

II. PARTIES

2. North Carolina is a sovereign State of the United States of America. It brings this cause of action on its own behalf to protect State property, resources, and revenue, as *parens patriae* on behalf of its citizens and residents to protect their health and well-being, and to protect those natural resources held in trust by the State. North Carolina's Attorney General is authorized under North Carolina law to bring an action in the name of the State to address wrongs done to its citizens that constitute a public nuisance.

3. A public nuisance under North Carolina law, as well as the laws of Tennessee, Alabama, and Kentucky, is generally a condition that injuriously affects the community at large, including that which tends to endanger life, or generate disease, and affect the health of the community.

4. North Carolina has responsibility for abating air pollution within its geographic area. The State's responsibilities include implementation of the federal Clean Air Act ("CAA") generally, and the CAA explicitly preserves to the states the right to enforce any state common law remedy. 42 U.S.C. §§ 7401, 7604(e).

5. In 2002 North Carolina enacted the Clean Smokestacks Act, officially titled the Air Quality/Electric Utilities Act (2002 N.C. Sess. Law 4), which requires substantial reductions in emissions from EGUs in North Carolina, and directs the State government to pursue similar emission reductions from upwind emission sources in other states that affect the air quality in North Carolina, explicitly including TVA.

6. Defendant TVA is a corporation created by federal law and wholly-owned by the United States, with its principal place of business located in Knoxville, Tennessee. At all times

relevant to this action, including the present, TVA has owned and commercially operated the following power plants:

- A. Allen: Tennessee
- B. Bull Run: Tennessee
- C. Colbert: Alabama
- D. Cumberland: Tennessee
- E. Gallatin: Tennessee
- F. John Sevier: Tennessee
- G. Johnsonville: Tennessee
- H. Kingston: Tennessee
- I. Paradise: Kentucky
- J. Shawnee: Kentucky
- K. Widows Creek: Alabama

III. JURISDICTION AND VENUE

7. The Court has jurisdiction of this matter under 28 U.S.C. § 1331 which grants federal subject matter jurisdiction over all suits against TVA. Subject matter jurisdiction is also found under 28 U.S.C. § 1337, in that TVA is a corporation created by a federal statute regulating commerce.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). TVA has significant contacts in the Western District of North Carolina. TVA sells electricity it generates directly to power companies serving customers in five counties in the Western District of North Carolina –

Avery, Burke, Cherokee, Clay, and Watauga. TVA owns and operates four hydroelectric dams and maintains four reservoirs in the Western District of North Carolina. TVA also sells its electricity directly to industries in North Carolina. More than 50 TVA employees are based in North Carolina. TVA also conducts other business in North Carolina including, purchasing fuel, material, and services within the state. A substantial part of the damage sustained by North Carolina and its citizens as a result of TVA's excessive emissions has occurred and is occurring in this District.

IV. CLAIMS FOR RELIEF

(Public Nuisance)

9. Paragraphs 1 through 8 are incorporated by reference.

10. Sulfur dioxide ("SO₂"), nitrogen oxides ("NO_x"), mercury ("Hg"), and primary coarse and fine particulate matter ("PM₁₀" and "PM_{2.5}", collectively "PM"), are emitted from TVA's EGUs, and secondary PM_{2.5} is formed from TVA's SO₂ and NO_x emissions downwind of TVA's EGUs. Collectively, these pollutants ("TVA's pollutants") have traveled and continue to travel into and adversely affect human health and the quality of the environment in North Carolina, as well as elsewhere in the region.

11. TVA's pollutants harm human health, safety, comfort, the environment, and the economy, including but not limited to natural resources, in North Carolina. TVA's pollutants also contribute to loss of revenue for the State and a substantial increase in expenditures for the State to combat and remedy the effects of the nuisance, as well as increased costs to the citizens of the State from increased hospital visits and other medical costs and from absence from work.

12. PM_{2.5} from TVA's EGUs (both primary and secondary) contributes to disease and premature death of citizens of North Carolina. Health effects include premature death, cardiovascular disease (including heart attacks and cardiac arrhythmia), aggravation of respiratory disease (including asthma), decreased lung function, changes to lung tissue and structure, and other respiratory effects.

