Exhibit 1: Table of EPA enforcement actions identified by OAR and OECA that arose, in whole or in part, from the CO_2 monitoring requirements of Section 821 of Public Law 101-549 and/or 40 C.F.R. Part 75, with case documents attached

Enforcement Type And Case Name	General Violation Alleged	Enforcement Authority Relied Upon	Summary of Inclusion of CO_2 Requirements in Case Documents
Administrative ------ *In the Matter of IES Utilities, Cedar Rapids, Iowa*, Docket No. VII-95-CAA-111	Violations of the Acid Deposition Control provisions of Title IV of the CAA and 40 CFR Part 75	CAA § 113(d)	Complaint generally notes that Part 75 requires continuous emissions monitoring systems (CEMs) for CO_2 and other acid rain pollutants (¶¶3-5), states that 40 CFR § 75.10(a)(3) contains the CO_2 monitoring requirements (¶ 8), and lists specific CO_2 CEMs violations (¶¶ 16-18) (See p. 3-15 of attached) ----- Consent Agreement and Consent Order does not mention CO_2, but does note IES's general compliance with CAA §412 (¶ 4) and the Acid Rain Deposition requirements of CAA Title IV (¶ 5) (See p. 16-21 of attached)
Administrative ------ *In the Matter of Indiana Municipal Power Agency, Carmel, Indiana at its Anderson Combustion Turbine Facility, Anderson, Indiana and Richmond Combustion Turbine Facility, Richmond, Indiana,* Docket No. CAA-05-2000-0016	Violations of Sections 412 and 821 of the Act and 40 C.F.R. Part 72 and 75	CAA § 113(d)	Complaint generally notes the monitoring and reporting requirements of Sections 412 and 821 of the Act (¶ 5), notes that Part 75 requires continuous emissions monitoring systems (CEMs) for CO_2 and other acid rain pollutants (¶¶3-4, 34), and alleges general violations of the Part 75 monitoring and reporting requirements (¶¶ 35-36, 45-46) (See p. 22-36 of attached) ----- Consent Agreement and Final Order (¶ 2) alleges violations of Sections 412 and 821 of the Act but does not specifically mention CO_2 or any other Part 75 pollutant[1] (See p. 37-46 of attached)

[1] EPA has been unable to locate a signed copy of the Consent Agreement and Final Order in *Indiana Municipal Power Agency*. Attached is an unsigned copy of the document, which was provided by the Regional Counsel assigned to the matter.

Enforcement Type And Case Name	**General Violation Alleged**	**Enforcement Authority Relied Upon**	**Summary of Inclusion of CO_2 Requirements in Case Documents**
Administrative --- *In the Matter of City of Detroit, Department of Public Lighting, Mistersky Power Station, Detroit, Michigan,* Docket No. CAA-05-2004-0027	Violations of the Acid Rain Program requirements of 40 C.F.R. Parts 72 to 78	CAA § 113(d)	Consent Agreement and Final Order generally states that the Acid Rain Program requirements of 40 C.F.R. Parts 72 to 78 require continuous emissions monitoring systems (CEMs) for CO_2 and other acid rain pollutants (¶¶5-8) and lists general CEMs violations but does not specifically mention CO_2 or any other Part 75 pollutant (¶¶ 31-35) (See p. 47-61 of attached)
Judicial --- *United States v. Block Island Power Co.*, CA-98-045 (D. R.I.)	Violations of Sections 412 and 821 of the Act and 40 C.F.R. Part 75	CAA § 113(b)	Complaint generally states that CAA § 412 and 40 C.F.R. Part 75 require CEMs for CO_2 and other acid rain pollutants (¶ 29) and alleges a general violation of the Part 75 CEMs requirements (¶49) (See p. 62-80 of attached) --- Consent Decree restates claim regarding lack of CEMs for CO_2 (¶ 5) and requires installation of CEMs as required by Part 75 (¶ 25) (See p. 81-118 of attached)
Judicial --- *Sierra Club v. Public Service Company of Colorado*, No. 93-B-1749 (D. Colo.)[2]	Violations of 40 C.F.R. Part 75	Sierra Club: CAA § 304 EPA: CAA §§ 304(c) and 113 (b)	Consent Decree (¶ 9) requires monitoring of CO_2 emissions and other acid rain pollutants in full compliance with the requirements of Part 75 (See p. 119-168 of attached)

