

# SOUTHERN ENVIRONMENTAL LAW CENTER

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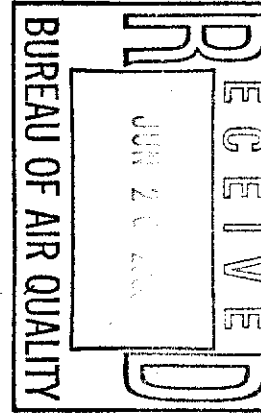
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June 17, 2008

VIA U.S. AND ELECTRONIC MAIL

Ms. Myra Reece  
Chief, Bureau of Air Quality  
S.C. Department of Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201



RECEIVED  
S.C. DEPT. OF HEALTH  
& ENVIRONMENTAL CONTROL  
2008 JUN 19 PM 2:44  
OFFICE OF THE COMMISSIONER  
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**Re: MACT Determination for Pee Dee Electrical Generating Station**

Dear Ms. Reece:

In light of Santee Cooper's recent announcement of its intent to conduct a Maximum Achievable Control Technology ("MACT") analysis for the utility's proposed Pee Dee Electrical Generating Station (the "Pee Dee plant")—and with the expectation that S.C. Department of Health and Environmental Control's ("DHEC") Bureau of Air Quality ("BAQ") may issue a public notice of a draft MACT determination for the Pee Dee plant in the coming months—the Southern Environmental Law Center ("SELC") and the Sierra Club are submitting this letter to outline some of the applicable Clean Air Act and regulatory requirements for case-by-case MACT determinations under § 112(g) of the Act. By providing this letter, SELC and the Sierra Club do not waive our fundamental objection to permitting construction of a conventional coal facility such as the Pee Dee plant.

At the outset, there is no question that Santee Cooper's proposed Pee Dee plant must comply with the Clean Air Act's hazardous air pollution provisions, found at § 112 of the Act, and its implementing regulations. As you are no doubt aware, the D.C. Circuit Court of Appeals ruled in early February that the U.S. Environmental Protection Agency violated the Clean Air Act when it purported to remove coal-fired power plants from the list of sources subject to the Clean Air Act's stringent requirements for hazardous air pollutants. New Jersey v. EPA, 517 F.3d 574 (D.C. Cir. 2008). The appeals court ruling makes it clear that coal-fired power plants like the proposed Pee Dee plant "**remain listed**" as sources of hazardous air pollutants that are subject to the hazardous air pollution provisions of Clean Air Act § 112. New Jersey, 517 F.3d at 583. See, e.g., Environmental Defense v. Leavitt, 329 F. Supp.2d 55, 64 (D.D.C. 2004) (confirming that "[w]hen a court vacates an agency's rules, the vacatur restores the status quo before the invalid rule took effect."); see also Environmental Defense v. EPA, 489 F.3d 1320, 1325 (D.C. Cir. 2007) (while remanded regulations remain in effect, vacated regulations do not);

and Campanale & Sons, Inc. v. Evans, 311 F.3d 109, 127 (1st Cir. 2002) (option of vacating a regulation described as “overturning it in its entirety”).

Section 112(g) of the Clean Air Act prohibits Santee Cooper from building the Pee Dee plant without an approved MACT determination for all hazardous air pollutants (“HAPs”) that the plant would emit. 42 U.S.C. § 7412(g)(2)(B) (“no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met.”). Additionally, DHEC regulations implementing the mandate of Clean Air Act § 112(g) provide “no person may begin actual construction or reconstruction of a major source of HAP in the State unless . . . [t]he Department has made a final and effective case-by-case determination . . . that emissions from the constructed or reconstructed major source will be controlled to a level no less stringent than the maximum achievable control technology emission limitation for new sources.” S.C. Reg. 61-62.63, Section 63.42. Thus, there is no doubt that an air permit for a new coal plant such as the Pee Dee plant must be based on a case-by-case analysis of the maximum available control technology for mercury and all other hazardous air pollutants the plant would emit, such as hydrochloric acid, dioxins, arsenic, and other heavy metals. See National Lime Ass’n v. EPA, 233 F.3d 625, 634 (D.C. Cir. 2000) (holding that the duty to develop MACT emission standards for hazardous air pollution emission sources includes a “clear statutory obligation to set emissions standards for each . . . HAP [listed in CAA §112(b)]”).

