

July 20, 2026

via U.S. Certified Mail (return receipt requested)

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RE: Notice of Intent to Sue for Violations of the Clean Air Act

To all recipients:

This letter provides notice that Appalachian Voices and Sierra Club (collectively, “Community Groups”) intend to file suit against the Tennessee Valley Authority (“TVA”) for past and ongoing violations of the federal Clean Air Act, Tennessee’s State Implementation Plan, and the Title V operating permit for the Kingston Fossil Plant, all occurring at the TVA Kingston Reservation located at 714 Swan Pond Road, Harriman, Roane County, TN 37748.

The TVA Kingston Reservation contains an existing coal-fired power plant that was built in the 1950s (“Kingston Coal Plant”). TVA recently began building a new methane gas-fired power plant nearby on the 1,255-acre Reservation. This new power plant consists of a combined-cycle gas-fired turbine, sixteen dual-fuel aeroderivative combustion turbines, and associated equipment such as an auxiliary boiler and fuel heaters (“Kingston Gas Plant”).

Under the Clean Air Act and Tennessee’s federally approved State Implementation Plan, before constructing a new facility or modifying an existing facility, the owner or operator must obtain either a “major” or “minor” New Source Review (“NSR”) permit, depending on how much additional air pollution will result. Major NSR requires permit applicants to evaluate and control harmful air pollution—before beginning construction of the polluting source—by taking specific steps, such as conducting preconstruction air monitoring and air dispersion modeling to determine the project’s impacts on ambient air quality. Major NSR permit applicants must also evaluate and implement up-to-date pollution control technologies to reduce emissions. And finally, the permitting agency must provide the public with a meaningful opportunity to participate in the major NSR permitting process. In contrast, minor NSR does not require those safeguards for pollution control technology and air quality impact assessment and, under Tennessee law, does not require an opportunity for the public to comment on a draft permit or on the permitting agency’s assessment of the permit application.

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Here, before constructing the Kingston Gas Plant, TVA obtained a “minor” NSR permit based on its representations that the Kingston Coal Plant and the Kingston Gas Plant comprise a single stationary source, that construction of the new Gas Plant is a modification of the existing Coal Plant, and that the Coal Plant would retire shortly after the Gas Plant becomes operational. TVA contended that under the federal Project Emissions Accounting rule,¹ the Coal Plant’s historical emissions could be subtracted from the new Gas Plant’s emissions when calculating whether the emissions increases caused by the new Gas Plant would exceed applicable significance thresholds and thus require “major” NSR review. The Tennessee Department of Environment and Conservation (“TDEC”) accepted TVA’s proposal, and the Technical Secretary of the Tennessee Air Pollution Control Board permitted the Kingston Gas Plant as a “minor” modification of the Kingston Coal Plant.

However, TVA has now decided to continue operating the Coal Plant alongside the new Gas Plant, which invalidates TVA’s minor NSR permit. In February 2026, the TVA Board of Directors reversed its prior decision to retire the Kingston Coal Plant by the end of 2027. Because the Coal Plant is no longer slated for retirement, TVA cannot subtract its historical emissions to evade applicability of major NSR for the new Gas Plant. TVA recognizes this and has stated that it plans to submit an application for a major NSR permit for the Kingston Gas Plant. Nonetheless, TVA continues to construct the Kingston Gas Plant without the required major NSR permit, in violation of the Clean Air Act and Tennessee’s federally enforceable State Implementation Plan.

Instead of retiring the Kingston Coal Plant, TVA has decided to invest over \$630 million in life-extending renovations to enable its continued operation beyond 2027. This large capital expenditure to extend the life of the Kingston Coal Plant is part of the same project as the construction of the Kingston Gas Plant and, as a result, is also subject to preconstruction permitting requirements for a major modification under the Clean Air Act and Tennessee’s State Implementation Plan.

The Kingston Gas and Coal Plants together have the potential to emit thousands of tons per year of harmful pollutants such as sulfur dioxide, fine particulate matter, smog-forming nitrogen oxides, and volatile organic compounds.² Further, TVA’s decision to operate *both* plants without undergoing appropriate regulatory review has left communities in Roane County and surrounding areas susceptible to significant increases in harmful air pollution.

Unless the violations detailed below are fully addressed, Community Groups intend to file suit under Section 304 of the Clean Air Act, 42 U.S.C. § 7604, on behalf of their adversely impacted members, in the U.S. District Court for the Eastern District of Tennessee after the applicable notice period has expired. Community Groups intend to seek injunctive relief to (1) stop the unlawful construction of the Kingston Gas Plant until TVA (a) completes and obtains

¹ Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting, 85 Fed. Reg. 74890 (Nov. 24, 2020).

² See TVA, Kingston Fossil Plant: Combined Cycle Project Air Permit-to-Construct Application at 3-1 tbl.3-1 (Oct. 2024), <https://perma.cc/W6WT-6LME> (“October 2024 Minor NSR Permit Application”) (showing Gas Plant’s potential emissions in “KIG” column and showing Coal Plant’s historical emissions in “KIF 1-9 (Retired)” column).

requisite approval of the required preconstruction monitoring and source impact analysis and (b) obtains a valid major NSR permit with enforceable emission limits reflective of the emissions reduction achievable through use of the best available control technology (“BACT”), and (2) stop or prohibit TVA from constructing any unpermitted life-extension modifications at the Kingston Coal Plant. Community Groups also intend to seek civil penalties for past and ongoing violations, fees and costs of litigation, and such other relief as the court deems appropriate to address the ongoing violations.

TVA’s mission as a public power provider does not entitle it to proceed with unlawful construction of a project that significantly increases air pollution at the expense of clean air and the health of the region’s communities. If you would like to discuss any factual or legal issues set forth in this letter, or a possible resolution of this matter during the notice period, please contact the undersigned attorneys.

I. FACTUAL BACKGROUND

A. TVA’s Kingston Coal Plant has been operating for more than seventy years.

Construction of the Kingston Coal Plant began in 1951.³ Constructed “principally to satisfy the tremendous power load demanded by the atomic installations at near-by Oak Ridge,”⁴ the Kingston Coal Plant is comprised of nine coal-fired boilers as well as coal and ash handling operations.⁵ Burning “as much coal in a day as could be carried in a coal train two miles long,”⁶ the Kingston Coal Plant was the largest coal-burning power plant worldwide when it was built.⁷

The Kingston Coal Plant’s impacts on the local community and surrounding environment are as old as the plant itself. In 1956, just one year after construction was completed, a U.S. Senator from Tennessee introduced a bill entitled “Providing for the adoption by the Tennessee Valley Authority of measures designed to eliminate the air-pollution problem in Kingston, Tenn., occasioned by the operation of steam plants by such Authority.”⁸ By 1967, one source attributed the death of 90% of white pine trees surrounding the Kingston Coal Plant to its emissions of sulfur dioxide (“SO₂”).⁹ Into the 1970s, TVA fought against regulating SO₂ emissions from coal plants, warning on one occasion that air pollution regulation could result in “shutdown or curtailed

³ *TVA’s Kingston Steam Plant Opens for First Time to Public April 12*, Elizabethton Star (Elizabethton, Tenn.), Apr. 3, 1958, at 7.

⁴ *Kingston Steam Plant Finish Celebrated*, The Knoxville News Sentinel, Nov. 17, 1955, at 18.

⁵ State of Tenn. Air Pollution Control Bd. Dep’t of Env’t & Conservation, Operating Permit (Title V) No. 572149 at 15, 22 (Aug. 3, 2021), <https://perma.cc/5TJW-VQYZ> (“Title V Permit No. 572149”).

⁶ *TVA’s Kingston Steam Plant Opens for First Time to Public April 12*, Elizabethton Star (Elizabethton, Tenn.), Apr. 3, 1958, at 7.

⁷ *Kingston Fossil Plant*, TVA, <https://perma.cc/XX9D-6SG8> (last visited July 15, 2026).

⁸ S. 3020, 84th Cong. (1956).

⁹ Hal Herd, *Smog Harm To Crops Up*, The Nashville Tennessean, Jan. 1, 1967, at 8-A.

operation.”¹⁰ In 1978, TVA settled with the U.S. Environmental Protection Agency (“EPA”), states, and environmental groups for a historic one billion dollars over excessive air pollution at the Kingston Coal Plant and several other TVA-owned power plants.¹¹ EPA estimated this settlement would “result in millions of dollars in health benefits from reductions in such diseases as asthma and emphysema, and untold millions more in protection for crops and watersheds from acid rain and other plagues.”¹²

In 2008, a retaining wall surrounding part of the coal ash stored at the Kingston Coal Plant broke, releasing 5.4 million cubic yards of wet, toxic coal ash into the surrounding area, contaminating nearby waters and exposing countless workers to dangerous toxins during the clean-up efforts that followed.¹³ TVA settled with EPA regarding this release.¹⁴

In 2011, TVA again settled with EPA, states, and environmental groups for power plant pollution that violated Clean Air Act requirements, including making emissions-increasing modifications to numerous coal-fired units such as those at the Kingston Fossil Plant without the required preconstruction permits.¹⁵

Coal plants have ruinous effects on local air quality and public health anywhere they are located, but the Kingston Fossil Plant’s emissions cause additional adverse impacts because the Plant is situated in the foothills of a mountain range treasured for its scenic views. The Kingston Fossil Plant is less than 50 miles away from Great Smoky Mountains National Park, which is the most visited National Park in the country and “largely known as a scenic and biologically diverse area.”¹⁶ Yet according to the National Park Service, the Great Smoky Mountains “experience[] some of the highest measured air pollution of any national park” in the country.¹⁷ SO₂ emissions from the Kingston Fossil Plant have long played a part in “killing foliage in the nearby Great

¹⁰ *TVA Warns Operations May Be Curbed*, The Knoxville News Sentinel, Aug. 10, 1972, at 1.

¹¹ Wire Reports, *TVA Settles History’s Largest Pollution Suit*, The Tennessean, Dec. 15, 1978, at 38; *T.V.A. Agrees to Spend \$1 Billion To Clean Up Air at Power Plants*, The New York Times (Dec. 15, 1978), <https://perma.cc/5JFQ-93LG>.

¹² Wire Reports, *TVA Settles History’s Largest Pollution Suit*, The Tennessean, Dec. 15, 1978, at 38.

¹³ Joel K. Bourne, Jr., *Coal’s Other Dark Side: Toxic Ash that Can Poison Water and People*, Nat’l Geographic (Feb. 19, 2019), <https://perma.cc/KM2L-ZRTK>.