[2] *Sierra Club v. Public Service Company of Colorado* was a CAA citizen suit in which EPA intervened. EPA identified this case on an archived administrative enforcement database, and a plain text copy of the consent decree was the only relevant document from this case that we could locate.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	Docket No. VII-95-CAA-111
IES UTILITIES INC.	)	
Cedar Rapids, Iowa	)	COMPLAINT AND NOTICE OF
	)	OPPORTUNITY FOR HEARING
Respondent	)	

COMPLAINT

This civil administrative Complaint and Notice of Opportunity for Hearing under Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), proposes penalties for violations of the Acid Deposition Control provisions of Title IV of the Act, 42 U.S.C. §§ 7651 to 7651o. This Complaint provides written notice of the United States Environmental Protection Agency ("EPA") proposal to assess administrative penalties, and provides an opportunity to request a hearing. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region VII, is the Director of the Air, RCRA and Toxics Division, EPA, Region VII.

GENERAL ALLEGATIONS

1. Respondent IES Utilities Inc. is a corporation that owns and operates electric and gas utility facilities, with a principal place of business at 200 First Street S.E., Cedar Rapids, Iowa ("Respondent").

2. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and in 40 C.F.R. § 72.2.

REGULATORY FRAMEWORK

3. Under Section 412 of the Act, 42 U.S.C. § 7651k, and 40 C.F.R. Part 75, the owner or operator of any fossil fuel-fired combustion device regulated under Title IV of the Act, 42 U.S.C. §§ 7651 to 7651o ("affected unit"), is required to install, certify, operate, and maintain continuous emission monitoring systems at each affected unit for sulfur dioxide, nitrogen oxides, opacity, and carbon dioxide.

4. Under Section 412(c) of the Act, 42 U.S.C. § 7651k(c), and 40 C.F.R. § 75.4(a)(3), the owner or operator of each existing Phase II affected unit listed in 40 C.F.R. § 73.10, Table 2, must install and perform certification tests for required continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, opacity, and carbon dioxide by January 1, 1995.

5. Section 412(e) of the Act, 42 U.S.C. § 7651k(e), makes it unlawful for the owner or operator of any source subject to Title IV of the Act to operate a source without complying with Section 412 and the implementing regulations at 40 C.F.R. Part 75, including 40 C.F.R. §§ 75.4 and 75.5.

6. 40 C.F.R. § 75.10(a)(1) provides, in relevant part, that the owner or operator for each affected unit shall install, certify, operate, and maintain a SO_2 continuous emission monitoring system with the automated data acquisition and handling system for measuring and recording SO_2 concentration,

volumetric gas flow, and SO_2 mass emissions discharged to the atmosphere.

7. 40 C.F.R. § 75.10(a)(2) provides, in relevant part, that the owner or operator for each affected unit shall install, certify, operate, and maintain a NO_x continuous emission monitoring system (including a NO_x concentration monitor and an O_2 or CO_2 diluent gas monitor) with the automated data acquisition and handling system for measuring and recording NO_x concentration and NO_x emission rate discharged to the atmosphere.

8. 40 C.F.R. § 75.10(a)(3) provides, in relevant part, that the owner or operator for each affected unit shall determine CO_2 emissions by using the options specified in 40 C.F.R. § 75.10(a)(3)(i); 40 C.F.R. § 75.10(a)(3)(ii) or 40 C.F.R. § 75.10(a)(3)(iii).

9. Respondent is the owner and operator of the following existing Phase II affected units listed in 40 C.F.R. § 73.10, Table 2: Sixth Street units 2(3/4), 3(5/6), 4(7/8) and 5(9/10) at the Sixth Street Power Station, Cedar Rapids, Iowa; Ottumwa unit 1 at Ottumwa Generating Station, Chillicothe, Iowa; Prairie Creek unit 3 at Prairie Creek Generating Station, Cedar Rapids, Iowa; and Sutherland units 1, 2 and 3 at the Sutherland Generating Station, Marshalltown, Iowa.

VIOLATIONS

10. As of January 1, 1995, Respondent had not completed the certification testing of required continuous emission

monitors for sulfur dioxide at Sixth Street units 4(7/8) and 5(9/10).