In accordance with these legal requirements, on March 19, 2008, Santee Cooper announced its intent to conduct a MACT analysis for the proposed Pee Dee plant. As discussed in detail in our January 21, 2008 comments to DHEC, the December 7, 2007 Draft PSD/NSPS/NESHAP Construction Permit No. 1040-0113-CA (the “Draft Permit”) issued for the Pee Dee plant on does not contain MACT limits for mercury or other hazardous air pollutants the plant would emit, and Santee Cooper has not otherwise obtained a MACT determination for HAPs that would be emitted from the Pee Dee plant. We therefore welcome Santee Cooper’s announcement that it will conduct the legally required MACT analysis for the Pee Dee plant.

In addition to Santee Cooper’s announced intent to perform a MACT analysis, applicable regulations make it clear that DHEC must perform a thorough, independent review of Santee Cooper’s MACT analysis, and must make a case-specific MACT determination for mercury and all other HAPs that the Pee Dee plant would emit. To meet legal requirements, a MACT analysis must look beyond “add-on” pollution controls and emissions limits for a supercritical pulverized coal plant such as Santee Cooper has proposed, and must instead require consideration of similar sources such as coal gasification or ultrasupercritical generating facilities. At a minimum, DHEC must then provide opportunity for public comment on the draft

determination before issuing a final Notice of MACT Approval or other MACT determination. S.C. Reg. 61-62.63, Section 63.43(h).

Because a proper MACT analysis will go to the heart of the generating technology itself and could therefore result in a substantially different plant design, utilities and regulators in other states have made the prudent decision to suspend permitting activities pending completion of the MACT process. For example, Entergy Louisiana LLC recently sought and obtained a suspension of proceedings after informing the Louisiana Public Service Commission that, like Santee Cooper, it was seeking a case-by-case MACT determination for its Little Gypsy plant pursuant to § 112(g) of the Clean Air Act, and was delaying the start of construction pending completion of that process, which it expected to last several months. In Texas, the State Office of Administrative Hearings recently ordered an indefinite abatement of permitting proceedings to allow NRG Texas Power LLC to file a MACT application with the state environmental agency for a new coal-fired unit at the utility's Limestone plant. Here, the appropriate course would be for DHEC to suspend all air permitting for the Pee Dee plant pending completion of the MACT analysis and determination, and then re-issue the Draft Permit in its entirety for public comment once that process is complete. This procedural course is consistent with the Clean Air Act's preconstruction permitting requirements, which require the permit applicant to demonstrate that "emissions from construction or operation of [the] facility will not cause, or contribute to, air pollution in excess of . . . any other applicable emissions standard or standard of performance under this chapter." 42 U.S.C. § 7475 (a)(3)(C).

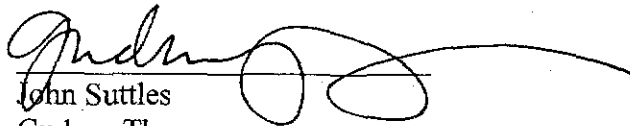
Full and fair opportunity for public comment on the MACT determination for Santee Cooper's proposed Pee Dee plant is critically important given the health risks of mercury and other HAPs the plant would emit. Mercury emissions, in particular, are a serious concern to the many South Carolina citizens who live and recreate in the areas of South Carolina's coastal plain and coastline where waters—including the Great Pee Dee River—are under fish consumption advisories due to high levels of this potent neurotoxin. These citizens deserve a meaningful opportunity to comment on the pollution controls and emissions limits for mercury proposed for the Pee Dee plant. Members of the public will also want to comment on control technologies and limits for the full range of other hazardous air pollutants that the Pee Dee plant would emit, including acid gases, selenium, dioxins, arsenic, and other heavy metals. Given the intense public interest in this project and the technical nature of the issues involved, we respectfully request that BAQ allow at least 90 days for written public comment on any draft MACT determination for the Pee Dee plant, and that BAQ hold at least three evening public hearings, in Columbia, Charleston, and Myrtle Beach, as well as a hearing in a community near the site of the proposed plant.

Thank you for your consideration of this request. Pursuant to S.C. Code Ann. 44-1-60, we are formally requesting that you provide the undersigned with prompt notice in writing via certified mail of any decision or determination taken on any permit, license or certification for

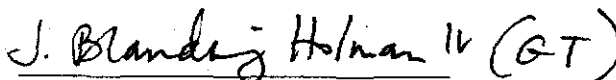
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the Pee Dee plant or associated facilities. Please do not hesitate to contact us if you have any questions or wish to discuss this matter.

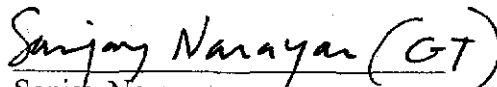
Sincerely,



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cc: Commissioner Earl Hunter, DHEC  
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