or control emissions of air contaminants to the maximum degree possible and which are available or may be made available.” 25 Pa. Code § 121.1. BAT standards apply to all air pollutants regulated under Pennsylvania law, including without limitation SO₂, NO_x, ozone, PM, and mercury and other hazardous air pollutants.

79. The plan approval for new sources must include, among other things, the applicable emissions and performance standards, including BAT, and other requirements under the Pennsylvania APCA, the CAA, and the regulations promulgated under either statute. 25 Pa. Code § 127.12b.

80. The term “modifications” is defined as “[a] physical change in a source or a change in the method of operation of a source which would increase the amount of an air contaminant emitted by the source.” 25 Pa. Code § 121.1 (definition of modification). Such modifications are subject to these preconstruction plan approval requirements. 25 Pa. Code § 127.11. To obtain approval for modification projects, the source must show that it will comply with applicable requirements under 25 Pa. Code Article III and requirements promulgated by EPA under the CAA, which includes PSD and NSR. 25 Pa. Code § 127.12(a)(4).

81. The plan approval for modified sources must include, among other things, the applicable emissions and performance standards, including PSD or NSR and other requirements under the Pennsylvania APCA, the CAA, and the regulations promulgated under either statute. 25 Pa. Code § 127.12b.

82. Modification or operation of a facility in violation of these plan approval requirements is unlawful. 25 Pa. Code § 127.11.

Operating Permit Requirements: Pennsylvania Legal Authority

83. Under Pennsylvania's integrated plan approval and operating permit program, an application for an operating permit shall include the information contained in the plan approval, demonstrate that the source is complying with applicable requirements of Article III and the requirements promulgated by EPA, and, for new sources, demonstrate that the emissions are the minimal attainable through the use of BAT as required by the plan approval. 25 Pa. Code § 127.411; 24 Pa. Bull. 5899 (Nov. 25, 1994).

84. An operating permit application must also include a certification of compliance with applicable requirements and a certification as to truth, accuracy and completeness, both by a responsible official of the entity seeking the permit. 25 Pa. Code § 127.402(d).

85. After filing a completed application for an operating permit, the applicant must (a) provide additional information as necessary to address requirements that become applicable to the source prior to the Department of Environmental Protection taking action on the application; (b) provide supplementary facts or corrected information if it becomes aware that it has submitted incorrect information or failed to submit relevant facts; and (c) except as otherwise required by 25 Pa. Code Article III, the Clean Air Act or the regulations promulgated thereunder,

submit additional information as necessary to address changes occurring at the source prior to the Department taking action on the permit. 25 Pa. Code §§ 127.414(a), (b) & (c).

86. At a minimum, each permit shall incorporate by reference the emission and performance standards and other requirements of the APCA, the CAA or the regulations thereunder. 25 Pa. Code § 127.441.

87. “The permit shall be issued with the condition that the source shall operate in compliance with the plan approval, the conditions of the plan approval and the conditions of the operating permit.” 25 Pa. Code § 127.443(b).

88. “The Department [of Environmental Protection] will not issue an operating permit unless the source was constructed in accordance with the plan approval and the conditions of the plan approval.” 25 Pa. Code § 127.443(c).

89. In Pennsylvania, it is unlawful to operate a source in violation of the operating permit requirements. 25 Pa. Code §§ 127.402(a) & (c) and .443.

Title V Operating Permits: Federal Legal Authority

90. Title V of the CAA, enacted in 1990, requires the following sources to obtain Title V operating permits:

(1) “major stationary sources,” as defined under 42 U.S.C. § 7602 to include facilities which directly emit, or have the potential to emit, 100 tpy or more of any air pollutant;

(2) “major stationary sources,” as defined in the federal nonattainment NSR permitting provisions to include, among other things, sources with the potential to emit 100 tpy or more of nitrogen oxides in areas classified as “moderate” nonattainment for those pollutants;

(3) sources subject to NSPS requirements; and

(4) sources subject to PSD or nonattainment NSR permitting requirements.

42 U.S.C. § 7661a(a), 40 C.F.R. §§ 70.2 & 71.2 (definitions of “major source”), 40 C.F.R. §§ 70.3 & 71.3; *see also* 42 U.S.C. § 7661 (defining “major source” to include “major stationary source”).

91. Any group of stationary sources located on contiguous or adjacent properties, under common control of the same person (or persons under common control), and belonging to a single industrial grouping can constitute a single “major source” for Title V permitting purposes. 40 C.F.R. §§ 70.2 & 71.2 (definitions of “major source”).

92. As the name of the program indicates, Title V operating permits govern the operation of covered facilities. As such, the permits must include “emission limitations and standards” and any other operating conditions necessary to assure compliance with “applicable requirements” of the CAA and the Pennsylvania SIP. 42 U.S.C. § 7661c(a); 40 C.F.R. §§ 70.6(a)(1) & 71.6(a)(1).

93. Federal regulations define “applicable requirement” to include: (1) “[a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA . . . that implements the relevant requirements of the Act”; (2) any applicable NSPS standard or requirement; and (3) “[a]ny term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act.” 40 C.F.R. §§ 70.2 & 71.2.

94. Such permits must also contain a schedule for compliance with applicable requirements for which the facility is not in compliance. 40 C.F.R. §§ 70.6(c)(3) & 71.6(c)(3).

95. Among other things, the following information is required in an application for a Title V operating permit under federal regulations: (1) a citation and description of all applicable air pollution control requirements; (2) other specific information that may be necessary to implement and enforce other applicable requirements of the CAA, 40 C.F.R. Part 70 (regarding

state operating permit programs) or Part 71 (regarding federal operating permit programs), or to determine the applicability of such requirements; and (3) a compliance plan including (a) a description of the compliance status of each stationary air source with respect to applicable requirements, (b) a narrative description of how the facility will achieve compliance with applicable requirements, if any, for which it is not in compliance, and (c) a schedule of remedial measures leading to compliance with applicable requirements for which the facility is not in compliance. 40 C.F.R. §§ 70.5(c)(4), (5) & (8); 40 C.F.R. §§ 71.5(c)(4), (5) & (8).

96. A Title V permit application must also include a certification of compliance with applicable requirements and a certification as to truth, accuracy and completeness, both by a responsible official of the entity seeking the permit. 40 C.F.R. §§ 70.5(c)(9) & (d); 40 C.F.R. §§ 71.5(c)(9) & (d).

97. Any applicant for a Title V permit who fails to submit any relevant facts or who has submitted incorrect information in a permit application must, upon becoming aware of the failure or incorrect submittal, promptly submit such supplementary facts or corrected information. 40 C.F.R. §§ 70.5(b) & 71.5(b). In addition, an applicant must “provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to the release of a draft permit.” *Id.*

98. It is unlawful for any person to violate any applicable requirement or to operate a source subject to Title V requirements except in compliance with a Title V operating permit. 42 U.S.C. § 7661a(a); 40 C.F.R. §§ 70.1(b), 71.1(b) & 71.12.

Title V Operating Permits: Pennsylvania Legal Authority

99. In November 1994, Pennsylvania added provisions to its administrative code, 25 Pa. Code §§ 127.401-.464 & .510-.543 (25 Pa. Code, Chapter 127, Subchapters F and G, relating to

operating permit requirements and Title V permits), to implement an operating permit program consistent with the requirements of Title V. 24 Pa. Bull. 5899 (Nov. 26, 1994). Effective in August 1996, EPA approved Pennsylvania's Title V program as part of Pennsylvania's SIP, thus authorizing Pennsylvania to operate a federally recognized Title V program. 61 Fed. Reg. 39597 (July 30, 1996).

100. Under Pennsylvania law, among the sources required to obtain Title V operating permits are:

- (1) a "major stationary source" as defined in 42 U.S.C. § 7602 (facilities which directly emit, or have the potential to emit, 100 tpy or more of any air pollutant);
- (2) a source subject to NSPS requirements; and
- (3) a "major stationary source" as defined under the nonattainment NSR requirements, including a facility which emits or has the potential to emit NO_x greater than 100 tpy in an area included in an ozone transport region established under CAA section 184, 42 U.S.C. § 7511c.

25 Pa. Code § 121.1 (definition of "Title V facility").

101. Any group of stationary sources located on contiguous or adjacent properties, under common control of the same person (or persons under common control), and belonging to a single industrial grouping can constitute a single facility for Title V permitting purposes. *Id.*

102. 25 Pa. Code Chapter 127, Subchapter G describes additional operating permit program requirements applicable to Title V facilities which are in addition to the requirements in Subchapter F.

103. Under Pennsylvania law, Title V operating permits must include "emission limitations and standards, including those operational requirements and limitations that assure compliance with the applicable requirements at the time of permit issuance." 25 Pa. Code § 127.512(h).

104. Pennsylvania regulations define “applicable requirements” to include: (1) “[a] standard provided for in the Commonwealth’s SIP approved by the EPA under Title I of the . . . Act . . . that implements the relevant requirements of the . . . Act, including revisions to that plan”; (2) any applicable NSPS standard or requirement; and (3) “[a] term or condition of preconstruction permits issued under regulations approved or promulgated through rulemaking under Title I, including Part C or D, of the . . . Act.” 25 Pa. Code § 121.1.

105. Under Pennsylvania law, “for Title V facilities, the applicable requirements for stationary air contamination sources in the Title V facility shall be included in the operating permit.” 25 Pa. Code § 127.502(a).

106. Such permits must also contain a schedule for compliance with applicable requirements for which the facility is not in compliance. 25 Pa. Code § 127.513(3).

107. Among other things, the following information is required in an application for a Title V operating permit in Pennsylvania: (1) a citation and description of applicable air pollution control requirements; (2) other specific information that may be necessary to implement and enforce other applicable requirements of the CAA, 25 Pa. Code, Chapters 122 and 127, or 40 C.F.R. Part 70, or to determine the applicability of such requirements; and (3) a compliance plan including (a) a description of the compliance status of each stationary air source with respect to applicable requirements, (b) a narrative description of how the facility will achieve compliance with applicable requirements, if any, for which the facility is not in compliance, and (c) a schedule of remedial measures leading to compliance with applicable requirements for which it is not in compliance. 25 Pa. Code §§ 127.503(4), (5) & (8).

108. A Title V application must also include a certification of compliance with applicable requirements and a certification as to truth, accuracy and completeness, both by a responsible official of the entity seeking the permit. 25 Pa. Code § 127.503(10).

109. In Pennsylvania, it is unlawful to operate a source in violation of the Title V operating permit requirements. 25 Pa. Code § 127.512(c)(1).

Enforcement Provisions: Federal

110. Pursuant to 42 U.S.C. § 7604(a)(1), any person may commence, in the United States district courts, a suit against any person who is alleged to have violated or to be in violation of a CAA emission standard or limitation. Any person filing such a claim must provide notice of the claim at least 60 days before filing suit to the EPA administrator, to the state in which the violation occurred, and to the alleged violator. 42 U.S.C. § 7604(b)(1)(A).

