



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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2018 JUL 31 PM 3:35
FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2018-0009

IN THE MATTER OF:)
)
BASIN ELECTRIC POWER COOPERATIVE) FINAL ORDER
)
)
)
)
)
RESPONDENT)

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 31st DAY OF July, 2018.

Katherin E. Hall
Katherin E. Hall
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
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In the Matter of:)
)
BASIN ELECTRIC POWER)
COOPERATIVE)
)
Laramie River Station)
)
)
Respondent.)
_____)

CONSENT AGREEMENT
Docket No. CAA-08-2018-0009

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and §§ 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. part 22.
2. Complainant is the undersigned delegated representative of the U.S. Environmental Protection Agency, Region 8. On the EPA's behalf, Suzanne J. Bohan, Assistant Regional Administrator for the Office of Enforcement, Compliance and Environmental Justice, is delegated the authority to settle civil administrative penalty proceedings under section 113(d) of the Act.
3. Respondent is Basin Electric Power Cooperative, organized under the laws of North Dakota and doing business in the state of Wyoming.
4. Respondent is a "person" as defined in section 302(e) of the Act, 42 U.S.C. § 7602(e).
5. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

6. This Agreement is entered into under section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. part 22. The violations in this Agreement are alleged pursuant to section 113(a)(3)(A) of the CAA, 42 U.S.C. § 7413(a)(3)(A).
7. The EPA and the Department of Justice determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment, pursuant to 42 U.S.C. § 7413(d).
8. The Regional Judicial Officer is authorized to ratify this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
9. The issuance of this Agreement and final order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

10. The purpose of the CAA is to “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.” 42 U.S.C. § 7401(b)(1).
 - A. National Ambient Air Quality Standards**
11. Section 108 of the CAA, 42 U.S.C. § 7408, directs the EPA to identify air pollutants that “may reasonably be anticipated to endanger public health or welfare.” These pollutants are known as “criteria pollutants.”
12. For criteria pollutants, section 109 of the CAA, 42 U.S.C. § 7409, requires the EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.
13. The EPA has identified sulfur dioxide (SO₂) as a criteria pollutant and has promulgated NAAQS for SO₂, pursuant to sections 108 and 109 of the CAA, 42 U.S.C. §§ 7408 and 7409. *See* 40 C.F.R. §§ 50.4 and 50.5.

14. Each state is required to designate those areas within its boundaries that meet or do not meet the NAAQS for each criteria pollutant, or where the area cannot be classified because of insufficient data, pursuant to section 107(d) of the CAA, 42 U.S.C. § 7407(d). An area that meets the NAAQS for a particular criteria pollutant is considered an “attainment” area for purposes of that pollutant. An area that does not meet the NAAQS for a particular criteria pollutant is considered a “nonattainment” area for purposes of that pollutant. An area that cannot be classified due to insufficient data is “unclassifiable.”
15. Each state must adopt and submit to the EPA for approval a plan that provides for the implementation, maintenance, and enforcement of the NAAQS for each criteria pollutant, pursuant to section 110(a) of the CAA, 42 U.S.C. § 7410(a). This plan is known as a state implementation plan (SIP).

B. Prevention of Significant Deterioration

16. Part C of Title I of the CAA, 42 U.S.C. §§ 7470–749, establishes requirements to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable. These provisions are referred to herein as PSD.
17. Section 165 of the CAA, 42 U.S.C. § 7475, prohibits the construction and operation of a “major emitting facility” in an area designated as attainment or unclassifiable for the applicable NAAQS without first obtaining a PSD permit and installing best available control technology (BACT).
18. Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input and which emit, or have the potential to emit, 100 tons per year or more of any air pollutant are “major emitting facilities,” as that term is defined by section 169(1) of the CAA, 42 U.S.C. § 7479(1).
19. “Construction” is defined to include a “modification” as that term is defined by section 111(a) of the CAA, 42 U.S.C. § 7411(a). Section 111(a) of the CAA, 42 U.S.C. § 7411(a), defines

“modification” to be “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.”

