IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

No. 1:08-cv-318

SOUTHERN ALLIANCE FOR CLEAN ENERGY, ENVIRONMENTAL DEFENSE FUND, NATIONAL PARKS CONSERVATION ASSOCIATION, NATURAL RESOURCES DEFENSE COUNCIL, and SIERRA CLUB,	)	
Plaintiffs,	)	**COMPLAINT**
v.	)	
DUKE ENERGY CAROLINAS, LLC,	)	
Defendant.	)	

Plaintiffs Southern Alliance for Clean Energy, Environmental Defense Fund, National Parks Conservation Association, Natural Resources Defense Council, and Sierra Club (hereinafter collectively referred to as "Plaintiffs"), make the following allegations upon knowledge as to themselves and upon information and belief as to all other matters:

NATURE OF THE CASE

1. Plaintiffs seek declaratory and injunctive relief and civil penalties against Duke Energy Carolinas, LLC ("Duke") for constructing a new, 800-megawatt, coal-fired power plant ("Cliffside Unit 6") at its Cliffside Steam Station in Rutherford County, North Carolina, in violation of Clean Air Act ("CAA" or "Act") requirements designed to protect people and the environment from hazardous air pollution.

2. Duke's ongoing construction of Cliffside Unit 6 violates Section 112(g) of the Act, 42 U.S.C. § 7412(g), which prohibits construction of such a plant in the absence of a final and effective determination that the facility will achieve a level of hazardous air pollutant emissions control that satisfies the Maximum Achievable Control Technology ("MACT") requirements of the Act. Applicable MACT provisions specify procedural and substantive requirements to assure that all new or modified major sources of hazardous air pollutants are designed to and will reduce emissions of such pollutants by the maximum achievable amount before they are constructed.

3. Duke has not received a MACT determination for Cliffside Unit 6. Duke's existing Air Quality Permit for the proposed facility does not even purport to include hazardous air pollutant emissions limits based on a proper MACT determination, and therefore is incomplete and inadequate to authorize actual construction.

4. The Clean Air Act requires that a MACT determination be obtained before construction commences because the MACT determination and resulting Air Quality Permit emission limits guide the design of the plant. Cliffside Unit 6 is not designed to meet MACT control requirements for hazardous emissions. Accordingly, with each day of construction on Cliffside Unit 6, Duke not only violates the CAA but also undertakes construction of a large, polluting power plant that is not designed to meet MACT emission limits for hazardous air pollutants.

5. Duke's violations of the Act's hazardous air pollution requirements pose a serious threat to people and the environment. The U.S. Environmental Protection Agency ("EPA") has found that coal-fired power plants such as Duke's Cliffside Unit 6 emit 67 of the 188 individual hazardous air pollutants Congress listed for regulation under the 1990 Clean Air Act Amendments, including mercury, selenium, dioxins, arsenic, acid gases, and other heavy metals.

EPA, *Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units—Final Report to Congress* ("Utility Study"), at ES 1-2, 4 (Feb. 1998), *available at* http://www.epa.gov/ttn/caaa/t3/reports/utilexec.pdf; *see also Regulatory Finding on the Emissions of Hazardous Air Pollutants from Electric Utility Steam Generating Units*, 65 Fed. Reg. 79,825, 79,827-28 (Dec. 20, 2000).

6. Mercury provides one example of the way hazardous pollutants emitted by coal-fired power plants pose serious health threats to people in North Carolina. North Carolina currently has fourteen coal-fired power plants and ranks among the ten states with the highest mercury emissions from power plants. Recent studies show that most of the mercury pollution deposited in North Carolina comes from local and regional coal-fired sources, including coal-fired power plants. Once mercury is deposited in North Carolina, the unique ecology of the state's waters favors the formation of highly toxic methylmercury, which then accumulates in fish tissue and threatens human health. Many fish species over a large portion of the state have high mercury concentrations, and many North Carolinians routinely consume locally caught fish. Fetuses, breast-fed infants, and children exposed to methylmercury when they or their mothers consume contaminated fish are at particular risk for developing permanent neurological disorders including mental retardation, vision loss, hearing loss, delayed developmental milestones, attention deficits, memory problems, auditory processing problems, language difficulties, ataxia, and, in extreme cases, seizures.