13. NO_x generated from TVA's EGUs contributes to the formation of ground-level ozone, which causes North Carolina citizens to experience adverse health effects, including chest pains, aggravated asthma, shortness of breath, reduced lung function, coughing, and throat irritation.

14. The SO₂ and NO_x emissions from TVA's EGUs contribute to the deposition of acid compounds in North Carolina. Acid deposition causes the acidification of surface waters, including lakes, streams and ponds, and damages forests in North Carolina.

15. SO₂, NO_x, and primary and secondary PM emanating from or caused by TVA's EGUs contribute to haze that markedly decreases visibility in North Carolina, including in the State's treasured State parks. This haze degrades the quality of the environment for the citizens of North Carolina and visitors to the State.

16. Hg is a toxic, persistent pollutant that accumulates in the food chain. Hg emitted from TVA's EGUs moves from the atmosphere to the earth and enters lakes, rivers, and estuaries in North Carolina. Once there, it can chemically transform into methylmercury, which becomes increasingly concentrated as it travels up the food chain, reaching concentrations in fish tissue that can be toxic to those who consume affected fish. Human exposure to elevated levels of mercury has been associated with a variety of developmental neurological abnormalities. The risk of these effects is substantially increased for developing fetuses and young children.

17. Reasonable measures to abate the emissions of SO₂, NO_x, Hg, and PM would have eliminated most of TVA's pollutants and prevented much of the damage that has occurred and is still occurring to the public health of the citizens of North Carolina, and to its environment and economy as a result of those pollutants.

18. TVA's excessive pollutants also cause similar health, environmental and economic impacts in other states in the region including Tennessee, Alabama, and Kentucky.

19. TVA is aware that North Carolina has repeatedly objected to, and sought abatement of, TVA's excessive emissions, in particular of SO₂ and NO_x, from its EGUs. TVA has nonetheless failed to take appropriate and sufficient action to control the excessive emissions from these EGUs.

20. Unless enjoined by this Court, TVA will continue to operate its EGUs in a manner that creates a common law public nuisance.

21. TVA's continuing failure to utilize appropriate pollution control technology or otherwise reasonably abate emissions from its EGUs results in significant harms to the State of North Carolina and constitutes a public nuisance under the applicable law of the three States where TVA's EGUs are located – Tennessee, Alabama and Kentucky.

22. EGUs Located in Tennessee. TVA has engaged, and continues to engage, in conduct – whether otherwise lawful or not – that unreasonably interferes with or obstructs rights common to the citizens of North Carolina. TVA's conduct is prejudicial to the health, comfort, safety, and property of North Carolina's citizens at large and to the economy, finances, and natural resources of the State of North Carolina. Based upon this conduct at its EGUs in Tennessee, TVA is liable to North Carolina for the creation of a public nuisance under Tennessee's common law doctrine

of public nuisance.

23. EGUs Located in Alabama. TVA has engaged, and continues to engage, in conduct – whether intentional, unintentional, and/or negligent and whether otherwise lawful or not – that causes hurt, inconvenience, and/or damage to an indefinite number of persons in North Carolina. TVA has improperly or negligently operated its EGUs. The conditions creating the nuisance have not been caused by changed conditions in the locality surrounding the EGUs. TVA's conduct has caused a substantial and unreasonable interference with North Carolina's citizens' use and enjoyment of their property and natural resources, and/or has imperiled the comfort or health of the citizens at large of North Carolina and has damaged the economy, finances, and natural resources of the State of North Carolina. Based upon this conduct at its EGUs in Alabama, TVA is liable to North Carolina for the creation of a public nuisance under Alabama's statutory and common law.

24. EGUs Located in Kentucky. TVA has engaged, and continues to engage, in conduct – whether lawful or not – unreasonably creating a condition prejudicial to the health, safety, comfort, and property of the citizens at large in North Carolina and to the finances and natural resources of the State of North Carolina. TVA's conduct affects the rights enjoyed by North Carolina's citizens as part of the public, and causes their material annoyance, discomfort, and/or hurt, and/or harms their enjoyment of their property. Additionally, TVA's conduct causes damage to the economy, finances, and natural resources of North Carolina. Based upon this conduct at its EGUs in Kentucky, TVA is liable to North Carolina for the creation of a public nuisance under Kentucky's common law.