20. Section 161 of the CAA, 42 U.S.C. § 7471, requires that each SIP contain emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in attainment areas.
21. On June 19, 1978, the EPA issued regulations implementing the federal PSD program at 40 C.F.R. § 52.21, and the requirements for SIP-approved PSD programs at 40 C.F.R. § 51.166. *See* 43 Fed. Reg. 26,380 (June 19, 1978) (SIP-approved PSD programs (originally codified at 40 C.F.R. § 51.24)); 43 Fed. Reg. 26,388 (June 19, 1978) (federal PSD program). The federal PSD regulations have since been revised, with subsequent revisions incorporated under 40 C.F.R. §§ 52.21 and 51.166.
22. The State of Wyoming has adopted a PSD program in accordance with Part D of Title I of the CAA, 42 U.S.C. §§ 7501–7509a. At all times relevant to this action, Wyoming’s PSD rules at Wyoming Air Quality Standards and Regulations (WAQSR), Chapter 6, Section 4, have been approved by EPA as part of the Wyoming SIP. *See* 44 Fed. Reg. 51,977 (Sept. 6, 1979) (approving Wyoming’s initial PSD program SIP submittal); 73 Fed. Reg. 40,750 (July 16, 2008) (approving Wyoming’s PSD program revisions).
23. Under the federal PSD regulations and the Wyoming SIP, no “major modification” of any major source may begin without a PSD permit. 40 C.F.R. § 52.21(a)(2)(iii); WAQSR Chapter 6, Section 2(a)(i) and Section 4(b).
24. Any “major modification” shall apply BACT for each regulated pollutant for which it would result in a significant emissions increase at the source. 40 C.F.R. § 52.21(j); WAQSR Chapter 6, Section 4(b)(J)(V)(ii)(A).

25. The term “major stationary source” is defined at 40 C.F.R. § 52.21(b)(1)(i) and WAQSR Chapter 6, Section 4(a) to include, inter alia, any fossil-fuel fired steam electric plant of more than 250 million Btu/hr that emits, or has the potential to emit, 100 tpy or more of any regulated air pollutant or any other facility that emits, or has the potential to emit, 250 tpy or more of any regulated air pollutant, or any physical change that would occur at a stationary source not otherwise qualifying as a major stationary source, if the changes would constitute a major stationary source by itself.
26. A “major modification” under the federal PSD regulations is “any 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 NSR pollutant . . . ; and a significant net emissions increase of that pollutant from the major stationary source. 40 C.F.R. § 52.21(b)(2)(i). The Wyoming SIP defines “major modification” in a substantively identical way. *See* WAQSR Chapter 6, Section 4(a).
27. “Regulated NSR pollutant” includes any pollutant for which a NAAQS has been promulgated. 40 C.F.R. § 52.21(b)(50); WAQSR Chapter 6, Section 4(a). SO₂ is a “regulated NSR pollutant.” *See* 40 C.F.R. §§ 50.4 and 50.5.
28. Under the federal PSD regulations and the Wyoming SIP, “significant” in reference to net emissions increase of SO₂ means an increase in the rate of emissions that would equal or exceed a rate of 40 tons per year of SO₂. 40 C.F.R. § 52.21(b)(23); WAQSR Chapter 6, Section 4(a).
29. “Net emissions increase” means the amount by which the sum of the following exceeds zero: “[t]he increase in emissions from a particular physical change or change in the method of operation at a stationary source” and “[a]ny other increases or decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 52.21(b)(3)(i); WAQSR Chapter 6, Section 4(a).

30. Violations of the federally-approved Wyoming PSD program are federally enforceable pursuant to section 113(a) of the CAA, 42 U.S.C. § 7413(a).

IV. STIPULATED FACTS

31. At all times relevant to this Agreement, Respondent was the part owner and operating agent of the Laramie River Station located in Platte County, Wyoming.
32. The Laramie River Station is a fossil-fuel fired steam electric plant of more than 250 million British thermal units per hour heat input.
33. The Laramie River Station emits, or has the potential to emit, more than 100 tons per year of air pollutants.
34. The Laramie River Station is therefore a “major emitting facility” for purposes of section 169 of the CAA and a “major stationary source” under 40 C.F.R. § 52.21(b)(1)(i) and WAQSR Chapter 6, Section 4(a).
35. The Laramie River Station consists of three coal-fired steam electric generating units, referred to as Unit 1, Unit 2, and Unit 3.
36. At all times relevant to this Agreement, the Laramie River Station was located in an area classified as attainment for SO₂.