11. As of January 1, 1995, Respondent had not completed the certification testing of required continuous emission monitors for sulfur dioxide at Prairie Creek unit 3.

12. As of January 1, 1995, Respondent had not completed the certification testing of required continuous emission monitors for sulfur dioxide at Sutherland units 1, 2 and 3.

13. As of January 1, 1995, Respondent had not completed the certification testing of required continuous emission monitors for nitrogen oxides at Sixth Street units 2(3/4), 4(7/8) and 5(9/10).

14. As of January 1, 1995, Respondent had not completed the certification testing of required continuous emission monitors for nitrogen oxides at Prairie Creek unit 3.

15. As of January 1, 1995, Respondent had not completed the certification testing of required continuous emission monitors for nitrogen oxides at Sutherland units 1, 2 and 3.

16. As of January 1, 1995, Respondent had not completed the certification testing of required continuous emission monitors for carbon dioxide at Sixth Street units 4(7/8) and 5(9/10).

17. As of January 1, 1995, Respondent had not completed the certification testing of required continuous emission monitors for carbon dioxide at Prairie Creek unit 3.

18. As of January 1, 1995, Respondent had not completed the certification testing of required continuous emission monitors for carbon dioxide at Sutherland units 1, 2 and 3.

19. As of January 1, 1995, Respondent had not completed the certification testing of required continuous emission monitors for volumetric flow at Sixth Street units 2(3/4), 3(5/6), 4(7/8) and 5(9/10).

20. As of January 1, 1995, Respondent had not completed the certification testing of required continuous emission monitors for volumetric flow at Ottumwa unit 1.

21. As of January 1, 1995, Respondent had not completed the certification testing of required continuous emission monitors for volumetric flow at Prairie Creek unit 3.

22. As of January 1, 1995, Respondent had not completed the certification testing of required continuous emission monitors for volumetric flow at Sutherland unit 3.

23. Accordingly, Respondent violated, and continued to violate, Section 412 of the Act, 42 U.S.C. § 7651k, and 40 C.F.R. §§ 75.4 and 75.5(b), on each day of operation of each affected unit at Sixth Street, Ottumwa, Prairie Creek, and Sutherland, from January 1, 1995, until the date of completion of each required certification test.

PROPOSED CIVIL PENALTY

Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), authorizes the assessment of a civil administrative penalty of up to Twenty-five Thousand Dollars ($25,000) per day for each

violation of the "Acid Deposition Control" provisions of Title IV of the Clean Air Act. Based on the allegations above, and taking into account the penalty assessment criteria of Section 113(e), 42 U.S.C. § 7413(e), the Complainant proposes to assess Respondent a civil penalty of One Hundred Twenty-Four Thousand One Hundred Dollars ($124,100).

This civil penalty is calculated using EPA's "Clean Air Act Stationary Source Civil Penalty Policy," dated October 25, 1991 ("Penalty Policy"), the Acid Rain Compliance/Enforcement Guidance dated June 27, 1994 and the Acid Rain Addendum to the February 7, 1992 Timely and Appropriate Enforcement Response to Significant Air Pollution Violators Guidance ("SVT&A Guidance").

To implement the penalty assessment criteria of Section 113(e) of the Act, 42 U.S.C. § 7413(e), the Penalty Policy provides for a penalty amount that includes any economic benefit the violator derived from the violations, as well as penalty amounts for various factors reflecting the gravity of the violations (including the seriousness of the violation, the duration of the violation, the size of the violator's business, the economic impact of the penalty on the violator's business, and the impact of the violation on the regulatory scheme). Adjustments to the penalty are considered in light of the violator's degree of willfulness or negligence in committing the violations, its degree of cooperation with EPA, any good faith efforts to comply, and any pertinent compliance history or previous penalty payments for the same violation. Below are

short explanations of the various penalty factors and any adjustments used in the calculation of the proposed penalty.

The proposed penalty does not include an estimated economic benefit component, because it appears that Respondent did not derive any substantial economic benefit through noncompliance.

