BEFORE THE ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY

In the Matter of TransAlta Generation, L.L.C.
913 Big Hanaford Road, Centralia, Washington

Permit No. SW98-8-R3
SIC Code 4911
AIRS No. 53-041-10010
Petition No. V-2009-_____

Title V Permit Issued by Southwest Clean Air Agency
on September 16, 2009

PETITION REQUESTING THE ADMINISTRATOR OBJECT TO ISSUANCE OF THE PROPOSED TITLE V OPERATING PERMIT FOR THE TRANSALTA CENTRALIA GENERATION, L.L.C. COAL-FIRED POWER PLANT

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INTRODUCTION

Pursuant to § 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), the Sierra Club, National Parks Conservation Association, and Northwest Environmental Defense Center ("Conservation Petitioners") petition the Administrator of the United States Environmental Protection Agency to object to the Title V Operating Permit for the TransAlta Centralia Generation L.L.C. ("TransAlta"), coal-fired power plant located in Centralia, Washington (the "Coal Plant"), Permit Number SW98-8-R3 (the "Permit"). The Southwest Clean Air Agency ("SWCAA") proposed the Permit more than 45 days ago. A copy of the Permit is enclosed with this Petition as Document 1 in the Appendix.[1] The Conservation Petitioners base their objection on their comments on the Permit submitted on July 2, 2009. A copy of the Conservation Petitioners' comments is Document 2 in the Appendix. SWCAA responded to the comments by posting its response on the SWCAA website. A copy of the website response is Document 3 in the Appendix.

PROCEDURAL BACKGROUND

SWCAA published the draft Permit on May 15, 2009. SWCAA gave Earthjustice and the clients Earthjustice represented (Conservation Petitioners) until July 2, 2009 to submit comments on the proposed Permit. Conservation Petitioners submitted comments to SWCAA on July 2, 2009. SWCAA provided a copy of the proposed Permit to the U.S. Environmental Protection Agency ("EPA") on July 21, 2009. On July 22, 2009, Conservation Petitioners provided EPA with a copy of the comments requesting that EPA object to the Permit within the 45 days afforded EPA under 42 U.S.C. § 7661d(b)(2). EPA took no action within the 45-day period and on September 16, 2009, SWCAA issued the Permit.

[1] Documents and other citations herein are included in the Appendix to this Petition, provided on the enclosed compact disc.

This Petition is filed within sixty days following the end of EPA's 45-day review period, as required by § 505(b)(2) of the Clean Air Act ("CAA"), 42 U.S.C. § 7661d(b)(2). The Administrator must grant or deny this Petition within 60 days of its filing. Id. If the Administrator determines that the Permit does not comply with the requirements of the CAA or fails to include any applicable requirement, she must object to issuance of the permit under 42 U.S.C. § 7661d(b)(2). Applicable requirements include all provisions of the State of Washington State Implementation Plan ("SIP"), any Prevention of Significant Deterioration or New Source Review requirements, and any standard or requirement under CAA § 111, 112, 114(a)(3) or 504. Id.; 40 C.F.R. § 70.2.

SUMMARY OF PETITION ARGUMENTS

Conservation Petitioners request that the Administrator object to the Permit because the Permit fails to comply with Washington law as incorporated in and applied by the Washington SIP in that the Permit:

1) fails to provide for the control of carbon dioxide emissions, an air contaminant that is detrimental to human health and welfare, property, and business;

2) fails to provide for the control of mercury emissions, an air contaminant that is detrimental to human health and welfare, property, and business;

3) fails to provide for adequate control of nitrogen oxide emissions, an air contaminant that is detrimental to human health and welfare, property, and business;

4) fails to require Reasonably Available Control Technology for the control of carbon dioxide emissions or for mercury emissions.

Conservation Petitioners further request that the Administrator independently review the Permit's "general duty" language in Req.-28 (page 16 of the Permit) regarding start-up, shut-down, and malfunction ("SSM") and relaxation of certain emission standards in the Permit

during SSM as potentially in violation of the Court's ruling in Sierra Club v. Environmental Protection Agency, 551 F.3d 1019 (D.C. Cir. 2008). [2]

SPECIFIC OBJECTIONS

I. WASHINGTON'S STATE IMPLEMENTATION PLAN REQUIRES CONTROL OF ALL AIR CONTAMINANTS THAT ARE DETRIMENTAL TO HUMAN HEALTH AND WELFARE OR THAT ARE DAMAGING TO PROPERTY OR BUSINESS.