V. ALLEGED VIOLATIONS OF LAW

37. During a Unit outage in April and May 2011, Respondent replaced the secondary superheater intermediate and outlet bank at Unit 3 of the Laramie River Station.
38. The project referenced in paragraph 37 resulted in a significant net emissions increase of over 40 tons per year of SO₂ emissions, which is a major modification as defined by federal PSD regulations and the Wyoming SIP.
39. The project referenced in paragraph 37 constitutes a major modification as defined in the federal PSD regulations and the Wyoming SIP.

40. Respondent failed to obtain a PSD permit to replace the secondary superheater intermediate and outlet bank at Unit 3 and failed to apply BACT.
41. Respondent's failure to apply for and obtain a PSD permit prior to commencing the major modification described in paragraph 37 and Respondent's failure to apply BACT to Unit 3 violate the Wyoming SIP, enforceable by EPA under section 113 of the CAA, 42 U.S.C. § 7413.

VI. NOTICES

42. EPA provided notice of the alleged violations described above to Respondent and to the State of Wyoming at least 30 days prior to the issuance of this Consent Agreement, as required by section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1).

VII. TERMS OF CONSENT AGREEMENT

43. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - a. admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
 - b. admits to the stipulated facts stated above;
 - c. neither admits nor denies the alleged violations of law stated above;
 - d. consents to the assessment of a civil penalty as stated below;
 - e. consents to the authority to issue and the issuance of any specified compliance or corrective action order;
 - f. consents to the conditions specified in this Agreement;
 - g. consents to any stated Permit Action;
 - h. waives any right to contest the alleged violations, the terms of this Agreement, and the conditions specified in this Agreement; and
 - i. waives its rights to appeal any final order which approves this Agreement.
44. For the purpose of this proceeding, Respondent:
 - a. agrees that this Agreement states a claim upon which relief may be granted against Respondent;

- b. acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Agreement, including any right of judicial review under section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);
- d. consents to personal jurisdiction in any action to enforce this Agreement, in the United States District Court for the District of Wyoming; and
- e. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement, and to seek an additional penalty for such noncompliance, and agree that federal law shall govern in any such civil action.

45. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation occurring between January 13, 2009 and November 2, 2015, and up to \$45,268 per day for each violation occurring after November 2, 2015. To determine the amount of the civil penalty to be assessed pursuant to section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), the EPA took into account, in addition to such other factors as justice may require, the size of Respondent's business, the economic impact of the penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.
46. The EPA has compromised the civil penalty pursuant to section 113(d)(2)(B) of the Act, 42 U.S.C. § 7413(d)(2)(B).

47. Penalty Payment. Respondent agrees to:
- a. pay the civil penalty of two hundred thousand dollars (\$200,000) within 30 calendar days of the Effective Date of this Agreement;
 - b. pay the penalty using any method provided on the following website:
www.epa.gov/financial/makepayment. Within 24 hours of payment of the penalty, send proof of payment to Alex North at north.alexis@epa.gov (proof of payment means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements).
48. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:
- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
 - b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and

- d. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.
49. As a condition of settlement, Respondent will be liable for stipulated penalties to the EPA for failure to pay the civil penalty, or any portion thereof, when due, or provide proof of such payment: \$5,000 per day for each day during the first 15 days, and \$10,000 per day thereafter. All stipulated penalties must be paid in the manner specified in the manner specified in subparagraph 47.b.
50. Definitions.
- a. "30-Day Rolling Average Emission Rate" means the Emission Rate for Unit 3 expressed in lb/mmBTU and calculated in accordance with the following procedure: first, sum the total pounds of pollutant emitted from the applicable Unit during the current Unit Operating Day and the previous 29 Unit Operating Days; second, sum the total heat input to the Unit in mmBTU during the current Operating Day and the previous 29 Operating Days; and third, divide the total number of pounds of pollutant emitted during the 30 Operating Days by the total heat input during the 30 Operating Days. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Unit Operating Day. Each 30-Day Rolling Average Emission Rate shall include all emissions of the applicable pollutant that occur during all periods within any Unit Operating Day, including emissions from startup, shutdown, and malfunction;
 - b. A "365-Day Rolling Average Emission Rate" for a Unit shall be expressed in lb/mmBTU and calculated in accordance with the following procedure: first, sum the pounds of the pollutant in question emitted from the Unit during the most