Complainant proposes a penalty of $30,000 ($10,000 per facility) for Respondent's failure to test continuous emission monitors for sulfur dioxide, nitrogen oxides and carbon dioxide at the affected units located at Sixth Street, Prairie Creek and Sutherland described in paragraphs 10 through 18 above ($5,000 for a violation that continued for 1 month at Sixth Street, and $5,000 for resulting harm to the regulatory scheme); ($5,000 for a violation that continued for 1 month at Prairie Creek, and $5,000 for resulting harm to the regulatory scheme); and ($5,000 for a violation that continued for 1 month at Sutherland, and $5,000 for resulting harm to the regulatory scheme).

Complainant proposes a penalty of $43,000 for Respondent's failure to test volumetric flow monitors at Sixth Street units 2(3/4), 3(5/6), 4(7/8) and 5(9/10); Ottumwa unit 1; Prairie Creek unit 3; and Sutherland unit 3 ($8,000 for a violation that continued for 2-3 months at Sixth Street units 2(3/4), 3(5/6), 4(7/8) and 5(9/10), and $5,000 for resulting harm to the regulatory scheme); ($5,000 for a violation that continued for 1 month at Ottumwa unit 1, and $5,000 for resulting harm to the regulatory scheme); ($5,000 for a violation that continued for 1 month at Prairie Creek unit 3, and $5,000 for resulting harm to

the regulatory scheme); and ($5,000 for a violation that continued for 1 month at Sutherland unit 3, and $5,000 for resulting harm to the regulatory scheme.)

A further penalty factor of $73,000 reflects the size of the violator, which has an estimated net worth of $519 million. Adding these penalty amounts yields a preliminary deterrence amount of $146,000.

Because Respondent voluntarily discussed the upcoming violations with EPA, and has been aiding EPA's oversight by voluntarily providing status reports and other requested information, EPA will adjust the preliminary deterrence amount downward by 15%. This adjustment results in the proposed penalty of $124,100.

No further adjustments to the gravity component are proposed based on the violator's history of compliance, payment of prior penalties, or degree of willfulness or negligence. Complainant has considered the economic impact of the penalty on Respondent's business and concludes, based on Respondent's reported sales and net worth, that the penalty will not have an inappropriate impact on Respondent's business. An adjustment for the economic impact of the penalty on Respondent's business will be considered if properly documented by Respondent. See Penalty Policy, p. 20.

Payment of the penalty may be made by cashier's or certified check, payable to the "Treasurer, United States of America, " and mailed to:

Mellon Bank
U.S. Environmental Protection Agency
Region VII
P.O. Box 360748M
Pittsburgh, PA 15251

Copies of the check must be sent to the Regional Hearing Clerk and to Julie L. Murray, Assistant Regional Counsel, at the addresses provided below.

OPPORTUNITY TO REQUEST A HEARING

As provided by Section 113(d) of the Act, 42 U.S.C. § 7413(d), Respondent has the right to request a hearing on the issues raised in this Complaint. In the event that Respondent intends to request a hearing to contest any material fact set forth in the Complaint, or contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled to a judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, KS 66101

An Answer must be filed within thirty (30) days of receipt of the Complaint. The Answer must clearly and directly admit, deny, or explain each factual allegation of the Complaint with regard to which Respondent has any knowledge. The Answer must also state: 1) the circumstances or arguments which are alleged to constitute the grounds of defense; 2) the facts which Respondent intends to place at issue; and, 3) whether a hearing is requested. Hearings will be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22.

If Respondent fails to file an Answer with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing under Section 113(d)(2) of the Clean Air Act, 42 U.S.C. § 7413(d)(2). The proposed penalty shall become due and payable by Respondent sixty (60) days after a final order has been issued through default proceedings.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondent may wish to be represented by counsel at the informal conference. If a settlement is reached, it will be finalized by the issuance of a written Consent Agreement and Order by the Regional Judicial Officer, EPA, Region VII. To explore the possibility of settlement in this matter, contact Julie L. Murray, Assistant Regional Counsel, at the U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101, or at telephone number (913) 551-7448, Please note that a request for an informal settlement conference does not enlarge the thirty-day period for the submission of a written Answer.