7. As a result of these factors, the North Carolina Department of Health and Human Services ("DHHS") has estimated that "at least 13,677 children per year" are born in North Carolina with blood mercury levels that place them at risk for lifelong learning disabilities, fine motor and attention deficits, and lowered I.Q. Luanne K. Williams, North Carolina DHHS,

Health Concerns of NC Communities Consuming Fish with High levels of Mercury and the Need for More Air Monitoring/Modeling and Human Testing for Mercury 6 (Mar. 31, 2006). Moreover, DHHS toxicologists have concluded that "this estimate likely underestimates the number of children with elevated methylmercury levels because the estimate is based on national blood mercury results of women of childbearing age and does not take into account exposures from routinely eating locally caught fish with high methylmercury levels." *Id.*

8. Other hazardous air pollutants emitted by power plants include arsenic, dioxins, acid gases, selenium, lead, and other heavy metals, which have been shown to cause serious adverse health effects, including cancer, heart disease, stroke, and neurological impairment. One of those pollutants, dioxin, is among the most potent carcinogens on the planet.

9. Plaintiffs are citizen groups whose members are harmed by Duke's violations of the Clean Air Act. In order to redress this harm and prevent further harm, Plaintiffs ask the Court, pursuant to the Act's citizen suit provision, 42 U.S.C. § 7604(a), to: (1) declare that Duke's construction of Cliffside Unit 6 without an approved MACT determination is illegal under section 112 of the Act, 42 U.S.C. § 7412; (2) enjoin Duke from construction or operation of Cliffside Unit 6 until and unless it complies with the Act and any applicable regulatory requirements; and (3) assess civil penalties against Duke for its violations of the Act.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action pursuant to the Act's citizen suit provision, CAA § 304(a), 42 U.S.C. § 7604(a), and pursuant to 28 U.S.C. § 1331 (Federal Question Jurisdiction).

11. Venue is proper in this District pursuant to CAA § 304(c), 42 U.S.C. § 7604(c), because Cliffside Unit 6 is located in this District, and violations have occurred and continue to occur in this District.

NOTICE

12. On May 6, 2008, Plaintiffs Southern Alliance for Clean Energy, National Parks Conservation Association, Natural Resources Defense Council, and Sierra Club provided Duke with notice of the violations alleged in this Complaint. These same Plaintiffs provided copies of the notice to the EPA Administrator and to the State of North Carolina, via the Secretary of the Department of Environment and Natural Resources ("DENR"), as required by section 304(b) of the Act, 42 U.S.C. § 7604(b). A copy of this notice is attached as Exhibit A and is incorporated by reference.

13. On May 15, 2008, Plaintiff Environmental Defense Fund provided Duke with notice of the violations alleged in this Complaint. Environmental Defense Fund provided copies of the notice to the EPA Administrator and to the State of North Carolina, via the Secretary of DENR, as required by section 304(b) of the Act, 42 U.S.C. § 7604(b). A copy of this notice is attached as Exhibit B and is incorporated by reference.

14. In accordance with 42 U.S.C. § 7604(b)(1)(A), at least 60 days have elapsed since Plaintiffs provided notice of the violations. Neither EPA nor the State of North Carolina has taken any of the actions described in 42 U.S.C. § 7604(b)(1)(B).

THE PARTIES AND STANDING

Plaintiffs

15. Southern Alliance for Clean Energy ("SACE") is a nonprofit corporation, based in Knoxville, Tennessee, with 478 members across the Southeast, including 126 in North Carolina.

SACE advocates for energy plans, policies, and systems that best serve the environmental, public health, and economic interests of the communities of the Southeast.

16. Environmental Defense Fund ("EDF") is a national nonprofit organization, organized under the laws of New York. EDF represents more than 400,000 members, including over 10,000 in North Carolina, and is dedicated to protecting clean air and water and healthy ecosystems. EDF has an office in North Carolina with staff that are dedicated to protecting human health and the environment in North Carolina.

17. National Parks Conservation Association ("NPCA") is a nonprofit organization based in Washington, D.C., with over 340,000 members nationwide, including over 9,800 members who live in North Carolina. NPCA seeks to restore healthy air, thriving ecosystems, and scenic values to the National Park System by reducing air pollution and climate change impacts.