recent Unit Operating Day and the previous 364 Unit Operating Days; second, sum the total heat input to the Unit in mmBTU during the most recent Unit Operating Day and the previous 364 Unit Operating Days; and third, divide the total number of pounds of the pollutant emitted during the 365 Unit Operating Days by the total heat input during the 365 Unit Operating Days. A new 365-Day Rolling Average Emission Rate shall be calculated for each new Unit Operating Day. Each 365-Day Rolling Average Emission Rate shall include all emissions that occur during all periods of operation, including startup, shutdown, and Malfunction.

- c. "Continuously Operate" means, except during a Malfunction, that when a pollution control technology or combustion control is required to be continuously used at Unit 3 pursuant to this Agreement, it shall be operated at all times Unit 3 is in operation, consistent with technological limitations, manufacturers' specifications, good engineering and maintenance practices, and good air pollution control practices for minimizing emissions (as defined in 40 C.F.R. § 60.11(d)) for such equipment and Unit 3.
- d. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- e. "Respondent" means Basin Electric Power Cooperative;
- f. "Emission Rate" means the number of pounds of a given pollutant emitted per million British thermal units of heat input (lb/mmBTU), measured in accordance with this Agreement;

- g. "lb/mmBTU" means pound per million British thermal units;
- h. "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or unusual manner, including but not limited to pump or blower failures or electrical problems that cause equipment to trip and reset. Failures that are caused in part by poor maintenance or careless operation are not Malfunctions.
- i. "SO₂" means sulfur dioxide, as measured in accordance with the provisions of this Agreement;
- j. "SO₂ Allowance" means an authorization to emit a specified amount of SO₂ that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or applicable Wyoming SIP;
- k. "Surrender" or "Surrender of Allowances" means, for purposes of SO₂ Allowances, permanently surrendering allowances from the accounts administered by EPA and the State of Wyoming, if applicable, so that such allowances can never be used thereafter to meet any compliance requirements under the CAA, a SIP, or this Agreement;
- l. "Title V Permit" means the permit required of major sources pursuant to Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e;
- m. "Unit" means, collectively, the coal pulverizer, stationary equipment that feeds coal to the boiler, the boiler that produces steam for the steam turbine, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine, and boiler, and all ancillary equipment, including pollution control

equipment and systems necessary for production of electricity. An electric steam generating station may be comprised of one or more Units; and

n. "Unit Operating Day" means any Day on which Unit 3 fires fuel in the boiler.

51. Conditions. As a conditions of settlement, Respondent agrees to the following:

- a. Unit 3 Dry Scrubber Operation. By the Effective Date of this Agreement and continuing thereafter, Respondent shall Continuously Operate the existing dry scrubber at the Laramie River Station Unit 3.
- b. SO₂ Emissions Limit at Unit 3. Beginning on the Effective Date of this Agreement and continuing thereafter, Respondent shall achieve and maintain a 30-Day Rolling Average SO₂ Emission Rate of no greater than 0.160 lb/mmBTU and a 365-Day Rolling Average SO₂ Emission Rate of no greater than 0.140 lb/mmBTU at Unit 3.
 - (1) In determining a 30-Day Rolling Average Emission Rate or a 365-Day Rolling Average Emission Rate, Respondent shall use SO₂ emission data obtained from a continuous emissions monitoring system in accordance with procedures at 40 C.F.R. part 75, except that missing data substitution procedures of 40 C.F.R. part 75 shall not apply to such determinations. Diluent capping (i.e., 5% CO₂) will be applied to the SO₂ Emission Rate for any hours where the measured CO₂ concentration is less than 5% following the procedures in 40 C.F.R. part 75, appendix F, section 3.3.4.1.
- c. SO₂ Allowance Surrender Requirements.
 - (1) Use and Surrender of SO₂ Allowances
 - i. Respondent shall not use SO₂ Allowances to comply with any requirement of this Agreement, including by claiming compliance with any emission

limitation required by this Agreement by using, tendering, or otherwise applying SO₂ Allowances to offset any excess emissions.