111. Pursuant to 42 U.S.C. § 7604(a)(3), any person may commence, in the United States district courts, a suit against any person who constructs a modified major emitting facility without a PSD permit. No notice must be provided before the commencement of a suit under 42 U.S.C. § 7604(a)(3).

112. 42 U.S.C. § 7602(e) defines a “person” to include corporations and States. The Commonwealth of Pennsylvania and the States of Connecticut, Maryland, New Jersey and New York are each a “person” within the meaning of 42 U.S.C. § 7602(e).

113. 42 U.S.C. § 7413(b), as amended, authorizes the award of both injunctive relief and civil penalties of up to \$32,500 per day for each violation. *See* 40 C.F.R. § 19.4 (2005) (penalty for violations after Mar. 15, 2004); 40 C.F.R. § 19.4 (1998) (penalty for violation between Jan. 30, 1997 and Mar. 15, 2004).

Enforcement Provisions: Pennsylvania

114. The Commonwealth of Pennsylvania Department of Environmental Protection is the executive agency of the Commonwealth charged with the responsibility of administering and enforcing the provisions of: the Pennsylvania APCA, Act of January 8, 1960, P.L. 2119 (1959), *as amended*, 35 P.S. § 4001 *et seq.*; Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 Pa .Stat. §§ 510-517 (“Administrative Code”) and the provisions of the rules and regulations promulgated at Title 25 of the Pennsylvania Code, including the PSD and nonattainment NSR provisions of 25 Pa. Code §§ 121.1, 127.81-.83 and 127.201-.216. Moreover, the Department has the duty and power to institute, in a court of competent jurisdiction, proceedings to compel compliance with the Pennsylvania APCA.

115. Under Pennsylvania law it is unlawful to fail to comply any provisions of the APCA or the rules and regulation adopted under the APCA. 35 P.S. § 4008.

116. Violations of (a) the Pennsylvania APCA, (b) any rule or regulation adopted under the APCA, (c) any act or any order of the Pennsylvania Department of Environmental Protection, or (d) any condition or term of any plan approval or permit issued pursuant to the APCA, are continuing violations: each such violation, and each day of continued violation, constitutes a separate offense and violation. 35 P.S. § 4009.3.

117. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief for each such violation.

118. In addition to proceeding under any other remedy available at law or equity for a violation of a provision of the APCA, or any rule or regulation promulgated under the APCA, civil penalties are available in the amount of up to \$25,000 per day for each violation. 35 P.S. § 4009.1.

119. 35 P.S. § 4013.6(c) authorizes the award of civil penalties for each such violation.

NOTICES

120. Notwithstanding the fact that notice is not a prerequisite for suits brought under 42 U.S.C. § 7604(a)(3), the Plaintiff States have provided notice of many of their claims to the owners of the Facilities, and have provided notice of all claims for which such notice is required pursuant to 42 U.S.C. § 7604(b)(1)(A).

121. On or about May 20, 2004, on behalf of the States of New York, Connecticut and New Jersey and the Commonwealth of Pennsylvania, the Attorneys General of New York, Connecticut and New Jersey and the Chief Counsel of the Pennsylvania Department of Environmental Protection, sent a notice of intent to sue to defendants Allegheny Energy, Allegheny Supply, Monongahela and West Penn for violations under the CAA.

122. On or about September 8, 2004, on behalf of the State of Maryland, the Attorney General of Maryland sent a notice of intent to sue to defendants Allegheny Energy, Allegheny Supply, Monongahela and West Penn for violations under the CAA.

123. On or about August 3, 2005, on behalf of the States of New York, Connecticut, Maryland and New Jersey and the Commonwealth of Pennsylvania, the Attorneys General of New York, Connecticut and New Jersey and the Chief Counsel of the Pennsylvania Department of Environmental Protection, sent a notice of intent to sue to defendants Allegheny Energy, Allegheny Supply, Monongahela, Potomac Edison and West Penn for additional violations under the CAA. Among other things, this notice described the NSPS, BAT and Title V operating permit claims that the Plaintiff States are litigating in this action.

124. Each notice was served by certified mail on the EPA Administrator, the EPA Regional Administrator for the EPA Region in which the plants identified in the notice are

located, the Governor of Pennsylvania, Allegheny Energy, Allegheny Supply, Monongahela and West Penn, and, in the case of the August 2005 notice, Potomac Edison. Each notice provided sufficient information to permit the recipients to identify the activity alleged to be in violation, the persons or persons responsible for the alleged violation (*i.e.*, Allegheny Energy and its subsidiaries), the location of the alleged violations, the date of the violations and the full name and address of each person giving the notice.

125. More than sixty days have elapsed since the notices were sent by the Plaintiff States.

FIRST CLAIM FOR RELIEF¹

*Armstrong Unit 1 –
PSD claim under federal law with respect to NO_x,
brought by all Plaintiff States*

126. On information and belief, the Armstrong facility includes two electricity generating units, each consisting of one boiler and one steam turbine. Unit 1 was placed in service in 1958. On information and belief, at all times relevant to this complaint, Allegheny reported to the Federal Energy Regulatory Commission (“FERC”) that Armstrong Unit 1 had a Maximum Generator Nameplate Rating of 163 MW. Unit 2 was placed in service in 1959. On information and belief, at all times relevant to this complaint, Allegheny reported to FERC that Armstrong Unit 2 had a Maximum Generator Nameplate Rating of 163 MW.

127. In 2003, the Armstrong facility emitted 3,976 tons of NO_x.

128. At the time Allegheny constructed the Armstrong facility, and at the time that the federal PSD regulations became effective on August 7, 1980, the facility had the potential to emit in excess of 250 tons per year of NO_x.

¹ A chart listing the claims pled in this complaint, including the relevant facility, unit, governing law, and type of claim, is attached as an appendix to this complaint.

129. The Armstrong facility is, and was at the time Allegheny made the modifications identified in this complaint, a “major emitting facility” within the meaning of 42 U.S.C. § 7479(1), a “major stationary source” within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(b) and 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), an “electric utility steam generating unit” within the meaning of 40 C.F.R. § 60.2 and 25 Pa. Code § 122.3 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and a “major NO_x emitting facility” within the meaning of 25 Pa. Code § 121.1 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

130. The Armstrong facility is located in an area that was classified as moderate nonattainment for ozone under the 1-hour standard from 1978 through October 18, 2001, has been attainment for ozone under the 1-hour standard since then, and has been nonattainment for ozone under the 8-hour standard from June 15, 2004 to present. The Armstrong facility is, and was at the time Allegheny made the modifications identified in this complaint, located in an ozone transport region established under CAA section 184, 42 U.S.C. § 7511c. The Armstrong facility is located in an area that has been attainment for NO₂ from 1978 to present.

131. Allegheny modified Unit 1 of the Armstrong facility when it, *inter alia*, replaced the entire Unit 1 boiler, with the exception of the steam drum, downcomer feeder tubes and six downcomers, in 1995. The work performed included the replacement of the structural steel, the casing of the boiler and the air draft supply system and its foundations.

132. Had Allegheny complied with the PSD preconstruction permitting requirements, it would have projected that the modifications identified in the preceding paragraph would result in a net increase of more than 40 tons per year in emissions of NO_x.

133. The aforesaid modifications constitute major modifications, within the meaning of 40 C.F.R. § 52.21(b)(2), 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-

.2062), and 25 Pa. Code § 121.1 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), for NO_x. Therefore, a PSD permit should have been obtained prior to the commencement of construction.

134. Allegheny has not applied for or obtained a PSD permit for the modifications of the Armstrong facility identified in this claim for relief.

135. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475, 40 C.F.R. §§ 52.21(j) through (r), or 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), including consideration of impacts on Federal Class I areas.

136. Allegheny has not implemented, or operated in accordance with, BACT for control of NO_x emissions from Unit 1 of the Armstrong facility.

137. Therefore, since 1995 or earlier, Allegheny has been in violation of 42 U.S.C. §§ 7475(a) and (d), 40 C.F.R. § 52.21, the Pennsylvania SIP (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

138. Unless restrained by an order of this Court, these violations of the Act will continue.

139. The violations set forth above subject Allegheny to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004, as provided in 42 U.S.C. §§ 7413(b) and 7604(a), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, note, and the Debt Collection Improvement Act, 31 U.S.C. § 3701, note.

See 40 C.F.R. § 19.4 (2005) (penalty for violations after Mar. 15, 2004); 40 C.F.R. § 19.4 (1998) (penalty for violation between Jan. 30, 1997 and Mar. 15, 2004).

SECOND CLAIM FOR RELIEF

*Armstrong Unit 1 –
PSD claim under Pennsylvania law with respect to NO_x
brought by Pennsylvania*

140. Paragraphs 126 through 130, regarding the Armstrong facility, are realleged and incorporated by reference in this claim for relief.

141. Allegheny modified Unit 1 of the Armstrong facility when it, *inter alia*, replaced the entire Unit 1 boiler, with the exception of the steam drum, downcomer feeder tubes and six downcomers, in 1995. The work performed included the replacement of the structural steel, the casing of the boiler and the air draft supply system and its foundations.

142. Had Allegheny complied with the PSD preconstruction permitting requirements, it would have projected that the modifications identified in the preceding paragraph would result in a net increase of more than 40 tons per year in emissions of NO_x.

143. The aforesaid modifications constitute major modifications, within the meaning of 25 Pa. Code § 127.83 and 25 Pa. Code § 121.1, for NO_x. Therefore, a PSD permit should have been obtained prior to the commencement of construction.

144. Allegheny has not applied for or obtained a PSD permit for the modifications of the Armstrong facility identified in this claim for relief.

145. This modification at Armstrong also subjected Allegheny to the Pennsylvania plan approval and operating permit requirements. 25 Pa. Code Subchapters B and F.

146. Allegheny has not applied for or obtained a plan approval and operating permit for the modifications of the Armstrong unit identified in this claim for relief.

147. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 25 Pa. Code § 127.83, including consideration of impacts on Federal Class I areas.

148. Allegheny has not implemented, or operated in accordance with, BACT for control of NO_x emissions from Unit 1 of the Armstrong facility.

149. Therefore, since 1995 or earlier, Allegheny has been in violation of 25 Pa. Code § 127.83, and 25 Pa. Code Subchapters B and F.

150. Unless restrained by an order of this Court, these violations of the Pennsylvania APCA and the Pennsylvania Administrative Code will continue.

151. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

THIRD CLAIM FOR RELIEF

*Armstrong Unit 1 –
Nonattainment NSR claim under Pennsylvania law with respect to SO₂ and ozone,
brought by Pennsylvania*

152. Paragraphs 126 through 130, regarding the Armstrong facility, are realleged and incorporated by reference in this claim for relief.

153. The Armstrong facility is in an area that has been nonattainment for SO₂ from 1978 to the present. At the time Allegheny constructed the Armstrong facility, and at the time that the federal PSD regulations became effective on August 7, 1980, the facility had the potential to emit in excess of 250 tons per year of SO₂. The Armstrong facility is, and was at the time Allegheny

made the modifications identified in this claim for relief, a “major facility” for SO₂ within the meaning of 25 Pa. Code § 121.1, and a “major NO_x emitting facility” within the meaning of 25 Pa. Code § 121.1. In 2003, the Armstrong facility emitted 34,141 tons of SO₂.