Each Title V permit must include "enforceable emission limitations and standards, a schedule of compliance…and such other conditions as are necessary to assure compliance by the source with all applicable requirements of [the] Act, including the requirements of the applicable implementation plan." 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.1. See also Washington Administrative Code ("WAC") 173-401-605.

Washington's SIP incorporates the provisions of WAC 173-400-040(5) as General Standards for Maximum Emissions. 40 C.F.R. § 52.2479.[3] WAC 173-400-040(5) provides that:

> No person shall cause or permit the emission of any air contaminant from any "source" if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

An air contaminant is defined to include vapor and gas, and air pollution is the presence of one or more air contaminants in such quantities or characteristics as to be or likely to be injurious to human health, plant, or animal life, or property or that unreasonably interferes with the enjoyment thereof. Revised Code of Washington ("RCW") 70.94.030; WAC 173-400-030.[4]

[2] Conservation Petitioners did not raise the SSM argument in their permit comments as the implications of the case law were still being analyzed. Conservation Petitioners raise the issue here to alert EPA to the problem so that EPA may independently assess whether amendments are necessary to the Permit in order to conform to the current requirements of federal law.

[3] SWCAA's regulations contain the same language and requirements as WAC 173-400-040(5) in SWCAA 400-040(5).

[4] WAC 173-400-030 is incorporated in full into Washington's SIP. 40 C.F.R. § 52.2479.

The Permit fails to include emissions limitations consistent with these applicable provisions of Washington's SIP and is therefore in violation of Title V of the Clean Air Act.

II. THE PERMIT CONTAINS NO LIMITATION OR STANDARDS FOR CARBON DIOXIDE EMISSIONS FROM THE PLANT.

A. The Plant's Uncontrolled Carbon Dioxide Emissions Are Detrimental To Human Health And Welfare And Are Damaging To Property And Business.

The EPA estimates that 40% of the global warming pollutant carbon dioxide ("CO_2") emitted in the United States, comes from coal-fired power plants such as the TransAlta plant in Centralia, Washington.[5] During the years that TransAlta has owned and operated the Plant, it has emitted an average of 10 million metric tons of CO_2 comprising roughly 10% of the total greenhouse gas emissions for the entire State of Washington.[6]

As recognized by the EPA in its proposed Endangerment Findings regarding six greenhouse gases, 74 Fed. Reg. 18886 et seq. (April 24, 2009), and by the international Intergovernmental Panel on Climate Change ("IPCC"), the emission of greenhouse gases, in particular CO_2, is causing and/or contributing to the rapid deterioration of our climate.[7] This in turn is adversely affecting human health, welfare, and economies around the world. As found by the IPCC and the EPA, adverse impacts from greenhouse gases such as CO_2 are "unequivocal"[8]

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[5] U.S. Environmental Protection Agency, "Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2005," April 2007, (based on calculation of emission from table 3-1 and 3-3 by National Parks Conservation Association).

[6] Washington Department of Community, Trade, and Economic Development, "Washington State Greenhouse Gas Inventory and Reference Case Projections," 1990-2020 (Dec. 2007), http://www.ecy.wa.gov/climatechange/docs/WA_GHGInventoryReferenceCaseProjections_1990-2020.pdf.

[7] Intergovernmental Panel on Climate Change, Fourth Assessment Report, Summary for Policymakers (2007); http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf.

[8] Id. at 2.

and "[i]t is the Administrator's judgment that the total body of scientific evidence *compellingly* supports a positive endangerment finding for both public health and welfare."[9]

In Washington, the emission of greenhouse gases such as the enormous amounts of CO_2 from the Plant, have already caused significant adverse changes to Washington's and the region's climate with attendant adverse impacts on human health, welfare, and the economy. [10] The continued unchecked emission of CO_2 from the Plant will contribute to and worsen of the situation. For example, snowpack declines will decrease water availability throughout the region, for human, commercial, and industrial use.[11] In the last 50 years, the total mass of North Cascades National Park's glaciers—the largest glaciated area in the lower 48 states--has been reduced by 80 percent.[12] Predicted changes in precipitation and temperature patterns will also bring greater extreme precipitation events, increase forest fires, and adversely affect agriculture,

[9] 74 Fed. Reg. at 18888 (emphasis added).