Date 6/18/95

William A. Spratlin
Director
Air, RCRA and Toxics Division

Julie L. Murray
Julie L. Murray
Attorney
Office of Regional Counsel

Enclosures: Consolidated Rules of Practice
CAA Stationary Source Civil Penalty Policy
Acid Rain Compliance/Enforcement Guidance
Acid Rain Addendum to the SVT&A Guidance

CERTIFICATE OF SERVICE

I certify that the original and one true and correct copy of the foregoing Complaint were hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and a true and correct copy of the foregoing Complaint and copies of the Consolidated Rules of Practice, CAA Stationary Source Civil Penalty Policy, Acid Rain Compliance/Enforcement Guidance, and Acid Rain Addendum to the SVT&A Guidance were mailed by certified mail, return receipt requested, on this 19th day of June, 1995, to:

Stephen W. Southwick
Registered Agent
IES Utilities Inc.
200 First Street S.E.
Cedar Rapids, Iowa 52401

Donna V. Sullivan

Air Civil Penalty Worksheet
Preliminary Deterrence Amount

IES Utilities, Inc.

Category	Reason		Amount per pollutant: Gas Monitor SO2, NOx, & CO2	Flow
A. Gravity Component:				
1. Actual or possible harm				
a. level of violation	N/A		$0	
b. toxicity of pollutant	N/A		$0	
c. sensitivity of environment	N/A		$0	
d. length of time of violation				
Prairie Creek 3	1	month	$5,000	$5,000
Sutherland 1, 2, & 3	1	month	$5,000	$5,000
Ottumwa 1	1	month		$5,000
Sixth Street 2, 3, 4, & 5	2 - 3	months	$5,000	$8,000
2. Importance to regulatory scheme				
Prairie Creek 3	late		$5,000	$5,000
Sutherland 1, 2, & 3	late		$5,000	$5,000
Ottumwa 1	late			$5,000
Sixth Street 2, 3, 4, & 5	late		$5,000	$5,000
3. Size of violator	1/2 of PDA			$73,000
Total Gravity Component				$146,000
B. Economic Benefit				$0
PRELIMINARY DETERRENCE AMOUNT				$146,000
Cooperation Factor	15%			$124,100

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

In the Matter of	)	
	)	
IES UTILITIES INC.	)	CAA Docket No. VII-95-CAA-111
Cedar Rapids, Iowa	)	
	)	
Respondent.	)	

CONSENT AGREEMENT AND CONSENT ORDER

This proceeding for the assessment of a civil penalty was initiated on or about June 19, 1995, pursuant to Section 113(d) of the Clean Air Act (hereinafter CAA), as amended, 42 U.S.C. § 7413(d), when the United States Environmental Protection Agency (hereinafter Complainant or EPA) issued to IES Utilities Inc., Cedar Rapids, Iowa (hereinafter Respondent) a Complaint and Notice of Opportunity for Hearing (hereinafter Complaint).

The Complaint charged Respondent with violations of the Acid Deposition Control provisions of Title IV of the CAA, 42 U.S.C. §§ 7651 to 7651o, and the regulations promulgated thereunder.

The Complaint proposed a civil penalty of One Hundred Twenty-Four Thousand One Hundred Dollars ($124,100) for these violations.

The Complainant and Respondent entered into negotiations in an attempt to settle the allegations contained in the Complaint; this Consent Agreement and Consent Order are the result of such negotiations.

CONSENT AGREEMENT

Complainant and Respondent hereby agree as follows:

1. Respondent admits the jurisdictional allegations of the Complaint, and neither admits nor denies the factual allegations of the Complaint.

2. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees incurred as a result of this matter.

4. Respondent certifies by the signing of this Consent Agreement and Consent Order that it is presently in compliance with Section 412 of the CAA, 42 U.S.C. § 7651k, and the regulations promulgated thereunder.

5. Respondent has cooperated fully with Complainant throughout this proceeding and has made a good faith effort to comply with the Acid Rain Deposition Control provisions of Title IV of the CAA. Because Respondent cooperated with Complainant, Complainant adjusted the preliminary deterrence amount downward by 15%. This adjustment resulted in the proposed penalty of One Hundred Twenty-Four Thousand One Hundred Dollars ($124,100). Respondent provided further evidence of cooperation and good faith efforts during the settlement process, which resulted in an additional 15% penalty reduction, making the negotiated penalty

figure One Hundred Two Thousand Two Hundred Dollars ($102,200) prior to the Respondent undertaking a supplemental environmental project ("SEP"), as set forth below.