154. Allegheny modified Unit 1 of the Armstrong facility when it, *inter alia*, replaced the entire Unit 1 boiler, with the exception of the steam drum, downcomer feeder tubes and six downcomers, in 1995. The work performed included the replacement of the structural steel, the casing of the boiler and the air draft supply system and its foundations.

155. On information and belief, the fixed capital cost of the new components installed during the aforesaid modifications exceeded 50 percent of the fixed capital cost that would be required to construct a comparable entirely new boiler, so that the aforesaid modifications constitute the installation of a “new source” within the meaning of 25 Pa. Code § 121.1.

156. Had Allegheny complied with the nonattainment NSR preconstruction permitting requirements, it would have projected that the modifications identified in the preceding paragraph would result in an increase in potential to emit of more than 40 tons per year of SO₂ and/or NO_x, as calculated pursuant to 25 Pa. Code § 127.211(b) and §§ 127.207(1), (3)-(7).

157. The aforesaid modifications are major modifications, within the meaning of 25 Pa. Code §§ 121.1 and 127.203(a) and (b), for SO₂ and/or ozone, and are otherwise subject to the nonattainment NSR permitting requirements of 25 Pa. Code §§ 127.201-.216. Therefore, a nonattainment NSR permit should have been obtained prior to the commencement of construction.

158. Allegheny has not applied for or obtained nonattainment NSR permits for the modifications of the Armstrong facility identified in this claim for relief.

159. Prior to constructing the aforesaid modifications, Allegheny did not obtain emission offsets or comply with any other substantive requirements of 25 Pa. Code §§ 127.201-.216.

160. Allegheny has not implemented, or operated in accordance with, LAER for control of SO₂ or NO_x emissions from Unit 1 of the Armstrong facility.

161. This modification at Armstrong also subjected Allegheny to the Pennsylvania plan approval and operating permit requirements. 25 Pa. Code Subchapters B and F.

162. Allegheny has not applied for or obtained a plan approval and operating permit for the modifications of the Armstrong unit identified in this claim for relief.

163. Therefore, since 1995 or earlier, Allegheny has been in violation of 25 Pa. Code §§ 127.201-.216, and 25 Pa. Code Subchapters B and F.

164. Unless restrained by an order of this Court, these violations of the Pennsylvania APCA and the Pennsylvania Administrative Code will continue.

165. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

FOURTH CLAIM FOR RELIEF

*Armstrong Unit 1 –
NSPS claim under federal law with respect to SO₂ and NO_x,
brought by all Plaintiff States*

166. Paragraphs 126 through 130, regarding the Armstrong facility, are realleged and incorporated by reference in this claim for relief.

167. In 1995, Allegheny replaced the entire Unit 1 boiler, with the exception of the steam drum, downcomer feeder tubes and six downcomers. The work performed included the

replacement of the structural steel, the casing of the boiler and the air draft supply system and its foundations.

168. On information and belief, the fixed capital cost of the new components installed during the aforesaid modifications exceeded 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and it was technologically and economically feasible to meet applicable NSPS standards. As a result, the aforesaid modifications constituted a "reconstruction" within the meaning of 40 C.F.R. § 60.15 and 25 Pa. Code § 122.3 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

169. This reconstruction subjected the unit to the federal NSPS requirements for EUSGUs, and in particular subjected the unit to NSPS emissions limitations, irrespective of any change in emissions rate resulting from the modifications. 40 C.F.R. §§ 60.2, 60.15 & Subpart Da; 25 Pa. Code § 122.3 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

170. Since Allegheny completed the reconstruction, it has not operated the unit in accordance with NSPS emissions standards, including without limitation standards for SO₂ and NO_x.

171. Therefore, since 1995 or earlier, Allegheny has been in violation of 42 U.S.C. § 7411(e), 40 C.F.R. Part 60, Subpart Da, the Pennsylvania SIP (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code, Chapter 122 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

172. Unless restrained by an order of this Court, these violations of the Act will continue.

173. The violations set forth above subject Allegheny to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004, and \$32,500 per

day for each violation occurring after March 15, 2004, as provided in 42 U.S.C. §§ 7413(b) and 7604(a), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, note, and the Debt Collection Improvement Act, 31 U.S.C. § 3701, note. *See* 40 C.F.R. § 19.4 (2005) (penalty for violations after Mar. 15, 2004); 40 C.F.R. § 19.4 (1998) (penalty for violation between Jan. 30, 1997 and Mar. 15, 2004).

FIFTH CLAIM FOR RELIEF

*Armstrong Unit 1 –
NSPS claim under Pennsylvania law with respect to SO₂, NO_x and/or PM,
brought by Pennsylvania*

174. Paragraphs 126 through 130, regarding the Armstrong facility, are realleged and incorporated by reference in this claim for relief.

175. In 1995, Allegheny replaced the entire Unit 1 boiler, with the exception of the steam drum, downcomer feeder tubes and six downcomers. The work performed included the replacement of the structural steel, the casing of the boiler and the air draft supply system and its foundations.

176. On information and belief, the fixed capital cost of the new components installed during the aforesaid modifications exceeded 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and it was technologically and economically feasible to meet applicable NSPS standards. As a result, the aforesaid modifications constituted a “reconstruction” within the meaning of 25 Pa. Code § 122.3.

177. This reconstruction subjected the unit to Pennsylvania NSPS requirements for EUSGUs, and in particular subjected the unit to NSPS emissions limitations, irrespective of any change in emissions rate resulting from the modifications. 25 Pa. Code § 122.3.

178. Since Allegheny completed the reconstruction, it has not operated the unit in accordance with NSPS emissions standards, including without limitation standards for SO₂, NO_x and/or PM.

179. This reconstruction at Armstrong also subjected Allegheny to the Pennsylvania plan approval and operating permit requirements. 25 Pa. Code Subchapters B and F.

180. Allegheny has not applied for or obtained a plan approval and operating permit for the reconstruction of the Armstrong unit identified in this claim for relief.

181. Therefore, since 1995 or earlier, Allegheny has been in violation of 25 Pa. Code, Chapter 122, and 25 Pa. Code Chapter 127, Subchapters B and F.

182. Unless restrained by an order of this Court, these violations of the Act will continue.

183. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

SIXTH CLAIM FOR RELIEF

*Armstrong Unit 1 –
BAT claim under Pennsylvania law with respect to SO₂, NO_x, ozone, PM, and
mercury and other hazardous air pollutants,
brought by Pennsylvania*

184. Paragraphs 126 through 130, regarding the Armstrong facility, are realleged and incorporated by reference in this claim for relief.

185. In 1995, Allegheny replaced the entire Unit 1 boiler, with the exception of the steam drum, downcomer feeder tubes and six downcomers. The work performed included the replacement of the structural steel, the casing of the boiler and the air draft supply system and its foundations.

186. On information and belief, the fixed capital cost of the new components installed during the aforesaid modifications exceeded 50 percent of the fixed capital cost that would be required to construct a comparable entirely new boiler, so that the aforesaid modifications constitute the installation of a “new source” within the meaning of 25 Pa. Code § 121.1.

187. Because the modifications constituted the installation of a “new source,” preconstruction plan approval, including establishment of BAT emission and technology standards for the facility, should have been obtained from Pennsylvania, and the unit should have been operated in accordance with those BAT requirements. 25 Pa. Code §§ 127.12(a)(5) & 127.12b, and 25 Pa. Code § 127.443.

188. This modification at Armstrong also subjected Allegheny to the Pennsylvania plan approval and operating permit requirements. 25 Pa. Code Subchapters B and F.

189. Allegheny has not applied for or obtained plan approval and operating permit for the modifications identified in this claim for relief.

190. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that emissions from the source would be limited to BAT, and since completing those modifications, Allegheny has not implemented, or operated the unit in accordance with, BAT with regard to emissions for covered pollutants, including without limitation SO₂, NO_x, ozone, PM, and mercury and other hazardous air pollutants.

191. Therefore, since 1995 or earlier, Allegheny has been in violation of 25 Pa. Code, Chapter 127, Subchapters B and F.

192. Unless restrained by an order of this Court, these violations of the Act will continue.

193. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

SEVENTH CLAIM FOR RELIEF

*Armstrong Unit 2 –
PSD claim under federal law with respect to NO_x,
brought by all Plaintiff States*

194. Paragraphs 126 through 130, regarding the Armstrong facility, are realleged and incorporated by reference in this claim for relief.

195. Allegheny modified Unit 2 of the Armstrong facility when it, *inter alia*, replaced the entire Unit 2 boiler, with the exception of the steam drum, downcomer feeder tubes and six downcomers, in 1994. The work performed included the replacement of the structural steel, the casing of the boiler and the air draft supply system and its foundations.

196. Had Allegheny complied with the PSD preconstruction permitting requirements, it would have projected that the modifications identified in the preceding paragraph would result in a net increase of more than 40 tons per year in emissions of NO_x.

197. The aforesaid modifications constitute major modifications, within the meaning of 40 C.F.R. § 52.21(b)(2), 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code § 121.1 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), for NO_x. Therefore, a PSD permit should have been obtained prior to the commencement of construction.

198. Allegheny has not applied for or obtained a PSD permit for the modifications of the Armstrong facility identified in this claim for relief.

199. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in

any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475, 40 C.F.R. §§ 52.21(j) through (r), or 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), including consideration of impacts on Federal Class I areas.

200. Allegheny has not implemented, or operated in accordance with, BACT for control of NO_x emissions from Unit 2 of the Armstrong facility.

201. Therefore, since 1994 or earlier, Allegheny has been in violation of 42 U.S.C. §§ 7475(a) and (d), 40 C.F.R. § 52.21, the Pennsylvania SIP (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

202. Unless restrained by an order of this Court, these violations of the Act will continue.

203. The violations set forth above subject Allegheny to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004, as provided in 42 U.S.C. §§ 7413(b) and 7604(a), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, note, and the Debt Collection Improvement Act, 31 U.S.C. § 3701, note. *See* 40 C.F.R. § 19.4 (2005) (penalty for violations after Mar. 15, 2004); 40 C.F.R. § 19.4 (1998) (penalty for violation between Jan. 30, 1997 and Mar. 15, 2004).

EIGHTH CLAIM FOR RELIEF

*Armstrong Unit 2 –
PSD claim under Pennsylvania law with respect to NO_x
brought by Pennsylvania*

204. Paragraphs 126 through 130, regarding the Armstrong facility, are realleged and incorporated by reference in this claim for relief.

205. Allegheny modified Unit 2 of the Armstrong facility when it, *inter alia*, replaced the entire Unit 2 boiler, with the exception of the steam drum, downcomer feeder tubes and six downcomers, in 1994. The work performed included the replacement of the structural steel, the casing of the boiler and the air draft supply system and its foundations.