[10] Conservation Petitioners hereby incorporate the entirety of the Permit comments, Document 2, Appendix, which set forth adverse effects from CO_2 emissions in detail. Conservation Petitioners provide a summary of the comments in this Petition. The documents cited in the Permit comments are also part of the Appendix to this Petition on the enclosed compact disc.

[11] Littell, J.S., et al., (eds.), Climate Impacts Group, The Washington Climate Change Impacts Assessment: Evaluating Washington's Future in a Changing Climate-Executive Summary, at 8 (2009); www.cses.washington.edu/db/pdf/wacciaexecsummary638.pdf. (hereinafter "CIG Report").

[12] D. Granshaw, "Glacier Change in North Cascades National Park Complex, Washington State, U.S.A., 1957-1998" (Master's Thesis, Portland State University, 2001).

sea level, and hydro-power generation.[13] Worsening air quality, brought on by climate deterioration, will also result in increased deaths in the region.[14]

B. CO_2 Must Be Addressed In The Title V Permit.

CO_2 from the Plant meets the definition of an air contaminant under Washington law, applied through the SIP. It is a gas that, as set forth above, is injurious to human health, to ecosystems in Washington, and to Washington's economy.

CO_2's status as an air contaminant has been confirmed at both the federal and state levels. The U.S. Supreme Court has rejected any argument that CO_2 does not constitute an "air pollutant" under the Clean Air Act, finding that EPA has the statutory authority to regulate greenhouse gases, including CO_2 under federal law. Massachusetts v. EPA, 549 U.S. 497 (2007). EPA is currently engaged in just such regulatory process for CO_2 and other greenhouse gases. 74 Fed. Reg. 18886 et seq. (April 24, 2009). Moreover, the State of Washington, through Executive Order 09-05 (May 21, 2009), has explicitly acknowledged that "greenhouse gases are *air contaminants within the meaning of the state's Clean Air Act* and pose a serious threat to the health and welfare of Washington's citizens and the quality of the environment." (emphasis added.) [15]

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[13] CIG Report at 2, 10, and 31-32; United States Geological Survey, "Vulnerability of U.S. National Parks to Sea-Level Rise and Coastal Change" (September 2002) (citing Intergovernmental Panel on Climate change, 2001); Niemi, E., Climate Leadership Initiative, "An overview of Potential Economic Costs to Washington of a Business-As_usual Approach to Climate Change," at iv and 16 (February 2009); http://climlead.uoregon.edu/pdfs/Inaction_WA_FnlRpt.pdf (hereinafter "CLI Report").

[14] CLI Report at 34-37.

[15] See also, Testimony of Stuart Clark, Washington Department of Ecology, on behalf of the Climate Change Committee of the National Association of Clean Air Agencies, May 2009 Hearings on EPA's proposed endangerment findings, Seattle, Washington, enclosed Appendix.

The TransAlta Plant is emitting and/or permitted to emit and will emit, CO_2 air contaminants that are detrimental to human health and welfare, and that are damaging to property and business. The Permit contains no limitations or schedule of compliance regarding CO_2 from the Plant. Therefore, the Permit fails to include, or conform to, all applicable requirements of Washington's SIP.

III. THE PERMIT CONTAINS NO EMISSIONS LIMITATION OR STANDARDS FOR MERCURY EMISSIONS FROM THE PLANT.

A. The Plant's Uncontrolled Mercury Emissions Are Detrimental To Human Health And Welfare And Are Damaging To Property And Business.

According to the EPA's 1999 National Emissions Inventory, coal-fired power plants are the largest source of human-caused mercury air emissions in the U.S., accounting for approximately 40% of the U.S. total.[16] A recent report by the California Energy Commission confirms that coal-fired power plants are the number one source of mercury air pollution in North America.[17] Reports for 2007 at the Plant reflect a combined mercury emission (just for the coal-fired units) of a little over 372 pounds for the year, making it the largest emitter of mercury in the state.[18]

Mercury is a toxic pollutant which, when release into the atmosphere from coal plants and other sources, deposits into lakes, rivers, streams and the ocean where it bioaccumulates in fish.[19] Ingestion of fish by humans leads to a variety of health problems, particularly for fetuses

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[16] See also http://www.epa.gov/mercury/about.htm and http://www.epa.gov/mercury/reportover.htm.