¹⁴ Administrative Order and Agreement on Consent at 6–7, *TVA Kingston Fossil Fuel Plant Release Site*, CERCLA-04-2009-3766 (EPA Region 4 May 11, 2009), <https://perma.cc/M6HF-A7LJ>.

¹⁵ U.S. Env’t Prot. Agency, *Tennessee Valley Authority Clean Air Act Settlement*, <https://perma.cc/EBB2-KBGG>.

¹⁶ Hannah Butler, *America’s Most Visited and Most Polluted Park: The Fight to Clear the Smokies*, The Western Carolinian, Nov. 6, 2025, <https://perma.cc/Y73E-VMKG>.

¹⁷ *Air Quality at Great Smoky Mountains National Park*, Nat’l Park Serv., <https://perma.cc/X4TN-3RZF> (last updated Sep. 23, 2024).

Smoky Mountains National Park” and contributing to “the haze and acid rain that limits mountain views.”¹⁸

B. TVA decided to retire the deteriorating Kingston Coal Plant by the end of 2027 and received a minor NSR permit for construction of the Gas Plant based on that retirement date.

In 2021, TVA completed an evaluation of its aging coal fleet. Following that evaluation, TVA staff recommended retiring its entire coal fleet by 2038.¹⁹ Specifically, for the Kingston Coal Plant, TVA decided to decommission and demolish all nine coal-fired units by the end of 2027.²⁰ According to TVA, its fleetwide evaluation “confirmed that TVA’s aging coal fleet is among the oldest in the nation and is experiencing deterioration of material condition and performance challenges.”²¹ TVA determined that its aging coal fleet would increasingly face performance challenges and that “the continued, long-term operation of TVA’s coal plants, including [the Kingston Coal Plant], may increase environmental, economic, and reliability risks, and the aging infrastructure at [the Coal Plant], built between 1951 and 1955, exacerbates these risks.”²²

TVA noted that the need to operate the Kingston Coal Plant at full capacity had decreased over the last ten to fifteen years, leading to fluctuating use of the plant that exacerbated its reliability challenges.²³ TVA also found that continued operation of the Kingston Coal Plant would be “likely to result in cascading delays for the later planned retirements in TVA’s phased 2035 coal fleet retirement plan and cause delay in TVA’s plans to integrate more solar and storage assets onto the system.”²⁴ As a result, TVA determined that retiring the Kingston Coal Plant was the best course of action, because “[c]ontinued operation of [Kingston Coal Plant] beyond 2027 would create operational, and therefore reliability risks in TVA’s system due to the deteriorating condition of the coal units.”²⁵

¹⁸ The Associated Press, *Creating a Landfill to Have Cleaner Air*, The New York Times, Nov. 7, 2009, <https://perma.cc/BBC5-N2SY>.

¹⁹ Environmental Impact Statement for Cumberland Fossil Plant Retirement, Notice of Intent, 86 Fed. Reg. 25933, 25934 (May 11, 2021) (“Notice of Intent”); TVA, *Aging Coal Fleet Evaluation* at 12 (May 2021), <https://perma.cc/C6N5-BM2M>.

²⁰ Kingston Fossil Plant Retirement Environmental Impact Statement, Record of Decision, 89 Fed. Reg. 24557, 24558 (Apr. 8, 2024) (“Record of Decision”).

²¹ *Id.*

²² Record of Decision, 89 Fed. Reg. at 24558; *see also* TVA, *Aging Coal Fleet Evaluation* at 8 (May 2021), <https://perma.cc/C6N5-BM2M>.

²³ Record of Decision, 89 Fed. Reg. at 24558.

²⁴ *Id.*

²⁵ *Id.*

As part of its most recently submitted regional haze plan,²⁶ TDEC relied on Particulate Matter Source Apportionment Technology (“PSAT”) modeling to evaluate visibility impacts of the sources that it expected to have the greatest impact on special places such as national parks and wilderness areas.²⁷ The PSAT modeling showed that due to high SO₂ emissions from the Kingston Fossil Plant, TDEC was obligated to evaluate the feasibility and cost-effectiveness of implementing additional emissions reduction measures at the facility.²⁸ However, TDEC avoided performing this required evaluation based on TVA’s commitment to convert the Kingston Coal Plant from a baseload asset to a peaking asset “beginning in 2026” and to retire all nine coal-fired units by the end of 2027.²⁹

To replace generation from the retired coal plant, TVA decided to construct the Kingston Gas Plant: “a single natural gas-fired combined cycle (CC) plant, 16 dual-fuel aeroderivative combustion turbines (aero CTs) and a new switchyard (hereafter the CC/aero CT Plant),” as well as “a 3 to 4 megawatt (MW) solar site, a 100 MW lithium-ion battery energy storage system (BESS), and new transmission line infrastructure.”³⁰

On November 1, 2023, TVA submitted an air permit application to TDEC’s Division of Air Pollution Control, seeking authorization to construct the Kingston Gas Plant as a minor modification of the Coal Plant, which TVA said it “expected to retire from service at the end of 2028.”³¹ TVA proposed subtracting the Coal Plant’s historical emissions from the Gas Plant’s emissions, treating the construction of the Gas Plant and the retirement of the Coal Plant as a single project.³² This netting of emissions allowed the Gas Plant to bypass major NSR for the entire project and avoid the heightened air quality protections—and public participation requirements—associated with major modifications.³³

²⁶ Air Plan Approval; Tennessee; Second Planning Period Regional Haze Plan, 90 Fed. Reg. 40272, 40294 (Aug. 19, 2025) (proposing approval of TDEC’s plan).

²⁷ *Id.* at 40277, 40279.

²⁸ *Id.* at 40279. TDEC agreed that sources exceeding a one percent sulfate threshold would be subject to a four-factor analysis, *id.*, which is a Clean Air Act-mandated “assessment of potential emission reduction measures (i.e., control options)” a source must implement, *id.* at 40275.

²⁹ *Id.* at 40279; *see also* TDEC, *Tennessee Regional Haze State Implementation Plan* at 263 (Feb. 9, 2022), <https://perma.cc/8WPD-JABH> (“Kingston’s 2028 projected emissions are appropriate based on the facility’s Federal Register notice announcing NEPA planning for the retirement of all nine units.”).

³⁰ *Id.*

³¹ *See* TVA, Kingston Fossil Plant: Combined Cycle Project Air Permit-to-Construct Application at 3-1 to 3-2 (Oct. 2023), <https://perma.cc/2HQW-PXBH> (“October 2023 Minor NSR Permit Application”) (stating PSD review does not apply because the project includes retirement of both coal-fired units and result in a net emissions decrease).

³² *Id.*

³³ *Id.*

In response to the application, TDEC requested that TVA clarify the date by which all coal-fired electric generating units would be retired as well as the “the maximum amount of time the last remaining coal-fired [electric generating units] will continue to operate following the completion of the shakedown periods for all proposed gas-fired [electric generating units].”³⁴ TVA submitted a revised application on December 20, 2023, which restated the proposition that retirement of the coal units was expected to take place “upon completion” of the Gas Plant.³⁵ The revised application also added two dewpoint gas heaters to the project.³⁶

Shortly after TVA submitted its revised application, it submitted a letter to TDEC stating that it expected to retire the Kingston Coal Plant units “by December 31, 2027.”³⁷ On March 26, 2024, TDEC issued a public notice that TVA’s permit application was complete.³⁸

On October 28, 2024, TVA submitted a second revised application reiterating that it expected to retire the Coal Plant at the end of 2027.³⁹ On November 15, 2024, the Technical Secretary of the Tennessee Air Pollution Control Board issued Permit No. 981915 authorizing construction and operation of the Kingston Gas Plant pursuant to Tennessee’s minor NSR program.⁴⁰ In issuing the permit, the Technical Secretary accepted TVA’s proposal to treat the Gas Plant’s construction as part of the same “project” as the Coal Plant’s retirement, relying on TDEC’s finding that “the decommissioning of the existing coal [units] and the related construction of the new gas [units], is a single project” because the two sets of activities met the criteria to be

³⁴ See Letter from James P. Johnston, Deputy Dir., Permitting & Regul. Dev., State of Tenn. Air Pollution Control Bd., Dep’t of Env’t & Conservation, to Jeffrey A. Kickert, Plant Manager, TVA Kingston Fossil Plant (Nov. 30, 2023), <https://perma.cc/WYZ2-VN9M>.

³⁵ TVA, Kingston Fossil Plant: Combined Cycle Project Air Permit-to-Construct Application at 3-1 to 3-2 (Dec. 2023), <https://perma.cc/KZX2-7WNW> (“December 2023 Minor NSR Permit Application”).

³⁶ Compare December 2023 Minor NSR Permit Application at 2-3 to 2-4 (Dec. 2023) with October 2023 Minor NSR Permit Application at 2-3 to 2-4.

³⁷ Letter from Jeffrey A. Kickert, Kingston Plant Manager, TVA Kingston Fossil Plant, to Justin Dolzen, Div. of Air Pollution Control, Dep’t of Env’t & Conservation (Jan. 30, 2024), <https://perma.cc/EE58-Q5SZ>.

³⁸ See *Air Notices and Hearings: Public Participation Opportunities: Public Notices*, TDEC (Mar. 26, 2024), <https://perma.cc/BA7K-5N5J>.

³⁹ October 2024 Minor NSR Permit Application at 3-1 to 3-2.

⁴⁰ State of Tenn. Air Pollution Control Bd. Dep’t of Env’t & Conservation, Permit to Construct / Modify Air Contaminant Source(s) No. 981915 at 1 (Nov. 15, 2024) <https://perma.cc/GV45-9XV3> (“Minor NSR Permit No. 981915”).

considered “substantially related.”⁴¹ TDEC’s finding relied on the letter from TVA attesting that “TVA intends to retire the Kingston coal-fired units from service by December 31, 2027.”⁴² In addition, the permit explicitly states that shutting down the Coal Plant is “part of th[e] project” to construct the Gas Plant, and requires that “[a]ll coal-fired units (Source Numbers 01 through 09) shall cease operating upon completion of the shakedown periods for Source Numbers 25, and 27 through 42, but no later than December 31, 2027.”⁴³

C. After relying on the Coal Plant’s retirement to receive a minor NSR permit to construct the Gas Plant, TVA reversed course and decided to continue operating the Coal Plant beyond its 2027 retirement date and alongside the new Gas Plant.