18. The Natural Resources Defense Council ("NRDC") is a nonprofit membership corporation founded in 1970 and organized under the laws of the State of New York. NRDC has over 400,000 members, including over 9,200 who live in North Carolina. NRDC is dedicated to protecting public health and the environment and has a longstanding commitment to the reduction of hazardous air pollution from power plants and other polluting sources.

19. The Sierra Club is a national grassroots conservation organization, based in San Francisco, California, with over 750,000 members nationally and approximately 19,000 members in North Carolina. The Sierra Club has had a statewide chapter in North Carolina for over 20 years and has a long history of working to reduce power plant emissions that adversely affect air quality in the state.

20. Members of each of the Plaintiff organizations live, work, and recreate in areas that would be affected by the excessive amounts of mercury and other hazardous air pollutants that Cliffside Unit 6 will emit if it is constructed without a proper MACT determination. These members are concerned that they will suffer the direct, negative health impacts of breathing hazardous air pollutants emitted by Cliffside Unit 6 in excess of legal limits. Mercury emissions from Cliffside Unit 6 will also interfere with their use and enjoyment of waterways, including those in the Great Smoky Mountains National Park, and cause them to alter their fishing and fish consumption habits or risk adverse health effects from eating mercury-contaminated fish. Duke's construction of Cliffside Unit 6 without an approved MACT determination will harm these members' health, economic, recreational, and aesthetic interests. A decision requiring Duke to cease construction of Cliffside Unit 6 until it obtains a lawful MACT determination would redress these harms to Plaintiffs' members.

Defendant

21. Defendant Duke Energy Carolinas, LLC ("Duke") is a North Carolina limited liability company with headquarters located at 526 South Church Street, Charlotte, North Carolina 28202. Duke owns and operates the Cliffside Steam Station, where the violations that gave rise to this action occurred.

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

LEGAL BACKGROUND

23. Section 112(g)(2)(B) of the Clean Air Act prohibits any person from "construct[ing] . . . any major source of hazardous air pollutants unless the Administrator (or the State) determines that the maximum achievable control technology emissions limitation under this

section for new sources will be met." 42 U.S.C. § 7412(g)(2)(B); *see also* 15A N.C. Admin. Code 02Q.0528(b). This section further requires that the MACT determination "shall be made on a case-by-case basis where no applicable emission limitations have been established . . . ." 42 U.S.C. § 7412(g)(2)(B).

24. Section 112(g)(2)(A) of the Act prohibits any person from "modify[ing] . . . a major source of hazardous air pollutants unless the Administrator (or the State) determines that the maximum achievable control technology emissions limitation under this section for existing sources will be met." 42 U.S.C. § 7412(g)(2)(A). This section also requires that the MACT determination "shall be made on a case-by-case basis where no applicable emissions limitations have been established . . . ." *Id.*

25. Pursuant to federal and North Carolina regulations implementing section 112(g) of the Act, a MACT determination must identify and require a level of control that "shall not be less stringent than the level of emission control which is achieved in practice by the best controlled similar source" (the "MACT floor") and that goes beyond the MACT floor as much as possible utilizing the most current control technologies and taking into consideration relevant costs. 40 C.F.R. § 63.43(d)(1) and (2); 15A N.C. Admin. Code 02D.1112(d)(1) and (2).

26. EPA and North Carolina regulations governing the process for conducting a case-by-case MACT determination provide the public the right to comment on a Notice of Proposed MACT Approval and a right to appeal the final MACT determination. *See* 40 C.F.R. § 63.43(h); N.C. Gen. Stat. § 150B-23(f).

27. In 2000, EPA placed "electric utility steam generating units" ("EGUs") on the list of categories of sources of hazardous air pollutants established by CAA § 112(c), making them subject to regulation under section 112 of the Act. 65 Fed. Reg. at 79,830. An "EGU" is defined

in the Act as "any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale." 42 U.S.C. § 7412(a)(8). A coal-fired power plant is a type of EGU.

28. After a source category is placed on the section 112(c) list, all new and modified facilities in that category must obtain a case-by-case MACT determination. EPA must also set maximum achievable hazardous air pollutant emissions standards for that category, at which point all new and modified plants must meet those standards and no longer have to obtain a case-by-case determination. *See* 42 U.S.C. §§ 7412(d), 7412(g)(2)(B). EPA has not promulgated maximum achievable hazardous air pollutant emissions standards for EGUs.