[17] California Energy Commission; http://www.cec.org/trio/stories/pring.cfm?varian=Englis&ed=13&ID=148

[18] Mercury Summary for 2007 and Air emissions Inventory for 2007, emissions units 1 and 2. Documents from SWCAA file for TransAlta Centralia Generation, L.L.C Centralia coal plant.

[19] See generally EPA information regarding mercury, e.g. http://publicaccess.custhelp.com/cgi-bin/publicaccess.cfg/php/enduser/std_adp.php?p_faqid=1824&p_created=1106159090&p_sid=z

or children (whose nervous systems are still developing, making them particularly vulnerable to neurotoxins like mercury.)[20] Nationwide, approximately 6-8% of women of childbearing age are at risk of having mercury blood levels that exceed levels associated with a variety of health risks and as a result, hundreds of children are born each year at risk of mercury-caused learning disabilities and other developmental problems.[21]

Mercury contamination of fish will also adversely affect Washington's fishing and tourism economies. For example, the National Park Service ("NPS") recently reported that Olympic and Mt. Rainier National Parks show high levels of mercury contamination in snow and in fish in mountain lakes. Some fish sampled exceeded health thresholds for human consumption while all fish from both parks exceeded health thresholds for one or more species of fish-eating wildlife.[22]

B. Mercury Must Be Addressed In The Title V Permit.

Mercury is clearly an air contaminant as defined by Washington law and it is recognized as a hazardous air pollutant by EPA. The Plant is emitting and/or permitted to emit and will emit, mercury air contaminants that are detrimental to human health and welfare and damaging to property and the economy. The Permit contains no limitations or schedule of compliance

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[20] Id.

[21] Report to Congress ; U.S. Centers for Disease Control, Blood Mercury Levels in Young Children and Childbearing-Aged Women – United States, 1999-2002 (Nov. 5, 2004); Trasande, L., Landrigan, P.J., and Schechter, C., *Public Health and Economic Consequences of Methyl Mercury Toxicity to the Developing Brain.* Environmental Health Perspectives, 113(5), 590-596 (May 2005). See also http://www.epa.gov/ttn/atw/hlthef/mercury.html. See also Permit Comments and Appendix to this Petition.

[22] http://www.nps.gov/olym/parknews/airborne-contaminants-study-released.htm. Western Airborne Contaminant Project, Feb. 2008.

regarding mercury from the Plant despite the fact that mercury control technologies are achieving mercury emissions reductions of 90% or more at coal-fired power plants.[23] Therefore, the Permit fails to include, or conform to, all applicable requirements of Washington's SIP. See 40 C.F.R. § 52.2479; WAC 173-400-040(5).

IV. THE PERMIT CONTAINS INADEQUATE EMISSIONS LIMITATIONS OR STANDARDS FOR NITROGEN OXIDE EMISSIONS FROM THE PLANT.

A. The Plant's Inadequately-controlled Nitrogen Oxide Emissions Are Detrimental To Human Health And Welfare And Are Damaging To Property And Business.

On an annual basis, TransAlta's Centralia Plant emits approximately 12,000-16,000 tons of nitrogen oxides ("NOx").[24] This large contribution to the region's NOx pollution has long been a cause for concern by the National Park Service. On August 2, 1995, the NPS corresponded with SWCAA regarding the Plant's emissions and visibility impairment in the region's Class I areas. In particular, the NPS formally notified SWCAA that:

> Specifically, in the language of the regulation, the Centralia Power Plant is an existing stationary facility which may reasonably be anticipated to….contribute to impairment of visibility….in mandatory Class I Federal area[s] where the impairment is reasonably attributable to the power plant.[25]

Soon thereafter, on October 16, 1995, the NPS also notified the Washington Department of Ecology that NPS studies:

> Demonstrate that the Centralia Power Plant emissions contribute to visibility impairment and acid deposition in one or more Class I national park and wilderness areas in Washington. We request that you review and, if appropriate, confirm our finding of reasonable attribution, with respect to the Centralia Power Plant.[26]

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[23] U.S. Government Accountability Office, "Mercury Control Technologies at Coal-Fired Power Plants Have Achieved Substantial Emissions Reductions," GAO-10-47 (October 2009).