6. Respondent agrees to permanently surrender to EPA five hundred eighty-nine (589) sulfur dioxide (SO_2) allowances as defined under the Acid Deposition Control provisions of Title IV of the CAA. Under the provisions of Title IV, each allowance constitutes an authorization to emit, during or after a specified calendar year, one ton of sulfur dioxide. The parties agree such supplemental environmental project will secure significant environmental and public health protection and improvements.

7. To accomplish the project set forth in paragraph 6 above, Respondent specifically agrees to surrender to the EPA Enforcement Surrender Account the following 1995 SO_2 allowances:

Prairie Creek Unit 4	Burlington Unit 1
Prairie Creek Generating Station	Burlington Generating Station
Cedar Rapids, Iowa	Burlington, Iowa
294 allowances	295 allowances
Serial Numbers - 199502189232 through 199502189525	Serial Numbers - 199502162999 through 199502163293

8. Within thirty (30) days of the entry of the Order, herein, Respondent shall submit allowance transfer request forms to the EPA Office of Air and Radiation Acid Rain Division for the purpose of surrendering five hundred eighty-nine allowances to the EPA Enforcement Surrender Account. Respondent shall simultaneously submit a copy of such request forms to Complainant.

9. Within ten (10) days of receipt of the allowance transfer confirmation from the Office of Air and Radiation Acid

Rain Division, Respondent shall submit to Complainant a copy of said confirmation.

10. Respondent and Complainant agree that the cost of the SEP set forth above to Respondent is $130 per allowance, based on the 1995 EPA sulfur dioxide (SO_2) allowance auction results, as published in the Federal Register on April 24, 1995. Therefore, the total cost of the SEP to Respondent for its surrender of five hundred eighty-nine allowances is Seventy-Six Thousand Five Hundred Seventy Dollars ($76,570).

11. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP set forth above by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP.

12. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 412 of the CAA, 42 U.S.C. § 7651k.

13. Respondent shall pay a mitigated civil penalty of Twenty-Five Thousand Six Hundred Thirty Dollars ($25,630), within

thirty (30) days of the entry of the Consent Order herein. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and remitted to: EPA-Region VII, c/o Mellon Bank, P.O. Box 360748M, Pittsburgh, Pennsylvania 15251.

14. Respondent's failure to pay any portion of the mitigated civil penalty assessed herein shall result in commencement of a civil action in Federal District Court to recover the amount due, together with interest thereon, at the rate of five percent (5%) per annum.

15. In the event that Respondent does not complete the SEP pursuant to paragraphs 6 through 10 of this Consent Agreement and Consent Order, Respondent shall pay a stipulated penalty in the amount of Seventy-Six Thousand Five Hundred Seventy Dollars ($76,570). Such stipulated penalty shall become immediately due and payable upon written demand by Complainant.

16. Respondent agrees not to deduct the cost of the SEP as set forth in paragraph 10 above, the mitigated civil penalty to be paid pursuant to paragraph 13 above, or any stipulated penalty paid pursuant to paragraph 15 above, for federal, state or local tax purposes. Respondent agrees to provide EPA with certification by a corporate officer upon completion of the SEP that it has not deducted the SEP expenditures or the civil penalties for tax purposes.

17. This executed Consent Agreement and Consent Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By Julie L. Murray
Julie L. Murray
Assistant Regional Counsel

Date 8/17/95

RESPONDENT:

IES UTILITIES INC.

By Philip Ward

Title VICE PRESIDENT
ENGINEERING AND GENERATION

Date 8/15/95

CONSENT ORDER

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401 et seq., the foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective immediately.

Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date August 23, 1995

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	**Docket No. CAA-5-2000-0 16**
	)	
Indiana Municipal Power	)	**Proceeding to Assess a**
Agency, Carmel, Indiana	)	**Civil Penalty under**
at its	)	**Section 113(d) of the**
Anderson Combustion Turbine	)	**Clean Air Act,**
Facility, Anderson, Indiana	)	**42 U.S.C. § 7413(d)**
and	)	
Richmond Combustion Turbine	)	
Facility, Richmond, Indiana,	)	
Respondent.		