206. Had Allegheny complied with the PSD preconstruction permitting requirements, it would have projected that the modifications identified in the preceding paragraph would result in a net increase of more than 40 tons per year in emissions of NO_x.

207. The aforesaid modifications constitute major modifications, within the meaning of 25 Pa. Code § 127.83 and 25 Pa. Code § 121.1, for NO_x. Therefore, a PSD permit should have been obtained prior to the commencement of construction.

208. Allegheny has not applied for or obtained a PSD permit for the modifications of the Armstrong facility identified in this claim for relief.

209. This modification at Armstrong also subjected Allegheny to the Pennsylvania plan approval and operating permit requirements. 25 Pa. Code Subchapters B and F.

210. Allegheny has not applied for or obtained a plan approval and operating permit for the modifications of the Armstrong unit identified in this claim for relief.

211. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 25 Pa. Code § 127.83, including consideration of impacts on Federal Class I areas.

212. Allegheny has not implemented, or operated in accordance with, BACT for control of NO_x emissions from Unit 2 of the Armstrong facility.

213. Therefore, since 1994 or earlier, Allegheny has been in violation of 25 Pa. Code § 127.83, and 25 Pa. Code Chapter 127, Subchapters B and F.

214. Unless restrained by an order of this Court, these violations of the Pennsylvania APCA and the Pennsylvania Administrative Code will continue.

215. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

NINTH CLAIM FOR RELIEF

*Armstrong Unit 2 –
Nonattainment NSR claim under Pennsylvania law with regard to SO₂ and ozone,
brought by Pennsylvania*

216. Paragraphs 126 through 130, and Paragraph 153, regarding the Armstrong facility, are realleged and incorporated by reference in this claim for relief.

217. Allegheny modified Unit 2 of the Armstrong facility when it, *inter alia*, replaced the entire Unit 2 boiler, with the exception of the steam drum, downcomer feeder tubes and six downcomers, in 1994. The work performed included the replacement of the structural steel, the casing of the boiler and the air draft supply system and its foundations.

218. On information and belief, the fixed capital cost of the new components installed during the aforesaid modifications exceeded 50 percent of the fixed capital cost that would be required to construct a comparable entirely new boiler, so that the aforesaid modifications constitute the installation of a “new source” within the meaning of 25 Pa. Code § 121:1.

219. Had Allegheny complied with the nonattainment NSR preconstruction permitting requirements, it would have projected that the modifications identified in the preceding paragraph

would result in an increase in potential to emit of more than 40 tons per year of SO₂ and/or NO_x, as calculated pursuant to 25 Pa. Code § 127.211(b) and §§ 127.207(1), (3)-(7).

220. The aforesaid modifications are major modifications, within the meaning of 25 Pa. Code §§ 121.1 and 127.203(a) and (b), for SO₂ and/or ozone, and are otherwise subject to the nonattainment NSR permitting requirements of 25 Pa. Code §§ 127.201-.216. Therefore, a nonattainment NSR permit should have been obtained prior to the commencement of construction.

221. Allegheny has not applied for or obtained nonattainment NSR permits for the modifications of the Armstrong facility identified in this claim for relief.

222. This modification at Armstrong also subjected Allegheny to the Pennsylvania plan approval and operating permit requirements. 25 Pa. Code Subchapters B and F.

223. Allegheny has not applied for or obtained a plan approval and operating permit for the modifications of the Armstrong unit identified in this claim for relief.

224. Prior to constructing the aforesaid modifications, Allegheny did not obtain emission offsets or comply with any other substantive requirements of 25 Pa. Code §§ 127.201-.216.

225. Allegheny has not implemented, or operated in accordance with, LAER for control of SO₂ or NO_x emissions from Unit 2 of the Armstrong facility.

226. Therefore, since 1994 or earlier, Allegheny has been in violation of 25 Pa. Code §§ 127.201-.216, and 25 Pa. Code Chapter 127, Subchapters B and F.

227. Unless restrained by an order of this Court, these violations of the Pennsylvania APCA and the Pennsylvania Administrative Code will continue.

228. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

TENTH CLAIM FOR RELIEF

*Armstrong Unit 2 –
NSPS claim under federal law with respect to SO₂ and NO_x,
brought by all Plaintiff States*

229. Paragraphs 126 through 130, regarding the Armstrong facility, are realleged and incorporated by reference in this claim for relief.

230. In 1994, Allegheny replaced the entire Unit 2 boiler, with the exception of the steam drum, downcomer feeder tubes and six downcomers. The work performed included the replacement of the structural steel, the casing of the boiler and the air draft supply system and its foundations.

231. On information and belief, the fixed capital cost of the new components installed during the aforesaid modifications exceeded 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and it was technologically and economically feasible to meet applicable NSPS standards. As a result, the aforesaid modifications constituted a “reconstruction” within the meaning of 40 C.F.R. § 60.15 and 25 Pa. Code § 122.3 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

232. This reconstruction subjected the unit to the federal NSPS requirements for EUSGUs, and in particular subjected the unit to NSPS emissions limitations, irrespective of any change in emissions rate resulting from the modifications. 40 C.F.R. §§ 60.2, 60.15 & Subpart Da; 25 Pa. Code § 122.3 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

233. Since Allegheny completed the reconstruction, it has not operated the unit in accordance with NSPS emissions standards, including without limitation standards for SO₂ and NO_x.

234. Therefore, since 1994 or earlier, Allegheny has been in violation of 42 U.S.C. § 7411(e) and 40 C.F.R. Part 60, Subpart Da, the Pennsylvania SIP (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code, Chapter 122 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

235. Unless restrained by an order of this Court, these violations of the Act will continue.

236. The violations set forth above subject Allegheny to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004, as provided in 42 U.S.C. §§ 7413(b) and 7604(a), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, note, and the Debt Collection Improvement Act, 31 U.S.C. § 3701, note. *See* 40 C.F.R. § 19.4 (2005) (penalty for violations after Mar. 15, 2004); 40 C.F.R. § 19.4 (1998) (penalty for violation between Jan. 30, 1997 and Mar. 15, 2004).

ELEVENTH CLAIM FOR RELIEF

*Armstrong Unit 2 –
NSPS claim under Pennsylvania law with respect to SO₂, NO_x and/or PM,
brought by Pennsylvania*

237. Paragraphs 126 through 130, regarding the Armstrong facility, are realleged and incorporated by reference in this claim for relief.

238. In 1994, Allegheny replaced the entire Unit 2 boiler, with the exception of the steam drum, downcomer feeder tubes and six downcomers. The work performed included the

replacement of the structural steel, the casing of the boiler and the air draft supply system and its foundations.

239. On information and belief, the fixed capital cost of the new components installed during the aforesaid modifications exceeded 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and it was technologically and economically feasible to meet applicable NSPS standards. As a result, the aforesaid modifications constituted a "reconstruction" within the meaning of 25 Pa. Code § 122.3.

240. This reconstruction subjected the unit to Pennsylvania NSPS requirements for EUSGUs, and in particular subjected the unit to NSPS emissions limitation, irrespective of any change in emissions rate resulting from the modifications. 25 Pa. Code § 122.3.

241. This reconstruction at Armstrong also subjected Allegheny to the Pennsylvania plan approval and operating permit requirements. 25 Pa. Code Subchapters B and F.

242. Allegheny has not applied for or obtained a plan approval and operating permit for the reconstruction of the Armstrong unit identified in this claim for relief.

243. Since Allegheny completed the reconstruction, it has not operated the unit in accordance with NSPS emissions standards, including without limitation standards for SO₂, NO_x and/or PM.

244. Therefore, since 1994 or earlier, Allegheny has been in violation of 25 Pa. Code, Chapter 122, and 25 Pa. Code Chapter 127, Subchapters B and F.

245. Unless restrained by an order of this Court, these violations of the Act will continue.

246. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

TWELFTH CLAIM FOR RELIEF

*Armstrong Unit 2 –
BAT claim under Pennsylvania law with respect to SO₂, NO_x, ozone, PM, and
mercury and other hazardous air pollutants,
brought by Pennsylvania*

247. Paragraphs 126 through 130, regarding the Armstrong facility, are realleged and incorporated by reference in this claim for relief.

248. In 1994, Allegheny replaced the entire Unit 2 boiler, with the exception of the steam drum, downcomer feeder tubes and six downcomers. The work performed included the replacement of the structural steel, the casing of the boiler and the air draft supply system and its foundations.

249. On information and belief, the fixed capital cost of the new components installed during the aforesaid modifications exceeded 50 percent of the fixed capital cost that would be required to construct a comparable entirely new boiler, so that the aforesaid modifications constitute the installation of a “new source” within the meaning of 25 Pa. Code § 121.1.

250. Because the modifications constituted the installation of a “new source,” preconstruction plan approval, including establishment of BAT emission and technology standards for the facility, should have been obtained from Pennsylvania, and the unit should have been operated in accordance with those BAT requirements. 25 Pa. Code §§ 127.12(a)(5) & 127.12b and 25 Pa. Code § 127.443.

251. This reconstruction at Armstrong also subjected Allegheny to the Pennsylvania plan approval and operating permit requirements. 25 Pa. Code Subchapters B and F.

252. Allegheny has not applied for or obtained plan approval and operating permit for the modifications identified in this claim for relief.

253. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that emissions from the source would be limited to BAT, and since completing those modifications, Allegheny has not implemented, or operated the unit in accordance with, BAT with regard to emissions for covered pollutants, including without limitation SO₂, NO_x, ozone, PM, and mercury and other hazardous air pollutants.

254. Therefore, since 1994 or earlier, Allegheny has been in violation of 25 Pa. Code, Chapter 127, Subchapters B and F.

255. Unless restrained by an order of this Court, these violations of the Act will continue.

256. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

THIRTEENTH CLAIM FOR RELIEF

*Armstrong Units 1 and 2 –
Title V operating permit claim under federal law with regard to SO₂ and NO_x,
brought by all Plaintiff States*

257. Paragraphs 126 through 139, 153, 166 through 173, 194 through 203, and 229 through 236, regarding the Armstrong facility, are realleged and incorporated by reference in this claim for relief.

258. The Armstrong facility is, and at all times relevant to this claim has been, a source subject to Title V operating permit requirements. 42 U.S.C. § 7661a(a), 40 C.F.R. §§ 70.2 & 71.2 (definitions of “major source”), 40 C.F.R. §§ 70.3 & 71.3; *see also* 42 U.S.C. § 7661 (defining “major source” to include “major stationary source”)

259. As alleged above, Units 1 and 2 at the Armstrong facility became subject to federal BACT and NSPS emission limitations by virtue of modifications performed at those units in 1995 and 1994, respectively.