[24] EPA emissions database: http://camddataandmaps.epa.gov/gdm/index.cfm.

[25] A copy of the August 1995 letter is included in the Appendix as Document 50.

[26] A copy of the October 1995 letter is included in the Appendix as Document 51.

More recently, TransAlta's regional haze CALPUFF modeling, submitted to the Washington Department of Ecology in January of 2008, demonstrates that the Plant is causing visibility impairment in Mt. Rainer and in Olympic National Parks (in addition to many other Class I areas in the state and region.)[27] For example, TransAlta's modeling shows adverse impacts from the Plant's current NOx emissions to be worse than three deciviews—three times greater than EPA's causation threshold—on at least eight days in a year.[28] According to the NPS, this Plant alone affects the largest number of Class I areas as compared to any other single power plant in the U.S. The NPS recently (since the submission of comments on this Permit), reiterated and emphasized its findings regarding the adverse impacts of the Plant on Washington's Class I areas in testimony at a public meeting at the Department of Ecology on October 13, 2009.[29] Finally, nitrogen deposition in National Parks is an increasing concern as it has the potential to degrade aquatic systems and change vegetative cover with adverse impacts on habitat and species dependent upon that habitat.[30]

B. NOx Must Be More Stringently Controlled in the Permit.

Nitrogen oxides are air contaminants under applicable law. As set forth above and in Conservation Petitioners' comments, NOx emissions are having a detrimental effect on the

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[27] TransAlta Extinction Budget for Design Days, see Appendix with this Petition.

[28] Id.

[29] See transcript of testimony of Mt. Rainier Superintendant Randy King, October 13, 2009, Appendix, Document 52.

[30] See "The Environmental Impacts of Nitrogen Pollution in the Pacific Northwest," scientific literature review prepared by Northwest Environmental Defense Center, included in the Appendix to this Petition. See also Blett, T. and K. Morris, "Nitrogen Deposition: Issues and Effects in Rocky Mountain National Park Technical Background Document"; http://www.cdphe.state.co.us/ap/rmnp/noxtech.pdf. and http://www.cdphe.state.co.us/ap/rmnp/RMNPBlett.pdf. See also EPA, "Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur, Final, September 2009.

general welfare, the state's property, and business. While the Permit provides for the continuation of existing NOx controls at the Plant, those controls are obviously inadequate to prevent the significant adverse impacts NOx emissions from the Plant are presently having on visibility in numerous Class I areas.[31] Further, it is clear that other, better controls are readily available as noted in the NPS's comments, most notably Selective Catalytic Reduction ("SCR") controls.[32] The Permit's failure to include SCR controls for NOx, as well as the fact that NOx emissions from the Plant are continuing to have a detrimental effects on human health, safety, welfare, and business, means that the Permit fails to conform to all applicable requirements of the Washington SIP. See 40 C.F.R. § 52.2479; WAC 173-400-040(5).

V. WASHINGTON'S STATE IMPLEMENTATION PLAN REQUIRES ALL EMISSIONS UNITS TO, AT A MINIMUM, USE REASONABLY AVAILABLE CONTROL TECHNOLOGY TO CONTROL AIR CONTAMINANTS.

Washington's SIP also incorporates the provisions of WAC 173-400-040 which require that all emissions units are required to use reasonably available control technology (RACT) for the control of air contaminants. "[A]ll emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of any chapter of Title 173 WAC." Id. Where current controls are determined to be less than RACT, the permitting authority *shall* define RACT for each source and issue a regulatory order requiring the installation of RACT. Id. (emphasis added.) See also RCW 70.94.154 RACT Requirements.

[31] Conservation Petitioners recognize that the State of Washington is currently engaged in the process of determining Best Available Retrofit Technology ("BART") for NOx for the Plant. While Conservation Petitioners will comment on the proposal for BART for the Plant as well as the State's haze SIP, Conservation Petitioners point out that WAC 173-400-040(5) and Washington's SIP provide an independent obligation for SWCAA to control NOx air contaminants from the Plant in order to protect National Parks, wilderness areas, and aquatic and alpine ecosystems throughout the region.

[32] See also Report of Ranajit Sahu, Ph.D., Appendix, Document No. 54.