Six months after the minor NSR permit was issued, TVA staff attended a joint planning meeting with TDEC’s Air Pollution Control Division to discuss, among other topics, “Reevaluations” of the “TVA Asset Strategy” and “Coal Operation (potential impacts on air permitting, regional haze, . . . etc.).”⁴⁴ On July 28, 2025, the two entities participated in another meeting “to explore potential [major NSR] projects” consisting of “existing coal-fired plants scenarios” together with the new gas plants at the Kingston Fossil Plant and TVA’s Cumberland Fossil Plant in Stewart County.⁴⁵ In November 2025, TDEC staff documented in an internal email that the “Cumberland and Kingston coal units may operate beyond 2028.”⁴⁶ During an internal meeting two months later, TDEC noted that the Gas Plant was already under construction despite TVA’s new plans.⁴⁷

On February 11, 2026, the TVA Board passed a resolution authorizing TVA to continue operating the Coal Plant together with the new Gas Plant and directing TVA staff “to apply for

⁴¹ See State of Tenn. Air Pollution Control Bd. Dep’t of Env’t & Conservation, Construction Permit Summary Report: Permit No. 981915 attach.1 at 2–3 (Nov. 15, 2024), <https://perma.cc/C9JQ-43SB> (“TDEC Permit No. 981915 Summary”). TDEC expressly relied on the “substantially related” test set forth in EPA’s “2009 [New Source Review] Aggregation Action,” which it summarized as “establish[ing] a rebuttable presumption that activities that occurred more than three years apart are not ‘substantially related’ and therefore, generally, should not be aggregated for purposes of determining whether they are a single modification at Step 1.” *Id.*, attach.1 at 3 & n.11 (citing Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation and Project Netting, 74 Fed. Reg. 2376, 2380 (Jan. 15, 2009)).

⁴² See *id.* attach.1 at 3.

⁴³ Minor NSR Permit No. 981915 at 9.

⁴⁴ **Attachment 1**, Email from Kelley Clemons to David Salyers et al. (May 15, 2025) (listing attendees and attaching agenda for TVA/TDEC Quarterly Meeting).

⁴⁵ **Attachment 2**, Teams Meeting Invitation: TVA & TDEC (July 28, 2025); **Attachment 3**, TDEC October 2025 PSD Modeling Report-Out at 2 (Nov. 3, 2025) (noting that “a project permitting a modeling TEAMS call was held on 7/28” to discuss the projects).

⁴⁶ **Attachment 3**, October 2025 PSD Modeling Report-Out at 2 (Nov. 3, 2025).

⁴⁷ **Attachment 4**, Compiled Notes from TDEC Meeting at 1 (Jan. 7, 2026).

any permits that may be applicable” in order “to continue to operate [Kingston Coal Plant], along with [Kingston Gas Plant], beyond its currently scheduled retirement dates.”⁴⁸ That afternoon, TDEC staff circulated this news internally and stated: “So now we’re official.”⁴⁹

Consistent with the Board’s resolution, TVA identified several life-extending modifications required to continue operating the Kingston Coal Plant beyond its 2027 retirement date.⁵⁰ Presumably, these modifications address the “environmental, economic, and reliability risks” associated with continued operation of TVA’s coal plants identified in the end-of-life evaluation.⁵¹ The Coal Plant requires major renovations to some of its most essential components, such as turbine and generator maintenance and repair, boiler tube replacements, distributed control system upgrades, air preheater basket replacement, coal burner replacement, automatic voltage regulator replacement, and main condenser retubes.⁵² Additionally, the continued operation of the Kingston Coal Plant requires the construction of a new high recycle bottom ash transport water recirculation system and flue gas desulfurization wastewater treatment, modification of two existing switchyards, and other renovations to comply with federal environmental standards.⁵³

D. TVA began actual construction of the Kingston Gas Plant before undergoing major New Source Review.

In February 2026, when TVA announced its new “preferred alternative” of operating the Kingston Coal Plant beyond its 2027 retirement date, TVA expressly recognized the new Gas Plant could no longer rely on the net difference in emissions between the two plants to evade major NSR, specifically acknowledging that the project would exceed the applicable significance thresholds for a major modification requiring a new preconstruction permit.⁵⁴ Yet TVA also confirmed at that time that construction of the Gas Plant was ongoing.⁵⁵

Satellite imagery indicates that TVA had begun physical construction of the foundation and/or structural elements of at least one of the Kingston Gas Plant’s emission units by March 1, 2025.⁵⁶ On March 13, 2025, the Knoxville News Sentinel reported that “TVA has begun building

⁴⁸ TVA Bd. of Dirs., Board Resolution (Kingston Fossil Plant Continued Operation) at 2 (Feb. 11, 2026), <https://perma.cc/6FLR-6UC6> (“TVA Board Resolution”).

⁴⁹ **Attachment 5**, Email from Patrick J. Flood to Michelle B. Walker et al. (Feb. 11, 2026).

⁵⁰ See TVA, Continued Operation of the Kingston Fossil Plant: Final Supplemental Environmental Impact Statement at 9–14 (Feb. 2026), <https://perma.cc/H5JG-8EX3> (“TVA Kingston SEIS”).

⁵¹ See Record of Decision, 89 Fed. Reg. at 24558.

⁵² TVA Kingston SEIS at 9–10.

⁵³ *Id.* at 10–14.

⁵⁴ See *id.* at 42–43.

⁵⁵ *Id.* at i, 1, 9, 14.

⁵⁶ **Attachment 6**, Images of Kingston Gas Plant Construction at 1.

its Kingston Energy Complex, a large natural gas plant” and published two photos “provided by TVA” showing ongoing construction of the Gas Plant.⁵⁷

On May 29, 2025, the Knoxville News Sentinel reported that the new Kingston Gas Plant was “taking shape” and published two new photos depicting its ongoing construction.⁵⁸ The article also reported that “it’s not out of the question that regulation changes could mean the original plant could continue to operate alongside the gas plant under construction.”⁵⁹ The article included the following quote from Kingston Plant Manager Jeff Kickert: “My hope is that we do continue to operate [the Coal Plant] and we can get through some of these regulations that are currently closing us down into 2028 If those get turned around, we could potentially continue to run.”⁶⁰

Satellite imagery from February and July 2026 depicts ongoing construction of multiple emission units at the Kingston Gas Plant.⁶¹ On June 23, 2026, TVA announced on social media that substantial progress had been made on construction, confirming that one of the 250,000-pound aeroderivative turbines had been “placed into its enclosure at the project site.”⁶²

E. The Kingston Gas and Coal Plants emit significant amounts of harmful pollutants that pose a threat to public health.

The Kingston Coal Plant is an existing major stationary source of air pollution at TVA’s Kingston Reservation. In 2025 alone, the Kingston Coal Plant emitted 3,148 short tons of SO₂, 1,763 short tons of nitrogen oxides (“NO_x”), and more than 4.6 million short tons of carbon dioxide (“CO₂”).⁶³ The Kingston Coal Plant was Tennessee’s second-highest source of SO₂ and NO_x emissions reported to EPA in 2025, and the state’s third-highest source of CO₂ emissions.⁶⁴ The Kingston Coal Plant is also a major source of harmful particulate matter (“PM”); in its minor

⁵⁷ Daniel Dassow, *Transformation of TVA Coal Plant is Underway*, Knoxville News Sentinel, Mar. 13, 2025, at 1A, 9A; see **Attachment 6**, Images of Kingston Gas Plant Construction at 2.

⁵⁸ Allison Kiehl, *More Energy, Fewer Jobs*, Knoxville News Sentinel, May 29, 2025, at 1A, 9A; see also **Attachment 6**, Images of Kingston Gas Plant Construction at 2.

⁵⁹ Allison Kiehl, *More Energy, Fewer Jobs*, Knoxville News Sentinel, May 29, 2025, at 1A.

⁶⁰ *Id.* at 9A.

⁶¹ **Attachment 6**, Images of Kingston Gas Plant Construction at 3–4.

⁶² Images posted by TVA (@TVA), Facebook, *Big things are happening at the Kingston Energy Complex in East Tennessee!* (June 23, 2026), <https://www.facebook.com/TVA/posts/pfbid024eFAyK2o7EWvft97MwjxF27KyWYQSw68rARULZg3iST2WrnSsTU6bGJsqrnbtBLnl>; Images posted by TVA (@TVAnews), X, *Big things are happening at the Kingston Energy Complex in East Tennessee!* (June 23, 2026), <https://x.com/TVAnews/status/2069420974622032185>.

⁶³ **Attachment 7**, Data Query & Download, EPA Clean Air Markets Program (Tennessee Facilities, 2015–2025) (displaying data queried from *Clean Air Markets Program Data*, EPA, <https://campd.epa.gov/data/custom-data-download> (last visited July 10, 2026)).

⁶⁴ *Id.*

NSR permit application for the Gas Plant, TVA reported the Coal Plant's baseline emissions as 398 tons per year of PM with a diameter of 10 microns or less ("PM₁₀") and 336 tons per year of PM with a diameter of 2.5 microns or less ("PM_{2.5}").⁶⁵ In addition, the Kingston Coal Plant emits volatile organic compounds ("VOC"); carbon monoxide ("CO"); and hazardous air pollutants including mercury, arsenic, chromium, lead, manganese, and nickel;⁶⁶ all of which adversely impact air quality and pose a risk to public health.⁶⁷ The Kingston Gas Plant, once operational, will emit many of the same pollutants: NO_x, PM₁₀, PM_{2.5}, CO, and VOC, and added hazardous air pollutants such as formaldehyde.⁶⁸

Although the Kingston Gas Plant's minor NSR permit contains limits purporting to avoid major NSR between startup of the gas turbines and shutdown of the coal boilers,⁶⁹ those limits were devised under the assumption that the coal units would "cease operating upon completion of the shakedown periods" for the new combustion turbines, and no later than the end of 2027.⁷⁰ That assumption is no longer true; since nearly a year ago—as early as July 28, 2025—TVA has planned to operate the Coal Plant beyond 2027 and alongside the Gas Plant. Indeed, as evidenced by the fact that TVA has stated it will apply for a major NSR permit, TVA no longer intends to prevent the Kingston Fossil Plant's emissions increases from exceeding the applicable thresholds for a major modification. Accordingly, the "avoidance" limits in TVA's minor NSR permit are invalid, and TVA cannot rely on them to construct and operate the Gas Plant as a "minor" modification.⁷¹

⁶⁵ 2024 Minor NSR Permit Application at 3-1 tbl.3-1.