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is the Indiana Municipal Power Agency (IMPA), a corporation doing business in Indiana. This complaint addresses violations at IMPA's Anderson Combustion Turbine Facility located in Anderson, Indiana and Richmond Combustion Turbine Facility located in Richmond, Indiana.

Statutory and Regulatory Background

4. Pursuant to Title IV of the Act, 42 U.S.C. § 7401, et seq., as amended by Public Law 101-549 (November 15, 1990), the Administrator of the U.S. EPA established certain general provisions and operating permit program requirements for affected

sources and affected units under the Acid Rain Program at 40 C.F.R. Part 72.

5. Pursuant to Section 412 and 821 of the Act, 42 U.S.C. §§ 7401-7671q, as amended by Public Law 101-549 (November 15, 1990) the Administrator established requirements for the monitoring, record keeping, and reporting of sulfur dioxide, nitrogen oxide, and carbon dioxide emissions, volumetric flow, and opacity under the Acid Rain Program at 40 C.F.R. Part 75.

6. "Affected source" means a source that includes one or more affected units. 42 U.S.C. § 7651a(1), 40 C.F.R. § 72.2.

7. "Affected unit" means a unit that is subject to emission reduction requirements or limitation under Title IV of the Act and under 40. C.F.R. 72.6. 42 U.S.C. § 7651a(2), 40 C.F.R. § 72.2.

8. "Phase II" means the Acid Rain Program beginning January 1, 2000, and continuing into the future thereafter. 40 C.F.R. §72.2.

9. "Phase II Unit" means any affected unit that is subject to an Acid Rain emissions reduction requirement or Acid Rain emission limitation during Phase II only. 40 C.F.R. § 72.2.

10. 40 C.F.R. § 72.6(a)(3)(i) defines "new units" as affected units. Any source that includes such an unit shall be an affected source subject to the Acid Rain Program.

11. 40 C.F.R. § 72.30(a) requires any source with an affected unit to submit a complete Acid Rain permit application by the applicable deadline in 40 C.F.R. §72.30(b), and the owners and operators of such source and any affected unit at the source

shall not operate the source or unit without a permit that states its Acid Rain Program requirements.

12. 40 C.F.R. § 72.30(b)(2)(ii) requires the designated representative to submit a complete permit application governing such unit to the permitting authority at least 24 months before the later of January 1, 2000 or the date on which the unit commenced operation.

13. 40 C.F.R. § 75.2(a) requires the provisions of 40 C.F.R. Part 75 apply to each affected unit subject to the Acid Rain emission limitations or reduction requirements for SO_2 or NO_x.

14. 40 C.F.R. § 75.4(a) requires that owners or operators of each existing affected unit ensure that all monitoring systems required by 40 C.F.R. Part 75 for monitoring SO_2, No_x, CO_2, opacity, and volumetric flow be installed and all certification tests be completed by January 1, 1995 and January 1, 1996 as set forth in 40 C.F.R. § 75.4(a)(4).

15. 40 C.F.R. § 75.10 requires the owner or operator of an affected unit to measure opacity, and all SO_2, No_x, and CO_2 emissions for each affected unit as set forth in the Section.

16. 40 C.F.R. § 75.62 requires the designated representative for an affected unit to submit a monitoring plan to the Administrator no later than 45 days prior to the first scheduled certification test, as set forth in 40 C.F.R. § 75.4(a)(4).

17. 40 C.F.R. § 75.64 requires the designated representative for an affected unit to submit electronic

quarterly reports to the Administrator, beginning with the data from the later of: the last calendar quarter of 1993 or the calender quarter corresponding to the relevant deadline for certification in 40 C.F.R. § 75.4(a),(b) or (c).

18. The Administrator may assess a civil penalty of up to $25,000 per day of violation up to a total of $200,000 for Acid Rain Program violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collections Improvements Act of 1996 increased the statutory maximum penalty to $27,500 per day of violation up to a total of $220,000 for Acid Rain Program violations that occurred on or after January 31, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

19. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

21. IMPA operates four combustion turbines; two are located at its Anderson facility located at 6035 Park Road, Anderson,

Indiana and two at its Richmond facility located at 4752 Gates Road, Richmond, Indiana.

22. All four units are peaking units that began commercial operations in 1992.

23. All four units have a rated capacity of approximately 38.7 megawatts per unit, and are primarily fueled by natural gas with No. 2 fuel oil as a backup.