25. By failing to abate the public nuisance to human health and the environment

attributable to its emissions, TVA has caused and contributed to, and continues to cause and contribute to, the maintenance of a public nuisance in North Carolina and in other states in the region, including Tennessee, Alabama and Kentucky.

26. TVA's excessive emissions from its EGUs have caused and continue to cause harm to human health and the environment in North Carolina, and increased financial burdens to the State.

27. At all times relevant hereto, TVA has and continues to have a duty and obligation to North Carolina and its citizens to abate the harm and threatened harm resulting from its excessive emissions. Such duties and obligations include, inter alia, determining the nature and extent of the harm and threat to human, animal, and plant life, and to other natural resources, caused by the excessive emission of air pollutants, and implementing reasonable and appropriate measures needed to abate such harm and threat of harm.

28. TVA has failed and refused to perform its duties and obligations as set forth in the preceding paragraph.

29. Because of TVA's failure to perform some or all of those duties and obligations, North Carolina has incurred, and continues to incur, costs to pay for services needed to protect the public health and the environment. North Carolina has expended large sums of money to pay for the treatment of the harm caused by TVA's unlawful acts, including but not limited to incremental health care cost increases for treatment of additional cases of cardiovascular disease and respiratory problems and costs to address the impact of the environmental pollution.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant to:

1. Permanently enjoin Defendant from operating its EGUs in a manner that causes or contributes to a public nuisance;
2. Require Defendant to implement reasonable and appropriate air pollution control equipment and measures at each of its power plants, as necessary to abate the public nuisance it has created;
3. Order Defendant to take all other appropriate actions to remedy the harm to public health and the environment caused by the public nuisance alleged above;
4. Award costs and attorneys' fees to Plaintiff;
5. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

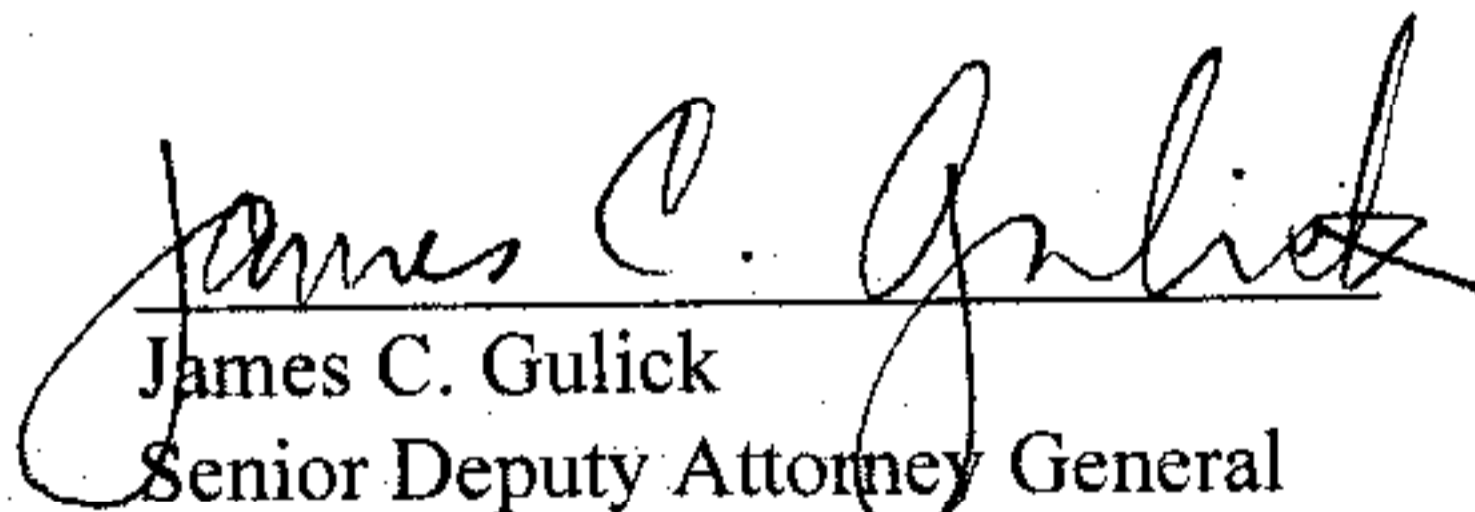
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