29. In 2005, EPA purported to remove EGUs from the list of sources subject to CAA § 112. North Carolina and EPA regulations provide that once a source is listed, the source may only be "deleted from the source category list pursuant to section 112(c)(9) of the federal Clean Air Act." 15A N.C. Admin. Code 02D.1112(b)(2); *see also* 40 C.F.R. § 63.40(e). However, EPA did not purport to delist EGUs pursuant to section 112(c)(9) of the Act.

30. EPA's decision was challenged in the D.C. Circuit Court of Appeals by numerous states, tribes, and environmental organizations, including Plaintiffs Natural Resources Defense Council, Environmental Defense Fund, and Sierra Club.

31. On February 8, 2008, the D.C. Circuit Court of Appeals vacated as unlawful EPA's attempt to remove coal-fired power plants from the list of sources regulated under section 112 of the Act. *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008). The D.C. Circuit held that power plants "remain listed under section 112." *Id.* at 583. The D.C. Circuit issued the mandate in *New Jersey v. EPA* on March 14, 2008.

32. As a result of the D.C. Circuit's vacatur, EPA's unlawful attempt to remove EGUs from the list of sources subject to the Act's stringent requirements for hazardous air pollutants had and has no legal effect and cannot provide a basis to avoid the requirements of section 112.

33. Pursuant to the citizen suit provision of the Clean Air Act, any person may commence a civil action for violation of a CAA emission standard or limitation, including the requirements of section 112(g). CAA § 304(a), (f), 42 U.S.C. § 7604(a), (f). The Act's citizen suit provision permits citizens to seek injunctive relief and civil penalties payable to the U.S. Treasury of up to thirty-two thousand five hundred dollars ($32,500) for each day of violation. CAA §§ 113(b), 304(a), 42 U.S.C. §§ 7413(b), 7604(a); 40 C.F.R. § 19.4.

FACTUAL BACKGROUND

34. The planned Cliffside Unit 6 is an 800-megawatt ("MW") fossil-fuel-fired boiler serving a generator that will produce electricity for sale, and therefore meets the definition of an EGU under CAA § 112, 42 U.S.C. § 7412.

35. Cliffside Unit 6 is a "major source" of hazardous air pollution under CAA § 112(a)(1) because it has the potential to emit over 10 tons per year of the hazardous air pollutants hydrochloric acid (HCl) and hydrofluoric acid (HF), and has the potential to emit over 25 tons per year of a combination of numerous hazardous air pollutants.

36. Prior to Duke's initial permit application and repeatedly throughout the permitting process for Cliffside Unit 6, one or more of the Plaintiffs notified Duke and the North Carolina Division of Air Quality ("DAQ" or "the Division") that EPA's purported delisting decision was unlawful and would likely be struck down by the D.C. Circuit, and that existing and new coal-fired EGUs were subject to the requirements of CAA § 112, 42 U.S.C. § 7412. On or before June 17, 2005, one or more Plaintiffs provided oral and written comments, as part of a North Carolina

mercury regulation stakeholder process in which Duke participated, stating that CAA § 112, 42 U.S.C. § 7412, applied to new and existing coal-fired EGUs. Additionally, Plaintiffs submitted written comments as part of the air permitting process for Cliffside Unit 6 on October 31, 2007; January 16, 2008; March 5, 2008; and March 18, 2008, repeatedly indicating that EPA's attempted delisting of EGUs was unlawful and that Duke was required to obtain a MACT determination for the plant.

37. On December 6, 2007, the D.C. Circuit held oral argument in *New Jersey v. EPA*, the challenge to EPA's rule purporting to delist EGUs. At the argument, the judges indicated through their comments and questions that they were likely to find EPA's purported delisting invalid. *See* Jenny Johnson, *Key Appellate Justices Warn EPA Mercury Rule May Defy Clean Air Act*, Clean Air Report, Dec. 13, 2007, *available at* 2007 WLNR 24518423. The Utility Air Regulatory Group ("UARG"), a utility industry trade group to which Duke belongs, was a party to *New Jersey v. EPA* and its attorney argued at the December 6, 2007 hearing. On information and belief, Duke was aware of the D.C. Circuit panel's strong inclination to vacate EPA's purported delisting decision before DAQ issued the Cliffside Unit 6 Air Quality Permit on January 29, 2008.