260. In the Title V operating permit application Allegheny submitted for the Armstrong facility in 1995, Allegheny did not include (1) a citation and description of applicable BACT and NSPS air pollution control requirements; (2) other specific information that was necessary to implement and enforce other applicable requirements of the CAA, 40 C.F.R. Part 70 (regarding state operating permit programs) or Part 71 (regarding federal operating permit programs), or to determine the applicability of such requirements, including information about the modifications relevant to determining the applicability of BACT and NSPS; or (3) a compliance plan including (a) a description of the compliance status of each stationary air source with respect to applicable BACT and NSPS requirements, (b) a narrative description of how the facility would achieve compliance with applicable BACT and NSPS requirements for which it was not in compliance, and (c) a schedule of remedial measures leading to compliance with applicable BACT and NSPS requirements for which the facility was not in compliance. 40 C.F.R. §§ 70.5(c)(4), (5) & (8); 40 C.F.R. §§ 71.5(c)(4), (5) & (8); 25 Pa. Code §§ 127.503(4), (5) & (8) (as made federal law by 40 C.F.R. §§ 52.2020-.2060).

261. In that application, Allegheny also failed to submit a certification of compliance with applicable requirements that addressed Allegheny's failure to meet applicable BACT and NSPS requirements at Armstrong Units 1 and 2. In failing to acknowledge that it had undertaken modifications at Armstrong Units 1 and 2 that triggered BACT and NSPS emission limitations, Allegheny's certification that its application was true, accurate and complete was inaccurate. 40

C.F.R. §§ 70.5(c)(9) & (d); 40 C.F.R. §§ 71.5(c)(9) & (d); 25 Pa. Code §§ 127.402(d) & .503(10) (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

262. Subsequent to the filing of its completed Title V application for the Armstrong facility, Allegheny did not supplement the application with information regarding the modifications at Units 1 and 2 and the BACT and NSPS requirements that became applicable to those two units as a result of those modifications. 40 C.F.R. §§ 70.5(b) & 71.5(b).

263. Because Allegheny failed to provide this information, the Title V operating permit issued for the Armstrong facility on July 31, 2001 did not include all “applicable requirements,” and in particular did not include applicable BACT and NSPS emission limitations for Units 1 and 2. For the same reason, the permit did not include a schedule for compliance with BACT and NSPS requirements consistent with 40 C.F.R. §§ 70.5(c)(8) & 71.5(c)(8) and 25 Pa. Code § 127.513(3) (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

264. As alleged above, Allegheny has not complied with applicable BACT and NSPS emission limitations for Units 1 and 2 since 1995 and 1994, respectively.

265. Therefore, since no later than the date the Title V operating permit was issued, July 31, 2001, Allegheny has been operating in violation of the Title V provisions of the Act, 42 U.S.C. §§ 7661-7661f, regulations promulgated thereunder, 40 C.F.R. §§ 70.1-70.11 & 71.1-71.12, the Pennsylvania SIP (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code §§ 127.401-.464 & 127.501-.543 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

266. Unless restrained by an order of this Court, these violations of the Act will continue.

267. The violations set forth above subject Allegheny to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004, and \$32,500 per

day for each violation occurring after March 15, 2004, as provided in 42 U.S.C. §§ 7413(b) and 7604(a), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, note, and the Debt Collection Improvement Act, 31 U.S.C. § 3701, note. See 40 C.F.R. § 19.4 (2005) (penalty for violations after Mar. 15, 2004); 40 C.F.R. § 19.4 (1998) (penalty for violation between Jan. 30, 1997 and Mar. 15, 2004).

FOURTEENTH CLAIM FOR RELIEF

*Armstrong Units 1 and 2 –
Title V operating permit claim under Pennsylvania law with regard to
SO₂, NO_x, ozone, PM, and mercury and other hazardous air pollutants,
brought by Pennsylvania*

268. Paragraphs 126 through 256, regarding the Armstrong facility, are realleged and incorporated by reference in this claim for relief.

269. The Armstrong facility is, and at all times relevant to this claim has been, a source subject to Title V operating permit requirements. 25 Pa. Code § 127.1.

270. As alleged above, Units 1 and 2 at the Armstrong facility became subject to federal and/or Pennsylvania BACT, LAER, NSPS and BAT emission limitations by virtue of modifications performed at those units in 1995 and 1994, respectively.

271. In the Title V operating permit application Allegheny submitted for the Armstrong facility in 1995, Allegheny did not include (1) a citation and description of applicable BACT, LAER, NSPS and BAT air pollution control requirements; (2) other specific information that was necessary to implement and enforce other applicable requirements of the CAA, 25 Pa. Code Chapters 122 and 127, or 40 C.F.R. Part 70, or to determine the applicability of such requirements, including information about the modifications relevant to determining the applicability of BACT, LAER, NSPS and BAT; or (3) a compliance plan including (a) a description of the compliance status of each stationary air source with respect to applicable

BACT, LAER, NSPS and BAT requirements, (b) a narrative description of how the facility would achieve compliance with applicable BACT, LAER, NSPS and BAT requirements for which it was not in compliance, and (c) a schedule of remedial measures leading to compliance with applicable BACT, LAER, NSPS and BAT requirements for which the facility was not in compliance. 25 Pa. Code §§ 127.503(4), (5) & (8).

272. In that application, Allegheny also failed to submit a certification of compliance with applicable requirements that addressed Allegheny's failure to meet applicable BACT, LAER, NSPS and BAT requirements at Armstrong Units 1 and 2. In failing to acknowledge that it had undertaken modifications at Armstrong Units 1 and 2 that triggered BACT, LAER, NSPS and BAT emission limitations, Allegheny's certification that its application was true, accurate and complete was inaccurate. 25 Pa. Code §§ 127.402(d) & .503(10).

273. Subsequent to the filing of its completed Title V application for the Armstrong facility, Allegheny did not supplement the application with information regarding the modifications at Units 1 and 2 and the BACT, LAER, NSPS and BAT requirements that became applicable to those two units as a result of those modifications. 25 Pa. Code §§ 127.414(a), (b) & (c).

274. Because Allegheny failed to provide this information, the Title V operating permit issued for the Armstrong facility on July 31, 2001 did not include all "applicable requirements," and in particular did not include applicable BACT, LAER, NSPS and BAT emission limitations for Units 1 and 2. For the same reason, the permit did not include a schedule for compliance with BACT, LAER, NSPS and BAT requirements pursuant to 25 Pa. Code § 127.513(3).

275. As alleged above, Allegheny has not complied with applicable BACT, LAER, NSPS and BAT emission limitations for Units 1 and 2 since 1995 and 1994, respectively.

276. Therefore, since no later than the date the Title V operating permit was issued, July 31, 2001, Allegheny has been operating in violation of 25 Pa. Code §§ 127.401-.464 & 127.501-.543.

277. Unless restrained by an order of this Court, these violations of the Act will continue.

278. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

FIFTEENTH CLAIM FOR RELIEF

*Hatfield's Ferry Unit 1 –
PSD claim under federal law with regard to SO₂ and NO_x,
brought by all Plaintiff States*

279. On information and belief, the Hatfield's Ferry facility includes three electricity generating units, each consisting of one boiler and one steam turbine. Unit 1 was placed in service in 1969. On information and belief, at all times relevant to this complaint, Allegheny reported to FERC that Hatfield's Ferry Unit 1 had a Maximum Generator Nameplate Rating of 576 MW. Unit 2 was placed in service in 1970. On information and belief, at all times relevant to this complaint, Allegheny reported to FERC that Hatfield's Ferry Unit 2 had a Maximum Generator Nameplate Rating of 576 MW. Unit 3 was placed in service in 1971. On information and belief, at all times relevant to this complaint, Allegheny reported to FERC that Hatfield's Ferry Unit 3 had a Maximum Generator Nameplate Rating of 576 MW.

280. In 2003, the Hatfield's Ferry facility emitted 17,643 tons of NO_x and 139,424 tons of SO₂.

281. At the time Allegheny constructed the Hatfield's Ferry facility, and at the time that the PSD regulations became effective on August 7, 1980, the facility had the potential to emit in excess of 250 tons per year of NO_x and 250 tons per year of SO₂.

282. The Hatfield's Ferry facility is, and was at the time Allegheny made the modifications identified in this complaint, a "major emitting facility" within the meaning of 42 U.S.C. § 7479(1), a "major stationary source" within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(b) and 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), a "major facility" for SO₂ within the meaning of 25 Pa. Code § 121.1 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and a "major NO_x emitting facility" within the meaning of 25 Pa. Code § 121.1 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

283. The Hatfield's Ferry facility is located in an area that has been attainment for SO₂ and NO₂ from 1978 to the present. The Hatfield's Ferry facility is located in an area that was classified as (a) nonattainment/incomplete data for ozone under the 1-hour standard from 1978 through June 4, 1998; (b) an area for which the 1-hour standard for ozone was not applicable from June 5, 1998 through January 15, 2001; (c) nonattainment/incomplete data for ozone under the 1-hour standard from January 16, 2001 to present; and (d) nonattainment for ozone under the 8-hour standard from June 15, 2004 to present.

284. Allegheny modified Unit 1 of the Hatfield's Ferry facility when it, *inter alia*, replaced the secondary superheater outlet header and all of the lower slope panels in 1997.

285. Had Allegheny complied with the PSD preconstruction permitting requirements, it would have projected that the modifications identified in the preceding paragraph would result in a net increase of more than 40 tons per year in emissions of SO₂ and NO_x.

286. The aforesaid modifications constitute major modifications, within the meaning of 40 C.F.R. § 52.21(b)(2), 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code § 121.1 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), for NO_x and SO₂. Therefore, a PSD permit should have been obtained prior to the commencement of construction.

287. Allegheny has not applied for or obtained a PSD permit for the modifications of the Hatfield's Ferry facility identified in this claim for relief.

288. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475, 40 C.F.R. §§ 52.21(j) through (r), or 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), including consideration of impacts on Federal Class I areas.

289. Allegheny has not implemented, or operated in accordance with, BACT for control of NO_x or SO₂ emissions from Unit 1 of the Hatfield's Ferry facility.

290. Therefore, since 1997 or earlier, Allegheny has been in violation of 42 U.S.C. §§ 7475(a) and (d), 40 C.F.R. § 52.21, the Pennsylvania SIP (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

291. Unless restrained by an order of this Court, these violations of the Act will continue.

292. The violations set forth above subject Allegheny to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004, as provided in 42 U.S.C. §§ 7413(b) and

7604(a), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, note, and the Debt Collection Improvement Act, 31 U.S.C. § 3701, note. *See* 40 C.F.R. § 19.4 (2005) (penalty for violations after Mar. 15, 2004); 40 C.F.R. § 19.4 (1998) (penalty for violation between Jan. 30, 1997 and Mar. 15, 2004).

SIXTEENTH CLAIM FOR RELIEF

*Hatfield's Ferry Unit 1 –
PSD claim under Pennsylvania law with regard to SO₂ and NO_x
brought by Pennsylvania*

293. Paragraphs 279 through 283, regarding the Hatfield's Ferry facility, are realleged and incorporated by reference in this claim for relief.

294. Allegheny modified Unit 1 of the Hatfield's Ferry facility when it, *inter alia*, replaced the secondary superheater outlet header and all of the lower slope panels in 1997.

295. Had Allegheny complied with the PSD preconstruction permitting requirements, it would have projected that the modifications identified in the preceding paragraph would result in a net increase of more than 40 tons per year in emissions of SO₂ and/or NO_x.