⁶⁶ See TVA, Title V Permit Renewal Application: Kingston Fossil Plant at 3-17 to 3-18, 3-34, 3-45 (July 15, 2022), <https://perma.cc/N29N-X4JA>.

⁶⁷ See 40 C.F.R. pts. 50, 61, 63 (establishing public-health-based standards).

⁶⁸ 2024 Minor NSR Permit Application at 2-4 tbl.2-1; *id.*, app.B, B-4 to B-5.

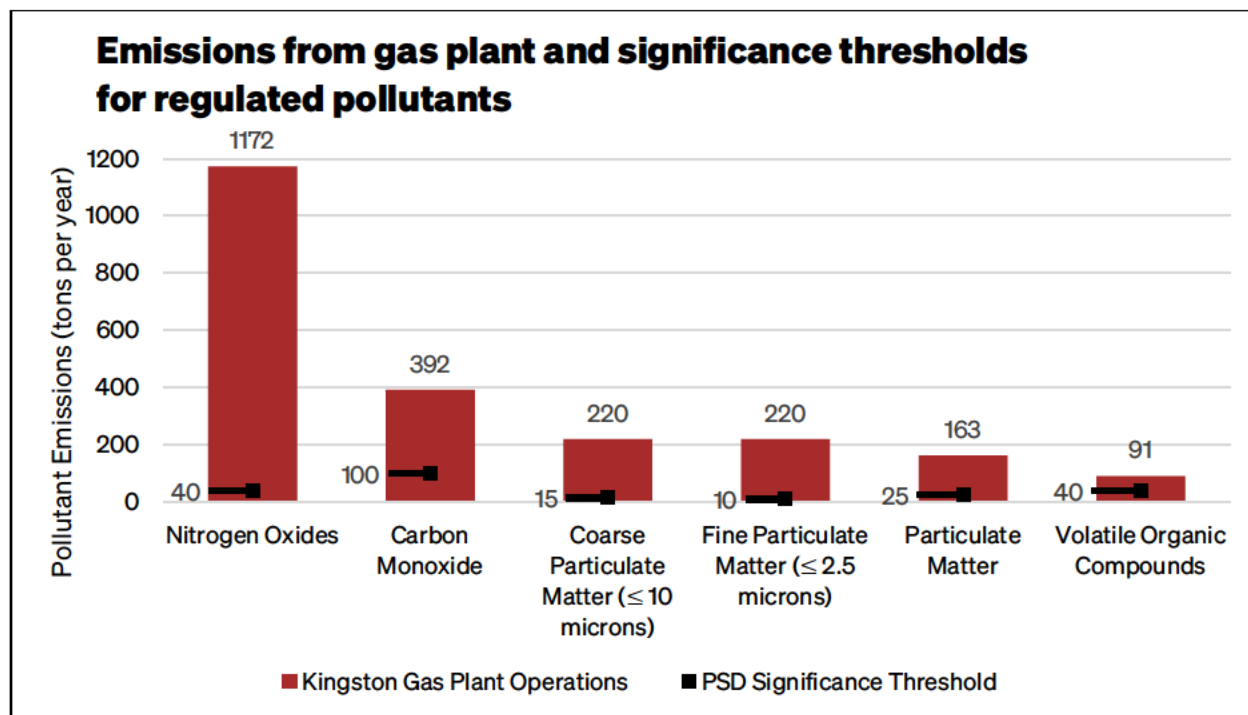
⁶⁹ Minor NSR Permit No. 981915 at 6, 25–26, 38–39 (Conditions G13, S1-4, and S3-4).

⁷⁰ *Id.* at 9; see TDEC Permit No. 981915 Summary at 1 ("This project encompasses the construction of: one natural gas-fired combined cycle combustion turbine unit, sixteen dual-fuel, simple-cycle, aeroderivative combustion turbine units . . . one natural gas-fired auxiliary boiler, five natural gas-fired gas heaters, two emergency engines, one fuel oil storage tank; *and the subsequent decommissioning of nine existing coal-fired boilers.*" (emphasis added)).

⁷¹ When a facility obtains a minor NSR permit "with an intent to construct, and possibly begin operation of, a major new source or major modification without first obtaining a [Prevention of Significant Deterioration ("PSD")] or nonattainment permit," that source is deemed "to have been major ab initio." Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans Final Rule, 54 Fed. Reg. 27274, 27280 (June 28, 1989). As a result, the minor NSR permit is treated as unenforceable from the time construction began, and the source's potential emissions are no longer "limited by the restrictions in the original permit." *Id.*; see also Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(d) (2013) ("Construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants must be in accordance with the approved construction permit application[.]").

Emission estimates set forth in TVA's minor NSR permit application demonstrate that the Kingston Gas Plant's emissions of several criteria pollutants will exceed the applicable thresholds for a major modification subject to review under the Clean Air Act's Prevention of Significant Deterioration ("PSD") regulations:

FIGURE 1: EMISSIONS INCREASES, TVA KINGSTON GAS PLANT⁷²



Now that TVA has decided to keep the Coal Plant operating alongside the new Gas Plant, total emissions from TVA operations at the Kingston Fossil Plant will be far higher than the representations TVA made when it received minor NSR Permit No. 981915.

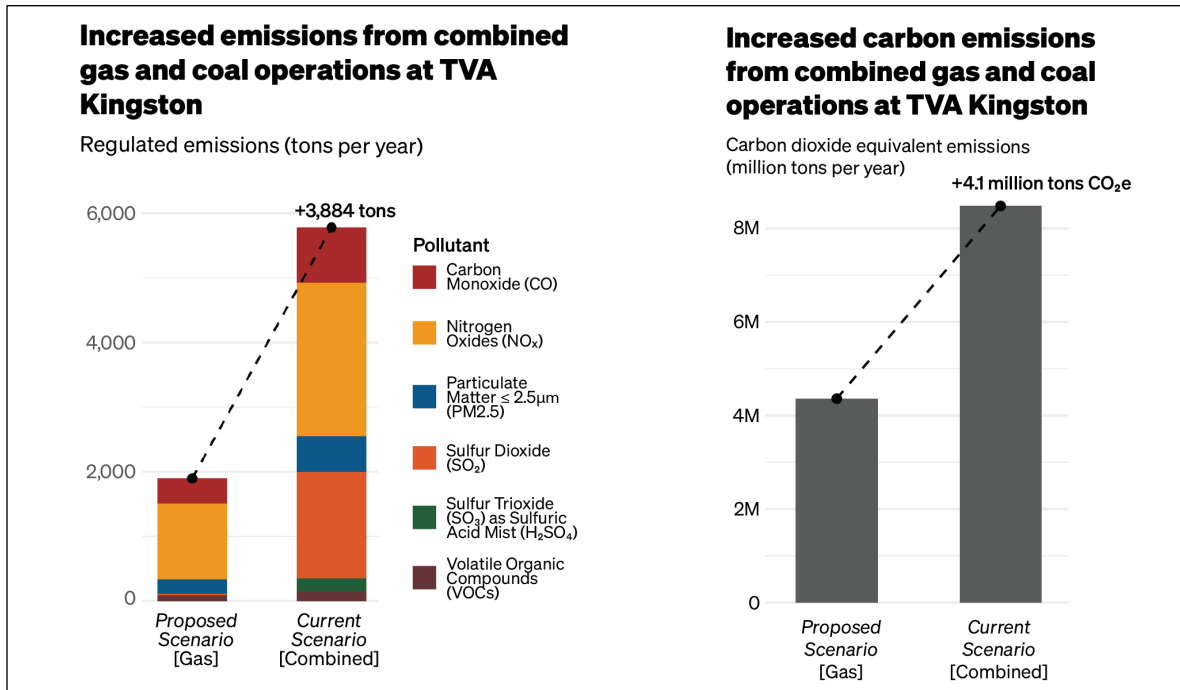
The air pollutants emitted by both the Kingston Coal and Gas Plants have serious adverse effects on local air quality and human health. Both short- and long-term exposures to NO_x, PM_{2.5}, CO, and SO₂ have been linked to a range of adverse health outcomes.⁷³ Exposure to PM_{2.5} is harmful even at levels well below the applicable national ambient air quality standard, as scientific

⁷² Emissions are based on TVA's estimate of the Gas Plant's potential emissions. October 2024 Minor NSR Application at 3-1 tbl.3-1.

⁷³ See Xia Meng et al., *Short Term Associations of Ambient Nitrogen Dioxide with Daily Total, Cardiovascular, and Respiratory Mortality: Multilocation Analysis in 398 Cities*, 372 *BMJ* 1, 4–5, 7 (2021); Jingchun Fan et al., *The Impact of PM_{2.5} on Asthma Emergency Department Visits*, 23 *Env't Sci. Pollution Rsch.* 843, 843–44 (2015); Francesca Dominici et al., *Fine Particulate Air Pollution and Hospital Admission for Cardiovascular and Respiratory Diseases*, 295 *J. Am. Med. Ass'n* 1127, 1133 (2006); Review of National Ambient Air Quality Standards for Carbon Monoxide, 76 *Fed. Reg.* 54294, 54297–99 (Aug. 31, 2011); Review of the Primary National Ambient Air Quality Standards for Sulfur Oxides, 84 *Fed. Reg.* 9866, 9874–79 (Mar. 18, 2019).

studies have not identified a concentration below which adverse health effects are not observed.⁷⁴ In addition, NO_x and VOC react with heat and sunlight to form ground-level ozone, adding another source of local air pollution that is linked to negative public health outcomes.⁷⁵

FIGURE 2: POTENTIAL EMISSIONS CHANGES, TVA KINGSTON SITE⁷⁶



II. APPLICABLE CLEAN AIR ACT REQUIREMENTS

The Clean Air Act is a broad remedial statute designed to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.”⁷⁷ The Clean Air Act requires EPA to regulate air pollutants that “cause or contribute to air pollution which may reasonably be anticipated to endanger public health or

⁷⁴ See Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 89 Fed. Reg. 16202, 16238 (Mar. 6, 2024) (explaining that “health effects can occur over the entire distribution of ambient PM_{2.5} concentrations evaluated”); *id.* at 16228 (describing scientific studies that “consistently demonstrate” there is “a linear, no-threshold [concentration-response] relationship between short term PM_{2.5} exposure and mortality”).

⁷⁵ Review of the Ozone National Ambient Air Quality Standards, 85 Fed. Reg. 87256, 87257 (Dec. 31, 2020).