38. Additionally, on January 16, 2008, Plaintiffs sent the transcript of the December 6, 2007 argument in *New Jersey v. EPA* to DAQ and reiterated that a CAA § 112(g) case-by-case MACT determination was required before Duke could construct Cliffside Unit 6.

39. DAQ issued to Duke an Air Quality Permit on January 29, 2008, just ten days before the D.C. Circuit rendered its decision in *New Jersey v. EPA*.

40. As of January 29, 2008, Duke had not obtained a determination from EPA or the State of North Carolina that Cliffside Unit 6 will meet MACT emission limits for hazardous air pollutants.

41. On March 5, 2008, Plaintiffs sent a letter to the North Carolina DAQ demanding that the Division reopen the Air Quality Permit process. The letter demanded, at a minimum, that DAQ make a MACT determination and modify or revoke the permit to take that determination into account. The letter also demanded that Duke cease construction of Cliffside Unit 6 unless and until DAQ issued a final and effective MACT determination pursuant to CAA § 112(g), 42 U.S.C. § 7412(g).

42. Duke has still not obtained a MACT determination from EPA or North Carolina.

43. On information and belief, Duke has commenced construction of, and currently is constructing, Cliffside Unit 6.

44. On June 2, 2008, approximately three weeks after Plaintiffs sent Duke and DAQ notice of Plaintiffs' intent to sue, DAQ wrote to Duke, stating that the agency had not decided whether a case-by-case MACT determination under § 112 was required for Cliffside Unit 6. The agency requested that Duke agree voluntarily to undertake an assessment of its hazardous air pollutant emissions controls and limits. DAQ specifically indicated that Duke would not need to stop construction during this voluntary process.

45. On June 13, 2008, Duke responded, expressly claiming that a section 112(g) case-by-case MACT determination was not required for Cliffside Unit 6, but agreeing to undertake some form of voluntary hazardous air pollutant analysis, "without waiving any of its rights."

46. On July 3, 2008, Duke submitted a purported "MACT-like" assessment to DAQ and reiterated its intent to participate in the voluntary "MACT-like" process suggested by North Carolina DAQ.

47. Duke has not committed to accept whatever permit limits North Carolina might seek to impose as a result of the ongoing, voluntary "MACT-like" process. Duke has not agreed to halt construction during this voluntary process. Duke has not stated that it will refrain from arguing that the hazardous air pollutant control options available for Cliffside Unit 6 are limited to those consistent with its construction plans or the actual construction that has occurred and that it continues to undertake. Duke has not stated that it will be strictly bound in the voluntary "MACT-like" process by the full range of substantive requirements of section 112 of the Act. Duke has not stated that it will refrain from challenging any petition for review of the final "MACT-like" determination based on a claim that it is voluntary and not subject to the legal authority of section 112(g) and the state's implementing regulations.

48. In addition, the assessment submitted by Duke does not meet the substantive requirements of a MACT analysis. For example, and without limitation, Duke has not demonstrated, and DAQ has not found, that the proposed limit (to which Duke has not proposed or committed to be bound) for each pollutant that would be emitted from Cliffside Unit 6 is at least as stringent as the emissions performance achieved in practice by the best controlled similar source.

THE NEED FOR COURT ACTION

49. Duke's past and ongoing construction of Cliffside Unit 6 without obtaining a final and effective MACT determination and without an Air Quality Permit that incorporates the MACT emission limits defies fundamental requirements of the Clean Air Act. Ongoing

construction harms Plaintiffs by prejudicing the MACT process in which Duke and DAQ, with public participation, must now engage. Each day of construction enhances this harm, limiting the chance that DAQ will modify or revoke Duke's Air Quality Permit consistent with the dictates of law.

50. Upon information and belief, without the issuance of injunctive relief and the assessment of civil penalties, Duke will continue to construct, and ultimately operate, Cliffside Unit 6 without obtaining the final and effective MACT determination mandated by CAA § 112(g), 42 U.S.C. § 7412(g), and without an Air Quality Permit that incorporates MACT emission limits. This will further prejudice the requisite MACT analysis, and will ultimately generate emissions of hazardous air pollutants exceeding the limits Congress prescribed in the Act to protect human health and the environment.