296. The aforesaid modifications constitute major modifications, within the meaning of 25 Pa. Code § 127.83 and 25 Pa. Code § 121.1, for NO_x and/or SO₂. Therefore, a PSD permit should have been obtained prior to the commencement of construction.

297. Allegheny has not applied for or obtained a PSD permit for the modifications of the Hatfield's Ferry facility identified in this claim for relief.

298. This modification at Hatfield's Ferry also subjected Allegheny to the Pennsylvania plan approval and operating permit requirements. 25 Pa. Code Subchapters B and F.

299. Allegheny has not applied for or obtained a plan approval and operating permit for the modifications of the Hatfield's Ferry's unit identified in this claim for relief.

300. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 25 Pa. Code § 127.83, including consideration of impacts on Federal Class I areas.

301. Allegheny has not implemented, or operated in accordance with, BACT for control of NO_x or SO₂ emissions from Unit 1 of the Hatfield's Ferry facility.

302. Therefore, since 1996 or earlier, Allegheny has been in violation of 25 Pa. Code § 127.83, and 25 Pa. Code Chapter 127, Subchapters B and F.

303. Unless restrained by an order of this Court, these violations of the Pennsylvania APCA and the Pennsylvania Administrative Code will continue.

304. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

SEVENTEENTH CLAIM FOR RELIEF

*Hatfield's Ferry Unit 2 –
PSD claim under federal law with regard to SO₂ and NO_x,
brought by all Plaintiff States*

305. Paragraphs 279 through 283, regarding the Hatfield's Ferry facility, are realleged and incorporated by reference in this claim for relief.

306. Allegheny modified Unit 2 of the Hatfield's Ferry facility when it, *inter alia*, replaced the pendant reheater bank and connecting crossover tubes in 1993 and replaced the secondary superheater outlet header and all of the lower slope panels in 1999.

307. Had Allegheny complied with the PSD preconstruction permitting requirements, it would have projected that one or more of the modifications identified in the preceding paragraph would result in a net increase of more than 40 tons per year in emissions of SO₂ and NO_x.

308. One or more of the aforesaid modifications constitute major modifications, within the meaning of 40 C.F.R. § 52.21(b)(2), 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code § 121.1 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), for NO_x and SO₂. Therefore, a PSD permit should have been obtained prior to the commencement of construction.

309. Allegheny has not applied for or obtained a PSD permit for the modifications of the Hatfield's Ferry facility identified in this claim for relief.

310. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475, 40 C.F.R. §§ 52.21(j) through (r), or 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), including consideration of impacts on Federal Class I areas.

311. Allegheny has not implemented, or operated in accordance with, BACT for control of NO_x or SO₂ emissions from Unit 2 of the Hatfield Ferry facility.

312. Therefore, since 1993 or earlier, Allegheny has been in violation of 42 U.S.C. §§ 7475(a) and (d), 40 C.F.R. § 52.21, the Pennsylvania SIP (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

313. Unless restrained by an order of this Court, these violations of the Act will continue.

314. The violations set forth above subject Allegheny to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004, as provided in 42 U.S.C. §§ 7413(b) and 7604(a), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, note, and the Debt Collection Improvement Act, 31 U.S.C. § 3701, note. See 40 C.F.R. § 19.4 (2005) (penalty for violations after Mar. 15, 2004); 40 C.F.R. § 19.4 (1998) (penalty for violation between Jan. 30, 1997 and Mar. 15, 2004).

EIGHTEENTH CLAIM FOR RELIEF

*Hatfield's Ferry Unit 2 –
PSD claim under Pennsylvania law with regard to SO₂ and NO_x,
brought by Pennsylvania*

315. Paragraphs 279 through 283, regarding the Hatfield's Ferry facility, are realleged and incorporated by reference in this claim for relief.

316. Allegheny modified Unit 2 of the Hatfield's Ferry facility when it, *inter alia*, replaced the pendant reheater bank and connecting crossover tubes in 1993 and replaced the secondary superheater outlet header and all of the lower slope panels in 1999.

317. Had Allegheny complied with the PSD preconstruction permitting requirements, it would have projected that one or more of the modifications identified in the preceding paragraph would result in a net increase of more than 40 tons per year in emissions of SO₂ and/or NO_x.

318. One or more of the aforesaid modifications constitute major modifications, within the meaning of 25 Pa. Code § 127.83 and 25 Pa. Code § 121.1, for NO_x and/or SO₂. Therefore, a PSD permit should have been obtained prior to the commencement of construction.

319. Allegheny has not applied for or obtained a PSD permit for the modifications of the Hatfield's Ferry facility identified in this claim for relief.

320. This modification at Hatfield's Ferry also subjected Allegheny to the Pennsylvania plan approval and operating permit requirements. 25 Pa. Code Subchapters B and F.

321. Allegheny has not applied for or obtained a plan approval and operating permit for the modifications of the Hatfield's Ferry unit identified in this claim for relief.

322. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 25 Pa. Code § 127.83, including consideration of impacts on Federal Class I areas.

323. Allegheny has not implemented, or operated in accordance with, BACT for control of NO_x or SO₂ emissions from Unit 2 of the Hatfield's Ferry facility.

324. Therefore, since 1993 or earlier, Allegheny has been in violation of 25 Pa. Code § 127.83, and 25 Pa. Code Chapter 127, Subchapters B and F.

325. Unless restrained by an order of this Court, these violations of the Pennsylvania APCA and the Pennsylvania Administrative Code will continue.

326. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

NINETEENTH CLAIM FOR RELIEF

*Hatfield's Ferry Unit 3 –
PSD claim under federal law with regard to SO₂ and NO_x,
brought by all Plaintiff States*

327. Paragraphs 279 through 283, regarding the Hatfield's Ferry facility, are realleged and incorporated by reference in this claim for relief.

328. Allegheny modified Unit 3 of the Hatfield's Ferry facility when it, *inter alia*, replaced the secondary superheater outlet header and all of the lower slope panels and ash hopper tube panels in 1996.

329. Had Allegheny complied with the PSD preconstruction permitting requirements, it would have projected that the modifications identified in the preceding paragraph would result in a net increase of more than 40 tons per year in emissions of SO₂ and NO_x.

330. The aforesaid modifications constitute major modifications, within the meaning of 40 C.F.R. § 52.21(b)(2), 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code § 121.1 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), for NO_x and SO₂. Therefore, a PSD permit should have been obtained prior to the commencement of construction.

331. Allegheny has not applied for or obtained a PSD permit for the modifications of the Hatfield's Ferry facility identified in this claim for relief.

332. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475, 40 C.F.R. §§ 52.21(j) through (r), or 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), including consideration of impacts on Federal Class I areas.

333. Allegheny has not implemented, or operated in accordance with, BACT for control of NO_x or SO₂ emissions from Unit 3 of the Hatfield's Ferry facility.

334. Therefore, since 1996 or earlier, Allegheny has been in violation of 42 U.S.C. §§ 7475(a) and (d), 40 C.F.R. § 52.21, the Pennsylvania SIP (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

335. Unless restrained by an order of this Court, these violations of the Act will continue.

336. The violations set forth above subject Allegheny to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004, as provided in 42 U.S.C. §§ 7413(b) and 7604(a), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, note, and the Debt Collection Improvement Act, 31 U.S.C. § 3701, note. *See* 40 C.F.R. § 19.4 (2005) (penalty for violations after Mar. 15, 2004); 40 C.F.R. § 19.4 (1998) (penalty for violation between Jan. 30, 1997 and Mar. 15, 2004).

TWENTIETH CLAIM FOR RELIEF

*Hatfield's Ferry Unit 3 –
PSD claim under Pennsylvania law with regard to SO₂ and NO_x,
brought by Pennsylvania*

337. Paragraphs 279 through 283, regarding the Hatfield's Ferry facility, are realleged and incorporated by reference in this claim for relief.

338. Allegheny modified Unit 3 of the Hatfield's Ferry facility when it, *inter alia*, replaced the secondary superheater outlet header and all of the lower slope panels and ash hopper tube panels in 1996.

339. Had Allegheny complied with the PSD preconstruction permitting requirements, it would have projected that the modifications identified in the preceding paragraph would result in a net increase of more than 40 tons per year in emissions of SO₂ and/or NO_x.

340. The aforesaid modifications constitute major modifications, within the meaning of 25 Pa. Code § 127.83 and 25 Pa. Code § 121.1, for NO_x and/or SO₂. Therefore, a PSD permit should have been obtained prior to the commencement of construction.

341. Allegheny has not applied for or obtained a PSD permit for the modifications of the Hatfield's Ferry facility identified in this claim for relief.

342. This modification at Hatfield's Ferry also subjected Allegheny to the Pennsylvania plan approval and operating permit requirements. 25 Pa. Code Subchapters B and F.

343. Allegheny has not applied for or obtained a plan approval and operating permit for the modifications of the Hatfield's Ferry unit identified in this claim for relief.

344. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 25 Pa. Code § 127.83, including consideration of impacts on Federal Class I areas.

345. Allegheny has not implemented, or operated in accordance with, BACT for control of NO_x or SO₂ emissions from Unit 3 of the Hatfield's Ferry facility.

346. Therefore, since 1996 or earlier, Allegheny has been in violation of 25 Pa. Code § 127.83, and 25 Pa. Code Chapter 127, Subchapters B and F.

347. Unless restrained by an order of this Court, these violations of the Pennsylvania APCA and the Pennsylvania Administrative Code will continue.

348. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

TWENTY-FIRST CLAIM FOR RELIEF

*Hatfield's Ferry Units 1, 2 and 3 –
Title V operating permit claim under federal law with regard to SO₂ and NO_x,
brought by all Plaintiff States*

349. Paragraphs 279 through 292, 305 through 314, and 327 through 336, regarding the Hatfield's Ferry facility, are realleged and incorporated by reference in this claim for relief.

350. The Hatfield's Ferry facility is, and at all times relevant to this claim has been, a source subject to Title V operating permit requirements. 42 U.S.C. § 7661a(a), 40 C.F.R. §§ 70.2 & 71.2 (definitions of "major source"), 40 C.F.R. §§ 70.3 & 71.3; *see also* 42 U.S.C. § 7661 (defining "major source" to include "major stationary source")

351. As alleged above, Units 1, 2 and 3 at the Hatfield's Ferry facility became subject to federal BACT emission limitations by virtue of modifications performed at those units in 1997, 1993 and 1999, and 1996, respectively.