⁷⁶ Libbie Weimer, S. Env’t L. Ctr. (2026). Emissions for all scenarios use calculations from TVA’s 2024 estimate of the Gas Plant’s potential emissions and the Coal Plant’s baseline emissions. See October 2024 Minor NSR Permit Application at 3-1 tbl.3-1.

⁷⁷ 42 U.S.C. § 7401(b)(1).

welfare.”⁷⁸ These pollutants are referred to as “criteria pollutants,” and include nitrogen dioxide (NO₂), fine particulate matter (PM_{2.5}), and ozone (O₃); ozone precursors such as NO_x and VOC are also regulated like criteria pollutants.⁷⁹

EPA must establish National Ambient Air Quality Standards (“NAAQS”) to limit concentrations of criteria pollutants.⁸⁰ Each state, in turn, is required to develop a State Implementation Plan (“SIP”) setting forth how the NAAQS will be achieved and maintained within the state.⁸¹ SIPs must be submitted to, and approved by, the EPA.⁸² Through SIPs, state agencies are responsible for ensuring compliance with federal air quality standards.⁸³ Once approved by EPA, a SIP is federally enforceable under the Clean Air Act.⁸⁴ EPA has approved Tennessee’s SIP,⁸⁵ and the EPA-approved sections of the SIP and the Clean Air Act are federally enforceable law governing air pollution sources in the state.

A. A major modification to an existing major stationary source must comply with the Clean Air Act’s major New Source Review requirements.

The Clean Air Act has detailed regulations applicable to “major” sources of air pollution.⁸⁶ A “major” source is one that “emits, or has the potential to emit” regulated pollutants at a rate equal to or higher than a specified threshold.⁸⁷ For new fossil-fuel fired steam electric plants with more than 250 million British thermal units per hour (“MMBtu/hr”) heat input, that threshold is 100 tons per year of any regulated NSR pollutant.⁸⁸ For existing major sources such as the

⁷⁸ *Id.* § 7408(a)(1)(A).

⁷⁹ 40 C.F.R. §§ 50.4–.21.

⁸⁰ 42 U.S.C. § 7409(a)–(b). The Act directs the EPA Administrator to develop both primary and secondary NAAQS. *Id.* Primary NAAQS represent the EPA Administrator’s judgment of air quality levels that, “allowing an adequate margin of safety, are requisite to protect the public health,” *id.* § 7409(b)(1), whereas secondary NAAQS are set at the level “requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.” *id.* § 7409(b)(2). EPA sets primary and secondary NAAQS for each criteria pollutant. *Id.* §§ 7408(a), 7409; *see* 40 C.F.R. §§ 50.4–.21.

⁸¹ *Id.* § 7407(a). In some areas, not at issue here, the local jurisdiction adopts and submits to EPA a Local Implementation Plan rather than a SIP.

⁸² *Id.* § 7410.

⁸³ *Id.* §§ 7410(a)(2)(A), 7502(c)(6).

⁸⁴ *Id.* §§ 7413, 7604.

⁸⁵ 40 C.F.R. § 52.2220.

⁸⁶ *Id.* § 51.166(b)(1)(i); Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)1.

⁸⁷ 40 C.F.R. § 51.166(b)(1)(i)(A); Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)1.(i).

⁸⁸ 42 U.S.C. § 7479(1); 40 C.F.R. § 51.166(b)(1)(i)(A); Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)1.(i)(I). A major source for VOC or NO_x is also “considered major for ozone.” Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)3.(i).

Kingston Fossil Plant, major NSR is required for any modification of the source that would result in a net emissions increase of a regulated pollutant above specified thresholds that are lower than those applicable to a new source. For example, the “major modification” threshold for NO_x is forty tons per year, and the threshold for PM_{2.5} is ten tons per year.⁸⁹

Major NSR has two sets of permitting requirements: (1) PSD for emissions of a pollutant in an area that is attaining the federal air quality standard for that pollutant, and (2) Nonattainment NSR for emissions of a pollutant in an area that is not attaining the federal air quality standard for that pollutant.⁹⁰ Although the Kingston Coal Plant has deteriorated local air quality throughout its operational life,⁹¹ Roane County is designated as in attainment for all applicable NAAQS, meaning PSD applies to every criteria pollutant for which there will be a significant net emissions increase.

1. The New Source Review program requires a Prevention of Significant Deterioration permit before beginning construction of a major modification to an emitting facility.

Under the Clean Air Act and Tennessee’s SIP, a PSD permit is required before beginning actual construction on a “major modification” to an existing major source.⁹² In addition, “under the Tennessee SIP, the obligation to obtain an appropriate permit is ongoing, and applies even to those sources that did not obtain the appropriate permits before construction.”⁹³

A major modification is a “physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase” of a regulated pollutant and a “significant net emissions increase of that pollutant.”⁹⁴ To “begin actual construction” of such a modification generally means “initiation of physical on-site construction activities on an emissions unit which are of a permanent nature,” including “installation of building

⁸⁹ 40 C.F.R. § 51.166(b)(23)(i); Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)24.(i)(II), (XVII).

⁹⁰ 42 U.S.C. § 7410(a)(2)(I)–(J); *see generally id.* §§ 7470–7492 (requirements for attainment areas), 7501–7514a (requirements for nonattainment areas).

⁹¹ *See, e.g.*, Approval and Promulgation of Implementation Plans; Tennessee: Revised SO₂ Limits, 46 Fed. Reg. 61120, 61120 (Dec. 15, 1981) (identifying the Kingston Coal Plant as “[t]he major source of sulfur dioxide emissions in Roane County” and noting that it “has caused violations of the sulfur dioxide ambient standards in the area”); Tenn. Dep’t of Env’t & Conservation, Redesignation Request and Maintenance Plan: Knoxville, Tennessee Nonattainment Area 2006 24-Hour PM_{2.5} NAAQS at 10 (Dec. 14, 2016), <https://perma.cc/8JZ4-LM9X> (describing nonattainment designation for federal PM_{2.5} NAAQS in part of Roane County containing the Kingston Coal Plant).

⁹² 42 U.S.C. § 7475(a); Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(a)1., (4)(c)3.

⁹³ *Nat’l Parks Conservation Ass’n v. TVA*, 480 F.3d 410, 419 (6th Cir. 2007) (citing Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(e)).

⁹⁴ Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)2.

supports and foundations, laying of underground pipework, and construction of permanent storage structures.”⁹⁵

Determining whether a proposed change at a source will be a “major modification” requiring a PSD permit is a two-step process. At Step One, the analysis looks at whether the project itself would result in a “significant emissions increase” of a regulated pollutant.⁹⁶ Increases in pollution are considered “significant” for this purpose if they exceed certain *de minimis* levels, specified by federal regulation, in tons per year for each pollutant.⁹⁷

If so, then the analysis turns to Step Two: whether the change would result in a “significant *net* emissions increase of the pollutant.”⁹⁸ A “net emissions increase” is calculated by combining the amount of emissions increased by the project with “any other increases and decreases” that are “creditable”—that is, all source-wide changes in emissions that are “contemporaneous with the particular change” and meet other requirements.⁹⁹ A “contemporaneous” increase or decrease is one that occurs between “[t]he date five years before a completed application for the particular change is submitted” and “[t]he date that the increase from the particular change occurs.”¹⁰⁰

An existing major source that was originally constructed prior to Congress’ creation of the PSD program (applicable to new major sources on which construction commenced after August 7, 1977¹⁰¹), such as the Kingston Fossil Plant, nonetheless must undergo PSD review if component redesigns or other renovations “render[] a plant more reliable and less susceptible to future shut-downs,” since those changes mean “‘the plant will be able to run consistently for a longer period of time,’ burning more coal and emitting more pollution.”¹⁰² Renovations that increase actual emissions above a specified threshold “trigger a utility’s obligation to conduct PSD review, secure the appropriate permits, and install required pollution controls.”¹⁰³

There is a narrow exemption in the Tennessee SIP for physical changes that constitute “[r]outine maintenance, repair, and replacement.”¹⁰⁴ That exemption “is generally limited to *de*

⁹⁵ *Id.* at 1200-03-09-.01(4)(b)12.

⁹⁶ Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(a)2. (defining “major modification”), (4)(b)49. (defining “project”); *see* 42 U.S.C. § 7411(a)(4).

⁹⁷ 40 C.F.R. § 52.21(b)(23) (listing current significance levels in paragraph (b)(23)(i), mostly between ten and forty tons per year); Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)24.

⁹⁸ Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(a)2.

⁹⁹ *Id.* at 1200-03-09-.01(4)(b)4.(i).

¹⁰⁰ *Id.* at 1200-03-09-.01(4)(b)4.(ii)(I)–(II).

¹⁰¹ 42 U.S.C. § 7475(a).

¹⁰² *United States v. Ameren Mo.*, 229 F. Supp. 3d 906, 915 (E.D. Mo. 2017) (quoting *United States v. Ala. Power Co.*, 730 F.3d 1278, 1281 (11th Cir. 2013)).

¹⁰³ *Id.*

¹⁰⁴ Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)2.(i)(I).

minimis circumstances.”¹⁰⁵ To determine whether a source has met its burden to demonstrate that a particular change is “routine”¹⁰⁶—and therefore not a “physical change” subject to the two-step PSD applicability analysis—courts look to the “nature, extent, purpose, frequency, and cost of the work, as well as other relevant factors.”¹⁰⁷ Physical changes that are “large in scope,” expensive, undertaken by outside contractors, and funded using a capital improvements budget are not “routine,”¹⁰⁸ nor are projects intended to increase the operational life and reliability of units or those that occur infrequently in a unit’s expected life cycle.¹⁰⁹

Under state law, changes to an existing major source that the operator claims are not “modifications” must still be reported to the TDEC.¹¹⁰

2. A PSD Permit for a major modification requires application of the best available pollution controls.

The PSD provisions of the Clean Air Act and Tennessee’s SIP, including those for “major modifications” to an existing major source, require the application of emission limits that reflect the maximum degree of reduction achievable for the facility through the use of pollution control technologies and other methods.¹¹¹ This standard is known as Best Available Control Technology

¹⁰⁵ *Ameren Mo.*, 229 F. Supp. 3d at 999 (quoting *United States v. Ameren Mo.*, No. 4:11-CV-77, 2016 WL 728234, at *5 (E.D. Mo. Feb. 24, 2016)).

¹⁰⁶ *See Nat’l Parks Conservation Ass’n v. TVA*, 618 F. Supp. 2d 815, 823–24 (E.D. Tenn. 2009) (“Generally, the party claiming the benefits of an exception to the prohibition of a statute has the burden of proof After careful consideration, the Court agrees with the district courts who have followed the general rule that the burden of proof is on the party seeking the benefit of the [routine maintenance, repair and replacement] exclusion as an exception.”).