CLAIM FOR RELIEF

51. Plaintiffs repeat and incorporate the allegations in the preceding paragraphs as if set forth in full.

52. The Clean Air Act authorizes citizens to bring suit against any person who is alleged to have violated or to be in violation of an emission standard or limitation under the Act. 42 U.S.C. § 7604(a)(1).

53. Plaintiffs are "persons" within the meaning of the Act's citizen suit provision and are entitled to bring this action pursuant to 42 U.S.C. § 7604(a)(1).

54. Duke is a "person" against whom a citizen suit can be brought pursuant to 42 U.S.C. § 7604(a)(1).

55. The case-by-case MACT requirements of CAA § 112(g) are emission standards or limitations within the meaning of 42 U.S.C. § 7604(a)(1), pursuant to 42 U.S.C. § 7604(f).

56. Duke is the owner and operator of the Cliffside Steam Station and owns and is constructing Cliffside Unit 6 within the meaning of 42 U.S.C. § 7412(g).

57. Cliffside Unit 6 is a coal-fired EGU, which is a listed source category of hazardous air pollutants under CAA § 112(c). 42 U.S.C. § 7412(a)(8); 65 Fed. Reg. 79,825.

58. Cliffside Unit 6 is a major source of hazardous air pollutants within the meaning of CAA § 112(a)(1), 42 U.S.C. § 7412(a)(1), and is subject to CAA § 112(g)(2)(B)'s prohibition on constructing a major source of hazardous air pollutants without a MACT determination.

59. In the alternative, the existing Cliffside Steam Station is a "major source" under CAA § 112(a)(1), and Cliffside Unit 6 is therefore subject to CAA § 112(g)(2)(A)'s prohibition on modifying a major source without a MACT determination.

60. Duke has commenced and currently is continuing construction of Cliffside Unit 6 in violation of CAA § 112(g), 42 U.S.C. § 7412(g), and federal and state implementing regulations.

61. Further, Duke is violating CAA § 112(g), 42 U.S.C. § 7412(g), because it has not obtained a case-by-case MACT determination for any of the hazardous air pollutants that would be emitted by Cliffside Unit 6. Pursuant to case-by-case MACT requirements, Duke must demonstrate and obtain a final and effective determination from EPA or DENR that Cliffside Unit 6 will achieve reductions in hazardous air pollutant emissions that appropriately reflect MACT for each hazardous air pollutant emitted, which must be at least as stringent as the emissions performance achieved in practice by the best performing similar source. CAA § 112(g), 42 U.S.C. § 7412(g). Duke has failed to make the required demonstration or obtain the necessary MACT determination for Cliffside Unit 6.

62. Therefore, Duke is unlawfully constructing a major source of hazardous air pollutants without a MACT determination and without an Air Quality Permit containing MACT-

based emission limits, in violation of CAA § 112(g)(2)(B), 42 U.S.C. § 7412(g)(2)(B), and Duke is in violation of Clean Air Act § 112(g)(2)(B) until it ceases construction and obtains a valid and effective case-by-case MACT determination for each hazardous air pollutant that Cliffside Unit 6 would emit.

63. In the alternative, Duke is unlawfully modifying a major source of hazardous air pollutants without a MACT determination and without an Air Quality Permit containing MACT-based emission limits in violation of CAA § 112(g)(2)(A), 42 U.S.C. § 7412(g)(2)(A), and Duke is in violation of Clean Air Act § 112(g)(2)(A) until it ceases construction and obtains a valid and effective case-by-case MACT determination for each hazardous air pollutant that Cliffside Unit 6 would emit.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in the foregoing paragraphs, the Plaintiffs request that this Court:

1. Issue a declaratory judgment that Duke's construction of Cliffside Unit 6 without an approved MACT determination is illegal under section 112 of the Act, 42 U.S.C. § 7412;

2. Permanently enjoin Duke from construction or operation of Cliffside Unit 6 except in accordance with the Clean Air Act and applicable regulatory requirements;

3. Assess a civil penalty against Duke of up to $32,500 per day for each violation of the Clean Air Act and applicable regulations;

4. Award Plaintiffs their costs and reasonable attorneys' fees incurred in initiating and prosecuting this action; and

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

Respectfully submitted this 16th day of July, 2008.

s/John Suttles
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