The Plant employs no controls for CO_2 or mercury emissions, RACT or otherwise, and SWCAA has made no RACT determinations for the Plant for either pollutant. The failure to include any emissions limitations for CO_2 or mercury in the Permit violates the RACT requirements of the Washington SIP.

VI. SWCAA'S RESPONSE TO CONSERVATION PETITIONERS' COMMENTS CONFIRMS SWCAA'S MISUNDERSTANDING OF ITS TITLE V OBLIGATIONS AND THE FAILURE OF THE PERMITTING ENTITY TO ENSURE THAT THE PERMIT MEETS ALL APPLICABLE REQUIREMENTS UNDER THE SIP.

In its response to Conservation Petitioners' comments, SWCAA argues that it cannot abide by the requirements of Washington's SIP because "the Air Operating Permit Program does not, and can not, impose substantive new requirements on sources" and that the "federal and state Air Operating Permit Program does not authorize or allow any agency, including SWCAA, to impose new emission or operating limits on a facility." (SWCAA response to comments, emphasis in original.) SWCAA's understanding of its Title V obligations for this Permit is incorrect.

SWCAA must ensure that the Title V permits it issues comply with all applicable requirements, including the SIP. The Washington SIP prohibits the emission of any air contaminant that is detrimental to public health, welfare, business or property. WAC 173-400-040(5). It also requires that all emissions units be required to use RACT to control emissions. WAC 173-400-040. These are not "new" or additional substantive requirements in that they have existed for years. See WAC 173-401-100(6). SWCAA and TransAlta's violation of these provisions in the past does not render them "new" or "additional" for the purposes of this Permit.

SWCAA apparently believes that its obligations under Title V are simply ministerial with no need for the permitting agency to engage in analysis and decision-making that will protect human health, welfare, or property. SWCAA emphasizes that only if new requirements are

imposed by rule (apparently by some agency other than SWCAA as evidenced by SWCAA's response regarding mercury), by permit (this reference is especially confounding given that the comments and response are all about the only air permit in existence or required for the Plant), or by regulatory order (again, apparently one issued by some agency other than SWCAA), would SWCAA dutifully copy such requirements into the piece of paper it is issuing under Title V. It appears from SWCAA's response to comments, that SWCAA considers only those air emission requirements that are part of one of these three processes to be "applicable requirements." This is clear legal error on the part of SWCAA as the Clean Air Act clearly provides that the SIP is also an applicable requirement as that term is used for the purposes of Title V permits.

SWCAA's response to the mercury and CO_2 issues is particularly distressing and calls into serious question SWCAA's understanding of the point of its existence and role, at least as to Title V permits. SWCAA argues that it can only include a limit on the Plant's mercury or CO_2 emissions after the federal government completes mercury rules and/or rules regarding the control of greenhouse gases. SWCAA's statements ignore its independent obligations under the SIP, WAC 173-400-040, and exhibit a lack of understanding of the basics of the Clean Air Act which clearly provides that states (and in this instance local entities created by the state) can always regulate air pollutants more stringently than the Clean Air Act and/or federal regulation. 42 U.S.C. § 7416; Exxon Mobil Corp. v. EPA, 217 F.3d 1246, 1255 (9th Cir. 2000) ("Air pollution prevention falls under the broad police powers of the states, which include the power to protect the health of citizens in the state."). See also RCW 90.74.380(2) ("Nothing in this chapter shall be construed to prevent a local or regional air pollution control authority from adopting and enforcing more stringent emission control requirements than those adopted by the department of ecology…").

Finally, SWCAA's failure to make a RACT determination and to issue an order for control of CO_2 and mercury pollutants from the Plant does not excuse the lack of emission requirements, RACT or otherwise, in the Permit. SWCAA, in its Response to Comments submits that it cannot include RACT emission limits in the Permit because it has not yet issued rules or a regulatory order on a RACT determination. First, Washington law provides that for categories where there are fewer than three sources (the case here as the Plant is Washington's only coal-fired power plant), SWCAA may proceed to determine and apply RACT on a case by case basis, without rulemaking. RCW 70.94.154.[33] As to the lack of an order for CO_2 or mercury RACT, SWCAA's arguments are akin to SWCAA asserting that because it has failed in its obligations under one requirement of state and federal law, it is excused from meeting another. The actual legal obligation in the SIP is for all the Plant's emissions units to employ at least RACT for all air contaminants and that those emissions limits must be in the Title V Permit. It is SWCAA's obligation to ensure that the Title V Permit includes emissions limits to meet those requirements, including issuing an order in that regard if SWCAA deems that a necessary step. SWCAA's voluntary failure to take what it deems a necessary step should not serve as a bar to EPA's objection to this Permit.