¹⁰⁷ *Id.* at 824 (quoting *Wis. Elec. Power Co. v. Reilly*, 893 F.2d 901, 910 (7th Cir. 1990)); *see also, e.g., United States v. Ohio Edison Co.*, 276 F. Supp. 2d 829, 850, 858–62 (S.D. Ohio 2003) (determining physical changes at power plant were not routine); *United States v. Cinergy Corp.*, 495 F. Supp. 2d 909, 933–48 (S.D. Ind. 2007) (finding life-extending refurbishment projects across group of power plants were not routine using four-factor test).

¹⁰⁸ *Ohio Edison Co.*, 276 F. Supp. 2d at 834; *accord Ameren Mo.*, 229 F. Supp. 3d at 1001–02, 1003.

¹⁰⁹ *Ohio Edison Co.*, 276 F. Supp. 2d at 835, 838–40, 855.

¹¹⁰ Tenn. Comp. R. & Regs. 1200-03-02-.01(aa)4.; *id.* at 1200-03-09-.01(1)(a).

¹¹¹ 42 U.S.C. § 7475(a)(4) (prohibiting construction of a major emitting facility unless it is subject to BACT, among other requirements); *see also* Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(c)2. (applying requirements from subparagraph (j), among others, to major modifications); *id.* at 1200-03-09-.01(4)(j)3. (2013) (requiring application of BACT to major modifications).

(“BACT”).¹¹² The application of BACT limits is required for “each proposed emissions unit at which a net emissions increase in the pollutant would occur.”¹¹³ In addition, under Tennessee’s SIP, “the duty to obtain a construction permit containing the proper emissions limits is ongoing.”¹¹⁴

Tennessee’s SIP requires the owner or operator of a proposed major modification to include in its permit application “[a] detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that [BACT] would be applied where required.”¹¹⁵ BACT is required at the emissions-unit level for each regulated criteria pollutant.¹¹⁶ For a major modification, BACT must be applied to every emissions unit undergoing a physical or operational change that results in any net emissions increase of a pollutant subject to regulation.¹¹⁷ Facility operators may be required to study and install multiple pollution control technologies to minimize different pollutant emissions from a single unit.¹¹⁸

3. A PSD Permit for a major modification requires preconstruction analysis of potential impacts on air quality to ensure NAAQS attainment and maintenance.

The proponent of a new major source or major modification must perform a “source impact analysis” to demonstrate that construction and operation of the new or modified source “would not cause or contribute to” an exceedance of any ambient air quality standard or otherwise significantly deteriorate ambient air quality.¹¹⁹ The source impact analysis, which typically must involve robust air dispersion modeling, enables the permitting agency to evaluate whether a source’s emissions will result in—or exacerbate—unhealthy air quality.¹²⁰ That preconstruction analysis must take into account existing pollution levels based on “continuous air quality monitoring data gathered

¹¹² The Clean Air Act defines BACT as “an emission limitation based on the maximum degree of reduction of each pollutant . . . which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility.” 42 U.S.C. § 7479(3).

¹¹³ Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(j)3. (2013).

¹¹⁴ *Nat’l Parks Conservation Ass’n*, 480 F.3d at 419 (citing Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(e)).

¹¹⁵ Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(e)2.(i)(III).

¹¹⁶ *Id.* at 1200-03-09-.01(4)(b)53.

¹¹⁷ *Id.* at 1200-03-09-.01(4)(j)3. (2013).

¹¹⁸ *Id.* (specifying that the requirement to apply BACT “applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit”).

¹¹⁹ *Id.* at 1200-03-09-.01(4)(e)1.(i)–(ii); see 42 U.S.C. § 7475(a)(3), (e)(1), (e)(3)(B); 40 C.F.R. § 51.166(k)(1)(i)–(ii), (m)(1).

¹²⁰ See Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(e), (4)(k).

for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the [NAAQS].”¹²¹

If the source impact analysis demonstrates the project will cause or contribute to a NAAQS exceedance, then the permittee must revise its project as needed to ensure NAAQS compliance, or the permitting agency must deny the application.¹²²

The PSD preconstruction review process also includes an assessment of visibility impacts on nearby national parks, wilderness areas, and other specially protected areas.¹²³ This assessment must involve the federal agencies responsible for managing and protecting such areas, and if the relevant agencies find that the project’s emissions will cause an “adverse impact” on visibility in such an area, the project cannot be permitted.¹²⁴

Permitting agencies must ensure that proposed projects undergo these air quality analyses as part of the *preconstruction* review, following processes, methodological standards, and guidelines for analysis set at the federal level.¹²⁵ These analyses take place preapplication for each pollutant subject to PSD review. Like the requirement to evaluate and install pollution controls as needed to comply with BACT emission limits, these source impact analysis requirements serve as substantive safeguards effectuating the purpose of the Clean Air Act’s PSD program: “to protect public health and welfare” against the adverse impacts of air pollution.¹²⁶

B. The Clean Air Act prohibits “sham” permitting, or construction of a major new source or modification pursuant to a minor NSR permit with intent to operate as a major new source or modification.

PSD requirements plainly apply *before* construction begins, and federal and state law prohibit a sham process in which a permittee constructs (or begins to construct) a purported minor source or minor modification with the intent to operate as a major source or major modification.¹²⁷ Tennessee’s SIP explicitly prohibits “circumvention” of applicable requirements through methods such as “stagger[ing] installation and operation of a facility to avoid coverage by a standard that applies only to operations larger than a specified size.”¹²⁸

¹²¹ *Id.* at 1200-03-09-.01(4)(e)7.(ii).

¹²² *See id.* at 1200-03-09-.01(1)(e)–(f).

¹²³ *Id.* at 1200-03-09-.01(4)(n); *see* 42 U.S.C. § 7475(d)(2).

¹²⁴ Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(n)2.; *see* 42 U.S.C. § 7475(d)(2)(C)(ii).

¹²⁵ Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(f), (4)(e), (4)(k); 40 C.F.R. § 51.166(l)–(m).

¹²⁶ *See* 42 U.S.C. § 7470(1); Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(c).

¹²⁷ Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans (“Requirements for Implementation Plans”), 54 Fed. Reg. 27274, 27280–81 (June 28, 1989).

¹²⁸ Tenn. Comp. R. & Regs. 1200-03-09-.03(2).

Although sources may rely on enforceable operational limits to remain under major source thresholds, those limits are only valid if they reflect the project at hand.¹²⁹ According to EPA, the Clean Air Act prohibits “construct[ion] [of] a source or major modification with a minor source permit when there is intent to operate as a major source or major modification.”¹³⁰ And “[p]ermits with conditions that do not reflect a source’s planned mode of operation are void ab initio and cannot act to shield a source from the requirement to undergo preconstruction review.”¹³¹ As a result, a source constructed pursuant to a minor NSR permit on the basis of operational limits that later becomes a major source or major modification “would have to undergo preconstruction review as though it had never begun construction.”¹³²

C. Major sources must comply with the terms of operating permits issued under Title V of the Clean Air Act.

Title V of the Clean Air Act¹³³ requires major sources to obtain operating permits containing “all applicable requirements”¹³⁴ and “other conditions as are necessary to assure compliance with” those requirements.¹³⁵ The Act provides that “it shall be unlawful for any person to violate any requirement of a [Title V] permit . . . or to operate . . . a major source . . . except in

¹²⁹ See Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(d) (2013) (“Construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants must be in accordance with the approved construction permit application[.]”).

¹³⁰ Memorandum from John B. Rasnic, Off. of Air Quality Planning & Standards, EPA, to George T. Czerniak, Region V Chief, EPA, at 2 (June 17, 1993), <https://perma.cc/TLQ6-SVKZ> (“3M-Maplewood Memo”); see also Requirements for Implementation Plans, 54 Fed. Reg. at 27281 (describing EPA’s desire “to prevent owners or operators from turning the statutory scheme on its head by using federally enforceable minor source permits in a manner inconsistent with the statute . . .”); Memorandum from Terrell E. Hunt, Off. of Enforcement & Compliance Monitoring, EPA, & John S. Seitz, Off. of Air Quality Planning & Standards, EPA, to Regional Counsels, Regions I–X et al., at 10–15 (June 13, 1989), <https://perma.cc/WAX6-5BDS> (“EPA Guidance on Limiting Potential to Emit in New Source Permitting”) (explaining EPA’s agencywide guidance for enforcement in sham permitting circumstances).

¹³¹ EPA Guidance on Limiting Potential to Emit in New Source Permitting at 12.

¹³² *In re Issuance of Air Emissions Permit No. 13700345-101 for PolyMet Mining, Inc.*, 955 N.W.2d 258, 265 (Minn. 2021) (citing 40 C.F.R. § 52.21(r)(4)).

¹³³ See generally 42 U.S.C. §§ 7661–7661f (comprising Title V).

¹³⁴ 42 U.S.C. § 7661b(b)(1); see also Tenn. Comp. R. & Regs. 1200-03-09-.02(2) (requiring operating permits).

¹³⁵ 42 U.S.C. § 7661c(a); see also Tenn. Comp. R. & Regs. 1200-03-09-.02(11) (detailing major stationary source operating permit requirements).

compliance with a [Title V] permit.”¹³⁶ Similarly, under Tennessee’s Title V program, sources must operate “in accordance with the provisions and stipulations set forth in the operating permit.”¹³⁷

Under Condition A16 of the Kingston Fossil Plant’s current Title V permit, TVA is prohibited from modifying any “air contaminant source which may result in the discharge of air contaminants without first having applied for and received” a permit, whether that modification is major or minor.¹³⁸ And modifications not initially expected to cause a significant net emissions increase that surpass the threshold are still considered major modifications.¹³⁹

III. VIOLATIONS OF THE CLEAN AIR ACT

A. **Claim 1: TVA is violating the Clean Air Act and Tennessee’s SIP by constructing the Kingston Gas Plant before obtaining a PSD permit covering the project’s significant net emissions increases of seven regulated NSR pollutants.**

According to TVA and TDEC, construction of the Kingston Gas Plant constitutes a physical change to the Kingston Fossil Plant, an existing major stationary source. And because the Kingston Coal Plant is no longer retiring, construction and operation of the Gas Plant is estimated to cause a significant net emissions increase of CO, NO_x, filterable PM, PM₁₀, PM_{2.5}, VOC, and CO_{2e}, as TVA acknowledged in its October 2024 Minor NSR permit application:¹⁴⁰

¹³⁶ 42 U.S.C. § 7661a(a); *see also* Tenn. Comp. R. & Regs. 1200-03-09-.02(11)(e)2. (stating that an operating permit under these rules “is a permit issued pursuant to the requirements of title V of the Federal [Clean Air] Act and its implementing Federal regulations”).