352. In the Title V operating permit application Allegheny submitted for the Hatfield's Ferry facility in 1995, Allegheny did not include (1) a citation and description of applicable BACT air pollution control requirements; (2) other specific information that was necessary to implement and enforce other applicable requirements of the CAA, 40 C.F.R. Part 70 (regarding state operating permit programs) or Part 71 (regarding federal operating permit programs), or to determine the applicability of such requirements, including information about the modifications relevant to determining the applicability of BACT; or (3) a compliance plan including (a) a description of the compliance status of each stationary air source with respect to applicable

BACT requirements, (b) a narrative description of how the facility would achieve compliance with applicable BACT requirements for which it was not in compliance, and (c) a schedule of remedial measures leading to compliance with applicable BACT requirements for which the facility was not in compliance. 40 C.F.R. §§ 70.5(c)(4), (5) & (8); 40 C.F.R. §§ 71.5(c)(4), (5) & (8); 25 Pa. Code §§ 127.503(4), (5) & (8) (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

353. In that application, Allegheny also failed to submit a certification of compliance with applicable requirements that addressed Allegheny's failure to meet applicable BACT requirements at Hatfield's Ferry Units 1, 2 and 3. In failing to acknowledge that it had undertaken modifications at Hatfield's Ferry Units 1, 2 and 3 that triggered BACT emission limitations, Allegheny's certification that its application was true, accurate and complete was inaccurate. 40 C.F.R. §§ 70.5(c)(9) & (d); 40 C.F.R. §§ 71.5(c)(9) & (d); 25 Pa. Code §§ 127.402(d) & .503(10) (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

354. Subsequent to the filing of its completed Title V application for the Hatfield's Ferry facility, Allegheny did not supplement the application with information regarding the modifications at Units 1, 2 and 3 and the BACT requirements that became applicable to those three units as a result of those modifications. 40 C.F.R. §§ 70.5(b) & 71.5(b).

355. Because Allegheny failed to provide this information, the Title V operating permit issued for the Hatfield's Ferry facility on November 29, 2001 did not include all "applicable requirements," and in particular did not include applicable BACT emission limitations for Units 1, 2 and 3. For the same reason, the permit did not include a schedule for compliance with BACT requirements consistent with 40 C.F.R. §§ 70.5(c)(8) & 71.5(c)(8) and 25 Pa. Code § 127.513(3) (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

356. As alleged above, Allegheny has not complied with applicable BACT emission limitations for Units 1, 2 and 3 since 1997, 1993, and 1996, respectively.

357. Therefore, since no later than the date the Title V operating permit was issued, November 29, 2001, Allegheny has been operating in violation of the Title V provisions of the Act, 42 U.S.C. §§ 7661-7661f, regulations promulgated thereunder, 40 C.F.R. §§ 70.1-70.11 and 71.1-71.12, the Pennsylvania SIP (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code §§ 127.401-.464 & 127.501-.543 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

358. Unless restrained by an order of this Court, these violations of the Act will continue.

359. The violations set forth above subject Allegheny to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004, as provided in 42 U.S.C. §§ 7413(b) and 7604(a), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, note, and the Debt Collection Improvement Act, 31 U.S.C. § 3701, note. *See* 40 C.F.R. § 19.4 (2005) (penalty for violations after Mar. 15, 2004); 40 C.F.R. § 19.4 (1998) (penalty for violation between Jan. 30, 1997 and Mar. 15, 2004).

TWENTY-SECOND CLAIM FOR RELIEF

*Hatfield's Ferry Units 1, 2 and 3 –
Title V operating permit claim under Pennsylvania law with regard to SO₂ and NO_x,
brought by Pennsylvania*

360. Paragraphs 279 through 348, regarding the Hatfield's Ferry facility, are realleged and incorporated by reference in this claim for relief.

361. The Hatfield's Ferry facility is, and at all times relevant to this claim has been, a source subject to Title V operating permit requirements. 25 Pa. Code § 127.1.

362. As alleged above, Units 1, 2 and 3 at the Hatfield's Ferry facility became subject to federal and Pennsylvania BACT emission limitations by virtue of modifications performed at those units in 1997, 1993 and 1999, and 1996, respectively.

363. In the Title V operating permit application Allegheny submitted for the Hatfield's Ferry facility in 1995, Allegheny did not include (1) a citation and description of applicable BACT air pollution control requirements; (2) other specific information that was necessary to implement and enforce other applicable requirements of the CAA, 25 Pa. Code Chapter 127, or 40 C.F.R. Part 70, or to determine the applicability of such requirements, including information about the modifications relevant to determining the applicability of BACT; or (3) a compliance plan including (a) a description of the compliance status of each stationary air source with respect to applicable BACT requirements, (b) a narrative description of how the facility would achieve compliance with applicable BACT requirements for which it was not in compliance, and (c) a schedule of remedial measures leading to compliance with applicable BACT requirements for which the facility was not in compliance. 25 Pa. Code §§ 127.503(4), (5) & (8).

364. In that application, Allegheny also failed to submit a certification of compliance with applicable requirements that addressed Allegheny's failure to meet applicable BACT requirements at Hatfield's Ferry Units 1, 2 and 3. In failing to acknowledge that it had undertaken modifications at Hatfield's Ferry Units 1, 2 and 3 that triggered BACT emission limitations, Allegheny's certification that its application was true, accurate and complete was inaccurate. 25 Pa. Code §§ 127.402(d) & .503(10).

365. Subsequent to the filing of its completed Title V application for the Hatfield's Ferry facility, Allegheny did not supplement the application with information regarding the

modifications at Units 1, 2 and 3 and the BACT requirements that became applicable to those three units as a result of those modifications. 25 Pa. Code §§ 127.414(a), (b) & (c).

366. Because Allegheny failed to provide this information, the Title V operating permit issued for the Hatfield's Ferry facility on November 29, 2001 did not include all "applicable requirements," and in particular did not include applicable BACT emission limitations for Units 1, 2 and 3. For the same reason, the permit did not include a schedule for compliance with BACT requirements pursuant to 25 Pa. Code § 127.513(3).

367. As alleged above, Allegheny has not complied with applicable BACT emission limitations for Units 1, 2 and 3 since 1997, 1993, and 1996, respectively.

368. Therefore, since no later than the date the Title V operating permit was issued, November 29, 2001, Allegheny has been operating in violation of 25 Pa. Code §§ 127.401-.464 & 127.501-.543.

369. Unless restrained by an order of this Court, these violations of the Act will continue.

370. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

TWENTY-THIRD CLAIM FOR RELIEF

*Mitchell Unit 3 –
PSD claim under federal law with regard to SO₂ and NO_x
brought by all Plaintiff States*

371. The Mitchell facility includes three electricity generating units. Two of those units are oil-fired; the third unit, referred to as Unit 3, is coal-fired and, on information and belief, consists of one boiler and one steam turbine. Unit 3 was placed in service in 1963. On

information and belief, at all times relevant to this complaint, Allegheny reported to FERC that Mitchell Unit 3 had a Maximum Generator Nameplate Rating of 299 MW.

372. In 2003, Mitchell Unit 3 emitted 2,279 tons of NO_x and 1,483 tons of SO₂.

373. At the time Allegheny constructed Mitchell Unit 3, and at the time that the PSD regulations became effective on August 7, 1980, the facility had the potential to emit in excess of 250 tons per year of NO_x and 250 tons per year of SO₂.

374. The Mitchell facility is, and was at the time Allegheny made the modifications identified in this complaint, a "major emitting facility" within the meaning of 42 U.S.C. § 7479(1), a "major stationary source" within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(b) and 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), a "major facility" for SO₂ within the meaning of 25 Pa. Code § 121.1 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and a "major NO_x emitting facility" within the meaning of 25 Pa. Code § 121.1 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

375. The Mitchell facility is located in an area that has been unclassifiable for SO₂ from 1981 to the present. The Mitchell facility is located in an area that (a) was classified as moderate nonattainment for ozone under the 1-hour standard from 1978 through October 18, 2001, (b) has been attainment for ozone under the 1-hour standard since then, and (c) has been nonattainment for ozone under the 8-hour standard from June 15, 2004 to present. The Mitchell facility is located in an area that has been attainment for NO₂ from 1978 to present.

376. Allegheny modified Unit 3 of the Mitchell facility when it, *inter alia*, replaced 24 front and rear ash hopper partial lower slope tube panels in 1994.

377. Had Allegheny complied with the PSD preconstruction permitting requirements, it would have projected that the modifications identified in the preceding paragraph would result in a net increase of more than 40 tons per year in emissions of NO_x and SO₂.

378. The aforesaid modifications constitute major modifications, within the meaning of 40 C.F.R. § 52.21(b)(2), 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code § 121.1 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), for NO_x and SO₂. Therefore, a PSD permit should have been obtained prior to the commencement of construction.

379. Allegheny has not applied for or obtained a PSD permit for the modifications of the Mitchell facility identified in this claim for relief.

380. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475, 40 C.F.R. §§ 52.21(j) through (r), or 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062), including consideration of impacts on Federal Class I areas.

381. Allegheny has not implemented, or operated in accordance with, BACT for control of NO_x or SO₂ emissions from Unit 3 of the Mitchell facility.

382. Therefore, since 1994 or earlier, Allegheny has been in violation of 42 U.S.C. §§ 7475(a) and (d), 40 C.F.R. § 52.21, the Pennsylvania SIP (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code § 127.83 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

383. Unless restrained by an order of this Court, these violations of the Act will continue.

384. The violations set forth above subject Allegheny to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004, as provided in 42 U.S.C. §§ 7413(b) and 7604(a), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, note, and the Debt Collection Improvement Act, 31 U.S.C. § 3701, note. *See* 40 C.F.R. § 19.4 (2005) (penalty for violations after Mar. 15, 2004); 40 C.F.R. § 19.4 (1998) (penalty for violation between Jan. 30, 1997 and Mar. 15, 2004).

TWENTY-FOURTH CLAIM FOR RELIEF

*Mitchell Unit 3 –
PSD claim under Pennsylvania law with regard to SO₂ and NO_x
brought by Pennsylvania*

385. Paragraphs 371 through 375, regarding the Mitchell facility, are realleged and incorporated by reference in this claim for relief.

386. Allegheny modified Unit 3 of the Mitchell facility when it, *inter alia*, replaced 24 front and rear ash hopper partial lower slope tube panels in 1994.

387. Had Allegheny complied with the PSD preconstruction permitting requirements, it would have projected that the modifications identified in the preceding paragraph would result in a net increase of more than 40 tons per year in emissions of SO₂ and/or NO_x.

388. The aforesaid modifications constitute major modifications, within the meaning of 25 Pa. Code § 127.83 and 25 Pa. Code § 121.1, for NO_x and/or SO₂. Therefore, a PSD permit should have been obtained prior to the commencement of construction.

389. Allegheny has not applied for or obtained a PSD permit for the modifications of the Mitchell facility identified in this claim for relief.

390. This modification at Mitchell also subjected Allegheny to the Pennsylvania plan approval and operating permit requirements. 25 Pa. Code Subchapters B and F.

391. Allegheny has not applied for or obtained a plan approval and operating permit for the modifications of the Mitchell unit identified in this claim for relief.

392. Prior to constructing the aforesaid modifications, Allegheny did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 25 Pa. Code § 127.83, including consideration of impacts on Federal Class I areas.

393. Allegheny has not implemented, or operated in accordance with, BACT for control of NO_x or SO₂ emissions from Unit 3 of the Mitchell facility.