VII. THE PERMIT'S START-UP, SHUT-DOWN AND MALFUNCTION PROVISIONS APPEAR CONTRARY TO RECENT CASE LAW INTERPRETING THE REQUIREMENTS OF THE CLEAN AIR ACT.

The Permit provides for relaxation of a number of emissions requirements in the Permit. The Permit does this with some specific provisions, for example regarding sulfur dioxide emissions, but also through the use of "general duty" language in Req-28 of the Permit providing

[33] SWCAA may also make a source-specific RACT determination where such a determination is needed to address specific air quality problems for which the source is a significant contributor. The TransAlta Plant is the largest source of CO_2 and mercury in the state.

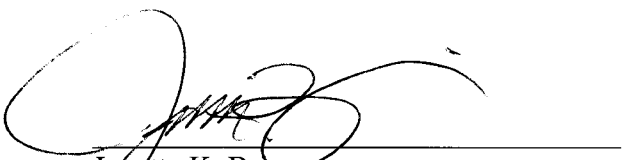
that the Plant must, during start-up, shut-down, or malfunction ("SSM"), operate the plant in a manner consistent with "good" air pollution control practice for minimizing emissions. This type of language was found to be contrary to the plain requirements of section 112 of the Clean Air Act in Sierra Club v. Environmental Protection Agency, 551 F.3d 1019 (D.C. Cir. 2008). Specifically, the court found that EPA's decision to exempt major sources from compliance with section 112 requirements during SSM events was contrary to the requirements in the Clean Air Act for "continuous" emissions controls. The court further found that the general duty language fails to meet the requirement for continuous emissions controls under section 112. Similarly, as to this Permit, Conservation Petitioners request that EPA review the Permit's relaxation of controls and/or general duty language and ensure that the Permit conforms to the requirements of the Clean Air Act as articulated by the court in the Sierra Club v. EPA case.

CONCLUSION

Conservation Petitioners respectfully request that EPA object to the TransAlta Centralia Plant Title V Permit on several grounds. The Permit fails to conform to the requirements of the Washington Administrative Code that are part of the State Implementation Plan in that it allows uncontrolled emissions of CO_2 and mercury from the Plant and inadequately controlled emissions of NOx from the Plant, all of which are detrimental to human health, safety, and welfare and cause damage to property and business. Further the uncontrolled emissions of CO_2 and mercury fail to conform to the State Implementation Plan requirement that all emissions units employ Reasonably Available Control Technology to control air contaminants. SWCAA has both the authority and obligation to address these matters in the permit and Conservation

Petitioners request that EPA require changes to the Permit to provide for adequate control of each of these pollutants.

Respectfully submitted this 29th day of October, 2009.



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CERTIFICATE OF SERVICE

STATE OF WASHINGTON)
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COUNTY OF KING)

I make this statement under oath and based on personal knowledge. On this day I caused to be served upon the following persons a copy of Petitioners Sierra Club, National Parks Conservation Association and Northwest Environmental Defense Center to the United States Environmental Protection Agency regarding the TransAlta Generation, L.L.C. Permit No. SW98-8-R3.

To Administrator Jackson via overnight and electronic mail:

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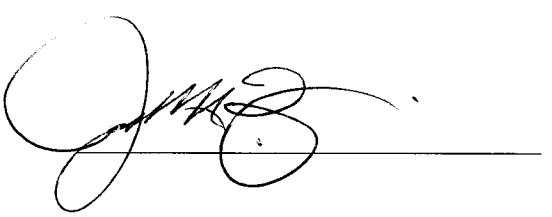
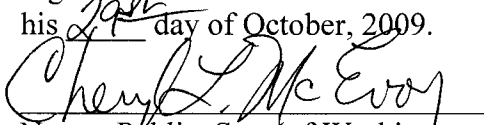
Seattle, Washington 98101

Polly Zehm
Interim Director
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dated: October 29, 2009.



Signed and sworn to before me
his 29th day of October, 2009.



Notary Public, State of Washington
My commission expires: 9/18/2013