¹³⁷ Tenn. Comp. R. & Regs. 1200-03-09-.02(6); *see also id.* at 1200-03-09-.02(11)(c)1.(i) (applying operating permit requirements to “[a]ny major source”).

¹³⁸ Title V Permit No. 572149 at 5.

¹³⁹ *See, e.g., In re Eastman Chemical Co.*, No. APC10-0227, 2010 WL 5658174, at *10 (Tenn. Dep’t Env’t & Conservation Dec. 16, 2010) (issuing violation order for “modifying a major stationary source” without having first “submit[ted] a timely and complete application for a Title V Operating Permit”).

¹⁴⁰ October 2024 Minor NSR Permit Application at 2-4 tbl.2-1; *see also id.* at 3-1, tbl.3-1.

Table 2-1
KIG Potential Emissions (Tons/Year)

Pollutant	CC Train ^[1]	Aero Units ^[2]	Aux Boiler ^[3]	Fire Pump ^[5]	BSG ^[4]	Gas ^[6] Heaters	Total
Carbon Monoxide (CO)	119	244	12.1	0.43	0.86	16	392
Nitrogen Oxides (NO _x)	802	354	12.0	0.47	1.5	2.4	1,172
Sulfur Dioxide (SO ₂)	12.7	8.9	0.2	0.00	0.00	0.13	22
Particulate Matter (PM)	90.5	71.1	0.62	0.02	0.05	0.40	163
Total PM ≤ 10 microns (TPM ₁₀)	109	106	2.5	0.05	0.10	1.6	220
Total PM ≤ 2.5 microns (TPM _{2.5})	109	106	2.5	0.05	0.10	1.6	220
Volatile Organic Compounds (VOC)	43	43	1.3	0.02	0.08	3.3	91 ^[8]
Lead (Pb)	0.01	0.01	0.00	0.00	0.00	0.00	0.02
Sulfuric Acid Mist (H ₂ SO ₄)	0.11	0.07	0.01	0.00	0.00	0.01	0.23
Carbon Dioxide Equivalent (CO _{2e}) ^[7]	2,540,256	1,757,759	38,687	85.9	172	25,533	4,362,492

TVA was required to—but did not—comply with all applicable preconstruction permitting requirements, such as performing source impact and BACT analyses, as needed to obtain a PSD permit for those pollutants *prior to* beginning actual construction of the Gas Plant.

In its supplemental environmental impact statement identifying continued operation of the Kingston Coal Plant as its new “preferred alternative” plan for the Kingston Fossil Plant, TVA acknowledged that it would be required to complete the required monitoring, air dispersion modeling, and BACT analyses for the new Gas Plant because it could no longer subtract the Coal Plant’s historical emissions and was thus required to obtain a PSD permit.¹⁴¹ TVA’s failure to complete those steps before beginning to construct the Kingston Gas Plant violates Section 165(a)(1) of the Clean Air Act, 42 U.S.C. § 7475(a)(1), and Rules 1200-03-09-.01(4)(a)1 and 1200-03-09-.01(4)(c)3 of the Tennessee SIP.¹⁴² This violation began on or about March 1, 2025, and recurred each day that actual construction ensued.¹⁴³ Construction of all the new emission units (Source Nos. 25–48), is presumed to be ongoing.

¹⁴¹ TVA Kingston SEIS at 42–43.

¹⁴² 40 C.F.R. § 52.2220(c) tbl.1; Approval and Promulgation of Implementation Plans; Tennessee: Prevention of Significant Deterioration Regulations, 45 Fed. Reg. 27757, 27757–58 (Apr. 24, 1980) (codified at 40 C.F.R. pt. 52); Tenn. Comp. R. & Regs. 1200-03-09-.01(4).

¹⁴³ See **Attachment 6**, Images of Kingston Gas Plant Construction at 1; *Nat’l Parks Conservation Ass’n*, 480 F.3d at 419 (“[U]nder the Tennessee SIP, the obligation to obtain an appropriate permit is ongoing, and applies even to those sources that did not obtain the appropriate permits before construction[.]”).

B. Claim 2: TVA is violating the Clean Air Act and Tennessee’s SIP by constructing life-extending modifications to the Kingston Coal Plant that are part of the same project as construction of the Kingston Gas Plant without a PSD permit covering the net emissions increases from the modified units.

TVA intends to continue operating the Kingston Coal Plant beyond its 2027 retirement date. Extending the operational life of the Coal Plant requires significant capital investments to substantially repair, replace, renovate, and/or reconfigure various components.¹⁴⁴ On February 11, 2026, the TVA Board directed TVA staff to move ahead with the investments needed for those modifications.¹⁴⁵

TVA estimates that the capital investments needed to finance these substantial renovations to the Kingston Coal Plant will total over \$630 million.¹⁴⁶ The modifications include renovations for the steam turbine and generator; replacement of the boiler tubes, air preheater baskets, coal burners, and automatic voltage regulator; and upgrades to the Coal Plant’s distributed control system.¹⁴⁷ And the express purpose of these modifications is to extend the operational life of the coal-fired assets.¹⁴⁸ These are not “routine” changes that could qualify for exclusion from the definition of a “modification” under applicable law, nor can they be expected to have a *de minimis* impact on plant emissions.¹⁴⁹

These physical changes to the Kingston Coal Plant, and any related changes in the method of the operation of the Kingston Coal Plant, are part of the same “project” as construction of the Kingston Gas Plant and are thus part of that major modification of the Kingston Fossil Plant, an existing major stationary source, requiring review under Tennessee’s federally approved PSD regulations for the project’s significant emissions increases of CO, NO_x, filterable PM, PM₁₀, PM_{2.5}, VOC, CO_{2e}, and potentially SO₂. TVA is constructing or proposing to construct changes that are part of a major modification requiring PSD review without complying with applicable preconstruction permitting requirements, including source impact and BACT analyses, and without obtaining the required PSD permit.

¹⁴⁴ E.g., TVA Kingston SEIS at 9–10; **Attachment 8**, TVA, Kingston System Value Analysis – Attachment A at 188 (Jan. 29, 2026) (“Kingston System Value Analysis”); Record of Decision, 89 Fed. Reg. at 24558.

¹⁴⁵ TVA Board Resolution at 2–3.

¹⁴⁶ Kingston System Value Analysis at 188.

¹⁴⁷ TVA Kingston SEIS at 9–10.

¹⁴⁸ **Attachment 9**, TVA, Coal Life Extension: Investment Overview at 1–2 (Dec. 12, 2025), <https://perma.cc/97JD-WNBN> (“Coal Life Extension Overview”).

¹⁴⁹ See *Ohio Edison Co.*, 276 F. Supp. 2d at 889 (stating “the general rule that any physical change resulting in an increase in emissions triggers the obligation to comply with the [Clean Air Act]”; *Ameren Mo.*, 229 F. Supp. 3d at 988 (categorizing units at power plant as being “big sources of pollution” and identifying use as “‘baseload’ units” in determining that source operator could and should have expected emissions increases to follow improvement projects).

After a reasonable opportunity for investigation or discovery, evidentiary support is likely to establish that the physical and/or operational changes to TVA's Kingston Coal Plant to enable its continued operation beyond 2027 are in violation of Section 165(a)(1) of the Clean Air Act, 42 U.S.C. § 7475(a)(1), and Rules 1200-03-09-.01(4)(a)1, 1200-03-09-.01(4)(c)3, and 1200-03-09-.03(2) of Tennessee's SIP, including the prohibition on "circumvention" of applicable requirements by "stagger[ing] installation and operation of a facility to avoid coverage by a standard that applies only to operations larger than a specified size."¹⁵⁰

Those violations began when TVA began actual construction of the life-extending modifications to the Coal Plant without a PSD permit covering those changes. Specific dates on which TVA has undertaken the modifications are within the sole possession of TVA at present. However, publicly available information indicates that TVA "proposes to construct" this part of its major modification without the requisite PSD permit within the meaning of Section 304(a)(3) of the Clean Air Act, 42 U.S.C. § 7604(a)(3).

C. Claim 3: TVA is violating the terms of its Title V permit for the Kingston Fossil Plant by constructing life-extending modifications to the Kingston Coal Plant without first obtaining a construction permit.

The life-extending changes to the Kingston Coal Plant constitute a "modification" of an existing major source requiring a preconstruction permit pursuant to Condition A16 of the facility's Title V permit.¹⁵¹ TVA's plan to extend the operational life of the Kingston Coal Plant requires significant capital investments to substantially repair, replace, renovate, and/or reconfigure various components.¹⁵² On February 11, 2026, the TVA Board directed TVA staff to move ahead with the investments needed for these modifications.¹⁵³

TVA estimates that the capital investments needed to finance these substantial renovations to the Kingston Coal Plant will total over \$630 million.¹⁵⁴ The modifications include renovations for the steam turbine and generator; replacement of the boiler tubes, air preheater baskets, coal burners, and automatic voltage regulator; and upgrades to the Coal Plant's distributed control

¹⁵⁰ Tenn. Comp. R. & Regs. 1200-03-09-.03(2), (2)(b).

¹⁵¹ See Title V Permit No. 572149 at 5 (stating that unless a specific exemption applies, "this facility shall not begin the construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants without first having applied for and received from the Technical Secretary a construction permit for the construction or modification of such air contaminant source" (citing Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(a))).

¹⁵² E.g., TVA Kingston SEIS at 9–10; Coal Life Extension Overview at 2.

¹⁵³ TVA Board Resolution at 2–3.

¹⁵⁴ Kingston System Value Analysis at 188.

system.¹⁵⁵ And the express purpose of these modifications is to extend the operational life of the coal-fired assets.¹⁵⁶

Because these substantial, life-extending changes are not “routine,”¹⁵⁷ they cannot qualify for exclusion from the definition of a “modification” under Rule 1200-03-02-.01(1)(aa)1 or Rule 1200-03-09-.01(4)(b)2.(i)(I) of the Tennessee SIP. And because these changes will likely increase emissions of regulated NSR pollutants—potentially significantly, thus triggering PSD review—they are subject to Condition A16’s prohibition on beginning construction of a modification “without first having applied for and received from the Technical Secretary a construction permit for the construction or modification of such air contaminant source.”¹⁵⁸

After a reasonable opportunity for investigation or discovery, evidentiary support is likely to establish that the physical and/or operational changes to the Kingston Coal Plant to enable its continued operation beyond 2027 are in violation of Condition A16 of TVA’s Title V Operating Permit No. 572149. This Title V permit violation began when TVA began actual construction of the life-extending modifications to the Coal Plant without a construction permit. This information is within the sole possession of TVA at present.