- ii. Beginning in calendar year 2018, and continuing each calendar year thereafter, Respondent shall surrender an amount of SO₂ Allowances equivalent to the total number of SO₂ Allowances allocated to Unit 3 of the Laramie River Station for that calendar year that Respondent does not need to meet federal or state CAA regulatory requirements for Unit 3. Surrendered Allowances for any given calendar year must be of the same or earlier vintage year. "Surrender" means permanently surrendering from the accounts administered by EPA and the State of Wyoming, if applicable, so that such allowances can never be used thereafter to meet any compliance requirements under the CAA, the SIP, or this Agreement. Respondent shall not sell, bank, trade, or transfer its interest in any such SO₂ Allowances.
- iii. Nothing in this Agreement shall prevent Respondent from purchasing or otherwise obtaining SO₂ Allowances from another source for purposes of complying with federal or state CAA regulatory requirements to the extent otherwise allowed by law.

(2) Method for Surrender of SO₂ Allowances

- i. Respondent shall surrender, or transfer to a non-profit third party selected by Respondent for surrender, all SO₂ Allowances required to be surrendered pursuant to subparagraphs 51.c(1) by March 1 of the immediately following year.
- ii. If any SO₂ Allowances required to be Surrendered under this Agreement are transferred directly to a non-profit third party, Respondent shall include a

description of such transfer in the next report submitted to EPA pursuant to subparagraph 51.i of this Agreement. Such report shall: (a) identify the non-profit third party recipient(s) of the Allowances and list the serial numbers of the transferred allowances; and (b) include a certification by the third-party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the Allowances and will not use any of the Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any Allowances, Respondent shall include a statement that the third-party recipient(s) surrendered the Allowances for permanent Surrender to EPA in accordance with the provisions of subparagraph 51.c(2)iii within one year after Respondent transferred the Allowances to them. Respondent shall not have complied with the Allowance Surrender requirements of this paragraph until all third party recipient(s) have actually Surrendered the transferred Allowances to EPA.

- iii. For all SO₂ Allowances required to be surrendered, Respondent shall ensure that an Allowance transfer request form is first submitted to the EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. Such Allowance transfer requests may be made electronically using the EPA's Clean Air Markets Division Business System, or similar system provided by EPA. As part of submitting these transfer requests, Respondent shall ensure that the transfer of its Allowances are irrevocably authorized and that the source and

location of the Allowances being Surrendered are identified by name of account and any applicable serial or other identification numbers or station names.

- d. Super-Compliant SO₂ Allowances. Notwithstanding Paragraph 51.c (SO₂ Allowance Surrender Requirements) of this Agreement, beginning with the year 2018 and continuing in each calendar year thereafter, Respondent may sell, bank, use, trade, or transfer SO₂ Allowances made available in that year's compliance period solely as a result of:
- (1) The installation and operation of any SO₂ pollution control that is not otherwise required by, or necessary to maintain compliance with, any provision of this Agreement, and is not otherwise required by law;
 - (2) The use of FGD prior to the date established by this Agreement; or
 - (3) Achievement and maintenance of an Emission Rate for SO₂ below the Emission Rates in subparagraph 51.b.

Respondent shall timely report the generation of such super-compliant Allowances in accordance with paragraph 51.i (Reporting) of this Agreement.

- e. Within one year of the Effective Date of this Agreement, Respondent shall amend any applicable Title V Permit application, or apply for amendments of its Title V Permit, to include a schedule for all requirements of this Agreement, including requirements in subparagraphs 51.a, b, and c. Respondent shall not include in its Title V application or Permit the "Malfunction" exception to "Continuously Operate" as provided for in subparagraph 51.a and defined in subparagraph 50.b, above.
- f. Within 180 days of the Effective Date of this Agreement, Respondent shall apply to permanently include the requirements and limitations enumerated in subparagraphs 51.a, b, and c into a federally enforceable permit or request a site-specific amendment to the

Wyoming SIP, such that the requirements and limitations enumerated in this Agreement become and remain “applicable requirements” as that term is defined in 40 C.F.R. § 70.2. Respondent shall not include in its federally enforceable permit or site-specific amendment the “Malfunction” exception to “Continuously Operate” as provided for in subparagraph 51.a and defined in subparagraph 50.b, above.