394. Therefore, since 1994 or earlier, Allegheny has been in violation of 25 Pa. Code § 127.83, and 25 Pa. Code Chapter 127, Subchapters B and F.

395. Unless restrained by an order of this Court, these violations of the Pennsylvania APCA and the Pennsylvania Administrative Code will continue.

396. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

TWENTY-FIFTH CLAIM FOR RELIEF

*Mitchell Unit 3 –
Title V operating permit claim under federal law with regard to SO₂ and NO_x
brought by all Plaintiff States*

397. Paragraphs 371 through 384, regarding the Mitchell facility, are realleged and incorporated by reference in this claim for relief.

398. The Mitchell facility is, and at all times relevant to this claim has been, a source subject to Title V operating permit requirements. 42 U.S.C. § 7661a(a), 40 C.F.R. §§ 70.2 & 71.2 (definitions of “major source”), 40 C.F.R. §§ 70.3 & 71.3; *see also* 42 U.S.C. § 7661 (defining “major source” to include “major stationary source”)

399. As alleged above, Unit 3 at the Mitchell facility became subject to federal BACT emission limitations by virtue of modifications performed at that unit in 1994.

400. In the Title V operating permit application Allegheny submitted for the Mitchell facility in 1995, Allegheny did not include (1) a citation and description of applicable BACT air pollution control requirements; (2) other specific information that was necessary to implement and enforce other applicable requirements of the CAA, 40 C.F.R. Part 70 (regarding state operating permit programs) or Part 71 (regarding federal operating permit programs), or to determine the applicability of such requirements, including information about the modifications relevant to determining the applicability of BACT; or (3) a compliance plan including (a) a description of the compliance status of each stationary air source with respect to applicable BACT requirements, (b) a narrative description of how the facility would achieve compliance with applicable BACT requirements for which it was not in compliance, and (c) a schedule of remedial measures leading to compliance with applicable BACT requirements for which the facility was not in compliance. 40 C.F.R. §§ 70.5(c)(4), (5) & (8); 40 C.F.R. §§ 71.5(c)(4), (5) & (8); 25 Pa. Code §§ 127.503(4), (5) & (8) (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

401. In that application, Allegheny also failed to submit a certification of compliance with applicable requirements that addressed Allegheny’s failure to meet applicable BACT requirements at Mitchell Unit 3. In failing to acknowledge that it had undertaken modifications at Mitchell Unit 3 that triggered BACT emission limitations, Allegheny’s certification that its application was

true, accurate and complete was inaccurate. 40 C.F.R. §§ 70.5(c)(9) & (d); 40 C.F.R. §§ 71.5(c)(9) & (d); 25 Pa. Code §§ 127.402(d) & .503(10) (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

402. Subsequent to the filing of its completed Title V application for the Mitchell facility, Allegheny did not supplement the application with information regarding the modifications at Unit 3 and the BACT requirements that became applicable to that unit as a result of those modifications. 40 C.F.R. §§ 70.5(b) & 71.5(b).

403. Because Allegheny failed to provide this information, the Title V operating permit issued for the Mitchell facility on September 5, 2002 did not include all “applicable requirements,” and in particular did not include applicable BACT emission limitations for Unit 3. For the same reason, the permit did not include a schedule for compliance with BACT requirements consistent with 40 C.F.R. §§ 70.5(c)(8) & 71.5(c)(8) and 25 Pa. Code § 127.513(3) (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

404. As alleged above, Allegheny has not complied with applicable BACT emission limitations for Unit 3 since 1994.

405. Therefore, since no later than the date the Title V operating permit was issued, September 5, 2002, Allegheny has been operating in violation of the Title V provisions of the Act, 42 U.S.C. §§ 7661-7661f, regulations promulgated thereunder, 40 C.F.R. §§ 70.1-70.11 & 71.1-71.12, the Pennsylvania SIP (as made federal law by 40 C.F.R. §§ 52.2020-.2062), and 25 Pa. Code §§ 127.401-.464 & 127.501-.543 (as made federal law by 40 C.F.R. §§ 52.2020-.2062).

406. Unless restrained by an order of this Court, these violations of the Act will continue.

407. The violations set forth above subject Allegheny to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, \$27,500

per day for each such violation between January 30, 1997 and March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004, as provided in 42 U.S.C. §§ 7413(b) and 7604(a), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, note, and the Debt Collection Improvement Act, 31 U.S.C. § 3701, note. *See* 40 C.F.R. § 19.4 (2005) (penalty for violations after Mar. 15, 2004); 40 C.F.R. § 19.4 (1998) (penalty for violation between Jan. 30, 1997 and Mar. 15, 2004).

TWENTY-SIXTH CLAIM FOR RELIEF

*Mitchell Unit 3 –
Title V operating permit claim under Pennsylvania law with regard to SO₂ and NO_x
brought by Pennsylvania*

408. Paragraphs 371 through 396, regarding the Mitchell facility, are realleged and incorporated by reference in this claim for relief.

409. The Mitchell facility is, and at all times relevant to this claim has been, a source subject to Title V operating permit requirements. 25 Pa. Code § 127.1.

410. As alleged above, Unit 3 at the Mitchell facility became subject to BACT emission limitations by virtue of modifications performed at that unit in 1994.

411. In the Title V operating permit application Allegheny submitted for the Mitchell facility in 1995, Allegheny did not include (1) a citation and description of applicable BACT air pollution control requirements; (2) other specific information that was necessary to implement and enforce other applicable requirements of the CAA, 25 Pa. Code Chapter 127, or 40 C.F.R. Part 70, or to determine the applicability of such requirements, including information about the modifications relevant to determining the applicability of BACT; or (3) a compliance plan including (a) a description of the compliance status of each stationary air source with respect to applicable BACT requirements, (b) a narrative description of how the facility would achieve

compliance with applicable BACT requirements for which it was not in compliance, and (c) a schedule of remedial measures leading to compliance with applicable BACT requirements for which the facility was not in compliance. 25 Pa. Code §§ 127.503(4), (5) & (8).

412. In that application, Allegheny also failed to submit a certification of compliance with applicable requirements that addressed Allegheny's failure to meet applicable BACT requirements at Mitchell Unit 3. In failing to acknowledge that it had undertaken modifications at Mitchell Unit 3 that triggered BACT emission limitations, Allegheny's certification that its application was true, accurate and complete was inaccurate. 25 Pa. Code §§ 127.402(d) & .503(10).

413. Subsequent to the filing of its completed Title V application for the Mitchell facility, Allegheny did not supplement the application with information regarding the modifications at Unit 3 and the BACT requirements that became applicable to that unit as a result of those modifications. 25 Pa. Code §§ 127.414(a), (b) & (c).

414. Because Allegheny failed to provide this information, the Title V operating permit issued for the Mitchell facility on September 5, 2002 did not include all "applicable requirements," and in particular did not include applicable BACT emission limitations for Unit 3. For the same reason, the permit did not include a schedule for compliance with BACT requirements pursuant to 25 Pa. Code § 127.513(3).

415. As alleged above, Allegheny has not complied with applicable BACT emission limitations for Unit 3 since 1994.

416. Therefore, since no later than the date the Title V operating permit was issued, September 5, 2002, Allegheny has been operating in violation of 25 Pa. Code §§ 127.401-.464 & 127.501-.543.

417. Unless restrained by an order of this Court, these violations of the Act will continue.

418. 35 P.S. § 4013.6(a) and 71 P.S. §§ 510-517 authorize the award of injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Pennsylvania APCA and the Pennsylvania Administrative Code set forth above.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff States request that this Honorable Court:

1. Permanently enjoin defendants from, among other things, operating Armstrong Units 1 and 2, Hatfield's Ferry Units 1, 2 and 3, and Mitchell Unit 3 except in accordance with the CAA, the federal PSD, NSPS and Title V operating permit regulations, the Pennsylvania APCA, and the Pennsylvania SIP, including the Pennsylvania PSD, nonattainment NSR, NSPS, BAT, plan approval, operating permit and Title V regulations;
2. Order defendants to remedy their past violations;
3. Order defendants to take other appropriate actions to remedy, mitigate, or offset the harm to public health and the environment caused by the violations of federal and state law alleged above;
4. Assess a civil penalty against defendants for each violation of federal law under the Act, the federal PSD, NSPS and Title V regulations, and the state SIP regulations as made federal law, including the state PSD, NSPS and Title V regulations, as follows: \$25,000 per day for each such violation prior to January 30, 1997; \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and \$32,500 per day for each violation occurring after March 15, 2004.
5. Assess a civil penalty against defendants for each violation of under the APCA, and the state SIP regulations as made federal law, including the state PSD, nonattainment NSR, NSPS,

BAT, plan approval, operating permit and Title V regulations in the amount of up to \$25,000 per day for each such violation.

6. Award the Plaintiff States their costs of this action and attorneys' fees; and
7. Grant such other relief as the Court deems just and proper.

Dated: January 17, 2006

Respectfully Submitted,

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APPENDIX

Chart of Claims

(Asterisks denote claims added in First Amended Complaint)

Claim No.	Facility	Unit(s)	Law/Plaintiff(s)	Type of Claim
1	Armstrong	1	Federal/All Plaintiff States	PSD
2	Armstrong	1	Pennsylvania	PSD
3	Armstrong	1	Pennsylvania	Nonattainment NSR
4*	Armstrong	1	Federal/All Plaintiff States	NSPS
5*	Armstrong	1	Pennsylvania	NSPS
6*	Armstrong	1	Pennsylvania	BAT
7	Armstrong	2	Federal/All Plaintiff States	PSD
8	Armstrong	2	Pennsylvania	PSD
9	Armstrong	2	Pennsylvania	Nonattainment NSR
10*	Armstrong	2	Federal/All Plaintiff States	NSPS
11*	Armstrong	2	Pennsylvania	NSPS
12*	Armstrong	2	Pennsylvania	BAT
13*	Armstrong	1 and 2	Federal/All Plaintiff States	Title V
14*	Armstrong	1 and 2	Pennsylvania	Title V
15	Hatfield's Ferry	1	Federal/All Plaintiff States	PSD
16	Hatfield's Ferry	1	Pennsylvania	PSD
17	Hatfield's Ferry	2	Federal/All Plaintiff States	PSD
18	Hatfield's Ferry	2	Pennsylvania	PSD
19	Hatfield's Ferry	3	Federal/All Plaintiff States	PSD
20	Hatfield's Ferry	3	Pennsylvania	PSD
21*	Hatfield's Ferry	1, 2 and 3	Federal/All Plaintiff States	Title V
22*	Hatfield's Ferry	1, 2 and 3	Pennsylvania	Title V
23	Mitchell	3	Federal/All Plaintiff States	PSD

Claim No.	Facility	Unit(s)	Law/Plaintiff(s)	Type of Claim
24	Mitchell	3	Pennsylvania	PSD
25*	Mitchell	3	Federal/All Plaintiff States	Title V
26*	Mitchell	3	Pennsylvania	Title V

A-2010-2176520
A-2010-2176732

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the attached document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

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