IV. AUTHORITY TO BRING SUIT

Community Groups have authority to bring a citizen suit under Section 304 of the Clean Air Act. Section 304(a)(1) authorizes “any person” to sue for violations of “an emission standard or limitation under this chapter.”¹⁵⁹ This includes any “emission limitation, standard of performance or emission standard,” any standard or limitation established “under any permit issued pursuant to [Title V] or under any applicable State implementation plan approved by the [EPA],” “any permit term or condition,” and “any requirement to obtain a permit as a condition of operations.”¹⁶⁰ This provision authorizes Community Groups to commence a civil action in response to violations of Tennessee’s SIP requirement to obtain a PSD permit containing BACT emission limits applicable to all units for which the project will cause a net emissions increase as a condition of construction of a major modification, as alleged herein under Claims 1 and 2. This provision also authorizes Community Groups to commence a civil action in response to a violation of an applicable condition of a Title V permit, as alleged herein under Claim 3.

¹⁵⁵ TVA Kingston SEIS at 9–10; Coal Life Extension Overview at 2.

¹⁵⁶ Coal Life Extension Overview at 1–2.

¹⁵⁷ See *Wis. Elec. Power Co. v. Reilly*, 893 F.2d 901, 910–12 (7th Cir. 1990); *Ohio Edison Co.*, 276 F. Supp. 2d at 858–62; *Cinergy Corp.*, 495 F. Supp. 2d at 933–48.

¹⁵⁸ Title V Permit No. 572149 at 5.

¹⁵⁹ 42 U.S.C. § 7604(a)(1).

¹⁶⁰ *Id.* § 7604(f)(1), (4); see *Nat’l Parks Conservation Ass’n*, 480 F.3d at 418–19; *Sierra Club v. Otter Tail Power Co.*, 615 F.3d 1008, 1014 (8th Cir. 2010) (describing the decision in *Nat’l Parks Conservation Ass’n* as “finding that PSD regulations in Tennessee SIP impose ongoing duties to obtain a PSD permit and apply BACT”).

Section 304(a)(3) of the Clean Air Act, authorizes “any person” to sue “any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality).”¹⁶¹ This provision authorizes Community Groups to commence a civil action in response to a violation of the requirement to obtain a PSD permit before beginning construction of a major modification, as alleged herein under Claims 1 and 2.

An action brought pursuant to Section 304(a)(1) may only proceed after a sixty-day notice period.¹⁶² However, an action pursuant to Section 304(a)(3), for a claim of construction (or proposed construction) of a major modification without a PSD permit may proceed immediately, without a notice period.

V. PERSONS GIVING NOTICE AND LEGAL COUNSEL

This letter provides notice of intent to sue on behalf of Appalachian Voices and the Sierra Club. The names and addresses of the persons giving notice are:

Appalachian Voices
815 Gill Ave.
Knoxville, TN 37917

Sierra Club
50 F Street NW – 8th Floor
Washington, DC 20001

Appalachian Voices is a grassroots nonprofit organization dedicated to bringing people together to protect the land, air, and water of Central and Southern Appalachia and to advance a just transition to a generative and equitable clean-energy economy. Appalachian Voices works collaboratively with local, state, and regional partners to promote energy efficiency and encourage the development of clean and affordable energy. Appalachian Voices meets with TVA and TVA-area distribution utilities to advocate for clean energy and supports communities across the region to help them organize and plan advocacy campaigns related to TVA’s and distribution utilities’ energy choices. Appalachian Voices has approximately 138 members in Tennessee.

Sierra Club is a national nonprofit organization of over 597,000 members dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club has more than 7,000 members in Tennessee.

Both groups are dedicated to protecting healthy ambient air quality for all Tennesseans.

¹⁶¹ 42 U.S.C. § 7604(a)(3).

¹⁶² *Id.* § 7604(b)(1)(A).

The Southern Environmental Law Center is legal counsel for Appalachian Voices and the Sierra Club in this matter and can be contacted at the mailing and email address provided below.

VI. LOCATION OF VIOLATIONS

The violations set out above have all occurred and continue to occur at the TVA Kingston Reservation located at or near 714 Swan Pond Road, Harriman, Roane County, TN 37748.

VII. PERSONS RESPONSIBLE FOR THE VIOLATIONS

TVA is the party responsible for the violations listed herein. As documented throughout TVA's recently published supplemental environmental impact statement, the TVA Board Resolution, TVA's social media accounts, satellite imagery, and media reports, TVA began and continues to construct the Kingston Gas Plant and is constructing or proposing to construct life-extending modifications of the Kingston Coal Plant in Roane County at 714 Swan Pond Road, Harriman, TN 37748.¹⁶³

TVA is a public utility owned by the United States government that delivers electricity to part or all of seven states in the Tennessee Valley region, largely via distribution to local power companies. TVA is headquartered in Knoxville, Tennessee. TVA owns and operates the emitting facilities located at the Kingston Reservation, including the Kingston Coal and Gas Plants.¹⁶⁴

The Clean Air Act contains an unambiguous waiver of sovereign immunity applicable to any federal department, agency, or instrumentality under specified circumstances:

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government . . . engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity.¹⁶⁵

¹⁶³ See TVA Kingston SEIS at i, 1, 9, 14; TVA Board Resolution at 2; Images posted by TVA (@TVA), Facebook, *Big things are happening at the Kingston Energy Complex in East Tennessee!* (June 23, 2026), <https://www.facebook.com/TVA/posts/pfbid024eFAyK2o7EWvfT97MwjxF27KyWYQSw68rARULZg3iST2WrnSsTU6bGJsqrnbtBLnl>; Images posted by TVA (@TVAnews), X, *Big things are happening at the Kingston Energy Complex in East Tennessee!* (June 23, 2026), <https://x.com/TVAnews/status/2069420974622032185>; **Attachment 6**, Images of Kingston Gas Plant Construction at 1–4.

¹⁶⁴ TVA is the sole permittee to whom the current Title V permit for the Kingston Fossil Plant was issued and to whom the now-invalid minor NSR permit for the construction of the Kingston Gas Plant was issued. See Title V Permit No. 572149 at 1; Minor NSR Permit No. 981915 at 1.

¹⁶⁵ 42 U.S.C. § 7418(a).

This waiver of sovereign immunity expressly applies “to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever)” and “to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner.”¹⁶⁶

VIII. DATES OF THE VIOLATIONS

Upon information and belief, TVA began actual construction of the Kingston Gas Plant on or about March 1, 2025, and its construction of all the new emission units is ongoing. The alleged violation of constructing this major modification without a PSD permit recurred (and is recurring) each day that actual construction ensued.¹⁶⁷

We note that TVA has access to specific dates of its installation and operation of the new emission units at the Kingston Gas Plant and any modifications of the Kingston Coal Plant boilers and ancillary equipment.

IX. CONCLUSION

TVA has violated and continues to violate the Clean Air Act and Tennessee’s federally approved SIP by (1) constructing a major modification without a PSD permit; (2) circumventing PSD requirements for the life-extending modifications of the Kingston Coal Plant by artificially disaggregating those changes despite being part of the same project as construction and operation of the Kingston Gas Plant, and (3) violating Condition A16 of its Title V permit by constructing (or proposing to construct) life-extending modifications of the Kingston Coal Plant without any preconstruction permit. Unless these violations are fully redressed, Community Groups intend to initiate a citizen suit against TVA.

If litigation is necessary, Community Groups will seek redress for the violations described herein, including injunctive relief, litigation costs (including reasonable attorney and expert witness fees) under 42 U.S.C. § 7604(d), as well as civil penalties under 42 U.S.C. §§ 7604(a) and 7413(e)(2).

During the notice period initiated by this letter, Community Groups are willing to discuss the factual assertions set forth in this letter, as well as effective remedies for the violations described. Community Groups have retained the assistance of counsel listed below, and all responses to this letter should be directed to the undersigned counsel.

¹⁶⁶ *Id.*

¹⁶⁷ *See Nat’l Parks Conservation Ass’n*, 480 F.3d at 419 (explaining that “the duty to obtain a construction permit containing the proper emissions limits is ongoing, even *post*-construction” (citing Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(e)).

Notice of Intent to Sue for Violations of the Clean Air Act
July 20, 2026

Thank you for your prompt attention to this matter.

Respectfully submitted,



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Southern Environmental Law Center

Notice of Intent to Sue for Violations of the Clean Air Act
July 20, 2026

CC, via U.S. Certified Mail (return receipt requested)

Todd Blanche, Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Kevin J. McOmber, P.E., Administrator
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth St. SW
Atlanta, GA 30303-8960

Bill Lee, Governor
Office of the Governor of Tennessee
State Capitol, 1st Floor
600 Dr. Martin L. King, Jr. Blvd.
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Jenny Howard, Deputy Commissioner and General Counsel
Tennessee Department of Environment and Conservation
Davy Crockett Tower, 5th Floor
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Courtesy copies, via electronic mail:

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ENCLOSURES

Attachment 1, Email and Agenda, TDEC/TVA Quarterly Meeting (May 2025)

Attachment 2, Teams Meeting Invitation: TVA & TDEC (July 28, 2025)

Attachment 3, TDEC October 2025 PSD Modeling Report-Out (Nov. 3, 2025)

Attachment 4, Compilation of Notes, TDEC Meeting (Jan. 7, 2026)

Attachment 5, Email from Patrick J. Flood to Michelle B. Walker et al. (Feb. 11, 2026)

Attachment 6, Images of Kingston Gas Plant Construction (March 2025–July 2026)

Attachment 7, Data Query & Download, EPA Clean Air Markets Program (2015–2025)

Attachment 8, TVA, Kingston System Value Analysis (Jan. 29, 2026)

Attachment 9, TVA, Coal Life Extension: Investment Overview (Dec. 12, 2025)

Referenced materials are accessible via public hyperlink or permalink in footnotes. Copies of referenced materials may also be accessed for download here:

<https://southernenvironment.sharefile.com/i/i15ccafcfea8448d8>.