- g. Respondent shall provide EPA with a copy of each application for a federally enforceable permit or SIP amendment, as well as a copy of any permit or amendment proposed as a result of such application.
- h. Prior to termination of this Agreement, Respondent must have obtained permits or submitted applications in accordance with subparagraphs 51.c and 51.d.
- i. Reporting. After the Effective Date of this Agreement, Respondent shall submit to EPA a periodic report, within 60 days after the end of each half of the calendar year (January through June and July through December). The report shall contain: (1) all information necessary to determine compliance during the reporting period with the 30-Day and 365-Day Rolling Average SO₂ Emission Rates pursuant to subparagraph 51.b; (2) an identification of all periods when the existing dry scrubber at Unit 3 was not Continuously Operating pursuant to subparagraph 51.a, the reason it was not operating; (3) the basis for Respondent’s compliance or noncompliance with subparagraph 51.a; and (4) all information necessary to determine compliance with the requirements pertaining to the use and Surrender of SO₂ Allowances pursuant to subparagraph 51.c.

- (1) All reports required by this Agreement shall be signed by the Responsible Official as defined in the Wyoming SIP and shall contain the following certification:

This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who

manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

j. Stipulated Penalties. Respondent shall be liable for stipulated penalties to the United States for violations of this Agreement as specified below. A violation includes failing to perform any obligation required by the terms of this Agreement, including any work plan or schedule approved under this Agreement, according to all applicable requirements of this Agreement and within the specified time schedules established by or approved under this Agreement.

- (1) If EPA determines that a stipulated penalty should be paid pursuant to this Agreement, it shall make a written demand for stipulated penalty. Respondent shall pay any stipulated penalty within 60 days of receiving EPA's written demand, unless the demand is disputed.
- (2) The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Agreement.
- (3) Stipulated penalties continue to accrue during any dispute resolution, but need not be paid until 30 days after the dispute is resolved.
- (4) Respondent shall pay stipulated penalties owed to EPA in the manner set forth and with the confirmation notices required by subparagraph 47.b, except that the transmittal letter must state that the payment is for stipulated penalties and must state for which alleged violation(s) the penalties are being paid.
- (5) The following stipulated penalties may apply:

Violation	Stipulated Penalty
(a) Failure to Continuously Operate the SO ₂ control device as required by subparagraph 51.a	\$10,000 per day per violation during the first 30 days; \$37,500 per day per violation thereafter

Violation	Stipulated Penalty
(b) Failure to comply with the SO ₂ emission limit for Unit 3 as required by subparagraph 51.b	\$750 for each day in a calendar quarter on which the specified 30-Day or 365-Day Rolling Average exceeds the applicable limit
(c) Failure to Surrender SO ₂ Allowances as required by subparagraph 51.c	\$37,500 per day, plus \$1,000 per SO ₂ Allowance not Surrendered
(d) Failure to submit a complete and timely permit amendment in accordance with subparagraphs 51.e or f	<u>Period of Delay</u> <u>Penalty per Day</u> <u>or Noncompliance</u>
	Days 1–30 \$ 250
	Days 31–60 \$ 500
	Days 61 and later \$1,000

52. Respondent agrees that the time period from the Effective Date of this Agreement until the Agreement is terminated pursuant to Section X (Tolling Period) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (Tolled Claims) set forth in Section V of this Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.
53. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in paragraph 52, if Respondent proposes to sell or transfer any of its ownership or operational interest to another entity, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Laramie River Station. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such

transfer, assignment, or delegation of Respondent's ownership or operational interest, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities. This Agreement shall not be construed to impede the transfer of any ownership or operational interest between Respondent and other entities so long as the conditions of this paragraph are met.

54. By signing this Agreement, Respondent acknowledges that this Agreement will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.
55. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
56. By signing this Agreement, both parties agree that each party's obligations under this Agreement constitute sufficient consideration for the other party's obligations.
57. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was, based on information and belief at the time of submission, true, accurate, and complete for each such submission, response, and statement. If Respondent learns after certifying that the information submitted was in any material respect inaccurate or incomplete, it shall promptly submit such supplementary or corrected information. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
58. Except as qualified by paragraph 47 (Penalty Payment), each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VIII. DISPUTE RESOLUTION

59. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Agreement. Respondent's failure to seek resolution of a dispute under this Section shall preclude Respondent from raising any such issue as a defense to an action by EPA to enforce any obligation of Respondent arising under this Agreement.
60. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Agreement shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Respondent sends EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 60 days from the date the dispute arises, unless that period is modified by written agreement. If EPA and Respondent cannot resolve a dispute by informal negotiations, then the position advanced by EPA shall be considered binding unless, within 45 days after the conclusion of the informal negotiation period, Respondent invokes formal dispute resolution procedures as set forth below.
61. Formal Dispute Resolution. Respondent shall invoke formal dispute resolution procedures, within the time period provided in the preceding paragraph, by serving on EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Respondent's position and any supporting documentation relied upon by Respondent.
62. EPA shall serve its Statement of Position within 45 days of receipt of Respondent's Statement of Position. EPA's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by EPA. EPA's Statement of Position shall be binding on Respondent, unless Respondent requests alternative dispute resolution in accordance with the following paragraph.

63. Respondent may request that EPA coordinate to designate a neutral party for dispute resolution consistent with 40 C.F.R. § 22.18(d). If Respondent and EPA cannot agree on a neutral party, the Respondent may move for the appointment of a neutral party to proceed with dispute resolution consistent with 40 C.F.R. § 22.18(d).
64. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Respondent under this Agreement, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in subparagraph 51.j (Stipulated Penalties). If Respondent does not prevail on the disputed issue, stipulated penalties (if applicable to the dispute) shall be assessed and paid as provided in subparagraph 51.j (Stipulated Penalties).

IX. EFFECT OF AGREEMENT

65. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
66. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
67. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
68. The terms and conditions of this Agreement may not be modified or amended except upon the written agreement of all parties, and approval of the Regional Judicial Officer.
69. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of up to \$95,284 per day per violation, or both, as provided in section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2) and adjusted for inflation pursuant to 40 C.F.R. part 19, as well as criminal sanctions as provided in

section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.

70. Nothing in this Agreement shall relieve Respondent of the duty to comply with all provisions of the Act and other federal, state, or local laws or statutes applicable to the Laramie River Station, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
71. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
72. If and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights.

X. TERMINATION

73. Upon demonstration of compliance with subparagraphs 51.a, b and c for a period of two years and completion of the conditions in subparagraphs 51.e, f, and g, Respondent shall provide a Statement of Completion along with the final periodic report described in subparagraph 51.i. The Statement of Completion shall certify that Respondent has complied with all conditions pursuant to paragraph 51.
74. After reviewing the Statement of Completion, EPA shall provide a Confirmation of Termination or notify Respondent of outstanding compliance items.

XI. EFFECTIVE DATE

75. Respondent and Complainant agree to issuance of a final order approving this Agreement. This Agreement, and subsequently issued final order, shall become effective after execution of the

final order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk
(Effective Date).

The foregoing Combined Complaint and Consent Agreement In the Matter of Basin Electric Power Cooperative is Hereby Stipulated, Agreed, and Approved.

FOR RESPONDENT:




July 17, 2018

Date



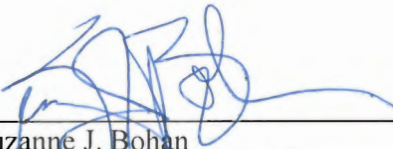
Mark D. Foss
Senior Vice President & General Counsel
1717 East Interstate Avenue
Bismarck, ND 58503

Respondent's Federal Tax Identification Number 

The foregoing Combined Complaint and Consent Agreement In the Matter of Basin Electric Power Cooperative is Hereby Stipulated, Agreed, and Approved.

FOR COMPLAINANT:

7/25/18
DATE



Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in the matter of **BASIN ELECTRIC POWER COOPERATIVE; DOCKET NO.: CAA-08-2018-0009** was filed with the Regional Hearing Clerk on July 31, 2018.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Jessica Portmess, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on July 31, 2018, to:

Respondent

Anine Merkens, Attorney
Basin Electric Power Cooperative
1717 East Interstate Avenue
Bismarck, North Dakota 58503

Respondent's Legal Representation


Emily Schilling
Holland & Hart LLP
222 S. Main Street, Suite 2200
Salt Lake City, Utah 84101

Jill Van Noord
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, Colorado 80202

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

July 31, 2018



Melissa Haniewicz
Regional Hearing Clerk