24. All four units are affected units as defined by 42 U.S.C. § 7651a(2) and 40 C.F.R. § 72.2 and as set forth at 40 C.F.R. § 72.6(a)(3)(i).

25. The Anderson and Richmond facilities are affected sources as defined by 42 U.S.C. § 7651a(2) and 40 C.F.R. §72.2 and are subject to the Acid Rain Program. 42 C.F.R. § 72.6(a)(3)(i).

26. As affected sources, the Anderson and Richmond facilities are subject to 40 C.F.R. Part 75.

27. IMPA is a "person" as defined at 42 U.S.C. § 7602.

Count I

28. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

29. 40 C.F.R. § 72.30 requires IMPA to submit a complete Acid Rain permit application to its permitting authority at least 24 months before January 1, 2000 for its Anderson and Richmond facilities.

30. From January 1, 1998 to April, 2000, IMPA failed to submit a complete Acid Rain permit application as required by 40 C.F.R. § 72.30.

31. IMPA's failure to submit a complete Acid Rain permit application by January 1, 1998 constitutes a violation of 40 C.F.R. § 72.30.

32. IMPA's violation of 40 C.F.R. § 72.30 subjects IMPA to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count II

33. Complainant incorporates paragraphs 1 through 32 of this Complaint, as if set forth in this paragraph.

34. 40 C.F.R. § 75.10 requires that IMPA measure all SO_2, No_x, and CO_2 emissions for each affected unit as detailed in 40 C.F.R. § 75.10(a).

35. Until July 2000, IMPA failed to comply with the monitoring provisions set forth at 40 C.F.R. § 75.10.

36. IMPA's failure to comply with such monitoring provisions constitutes a violation of 40 C.F.R. § 75.10.

37. IMPA's violation of 40 C.F.R. § 75.10 subjects IMPA to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

COUNT III

38. Complainant incorporates paragraphs 1 through 37 of this Complaint, as if set forth in this paragraph.

39. 40 C.F.R. § 75.10 requires that IMPA submit a monitoring plan to the Administrator no later than 45 days prior to January 1, 1996 for NO_x and no later than 45 days prior to

January 1, 1995 for SO_2.

40. Until July 2000, IMPA failed to submit the required monitoring plans for NO_x and SO_2 as required by 40 C.F.R. § 75.62.

41. IMPA's failure to submit such monitoring plans constitutes a violation of 40 C.F.R. § 75.62.

42. IMPA's violation of 40 C.F.R. § 75.62 subjects IMPA to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

COUNT IV

43. Complainant incorporates paragraphs 1 through 42 of this Complaint, as if set forth in this paragraph.

44. 40 C.F.R. § 75.64 requires that IMPA submit quarterly reports to the Administrator by January 1, 1995.

45. Until August 2000, IMPA failed to submit the quarterly reports as required by 40 C.F.R. § 75.64.

46. IMPA's failure to submit such quarterly reports constitutes a violation of 40 C.F.R. § 75.64.

47. IMPA's violation of 40 C.F.R. § 75.64 subjects IMPA to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Proposed Civil Penalty

48. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

49. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of $74,289.00, which represents the economic benefit gained by IMPA for its failure to comply with the provisions of the Acid Rain Program. The gravity portion of the penalty was mitigated by 100% due to IMPA's voluntary written and timely self-disclosure of it violations through letters dated February 10, 2000, February 14, 2000 and April 14, 2000 in accordance with the procedures set forth in the February 22, 1995 "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" policy. (60 F.R. 66706). Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy).

50. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

51. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22) govern this proceeding to assess a civil penalty. Enclosed with

the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

52. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

53. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Nidhi K. O'Meara to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. O'Meara at 312/886-0568. Ms. O'Meara's address is:

Nidhi K. O'Meara (C-14J)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

54. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on

the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Ms. O'Meara and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

55. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 56 through 61, below.

Answer

56. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 52, above, and must serve copies of the written answer on the other parties.

57. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of

receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

58. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

59. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

60. Respondent's answer must also state:

a. the circumstances or arguments which Respondent alleges constitute grounds of defense;

b. the facts that Respondent disputes;

c. the basis for opposing the proposed penalty; and

d. whether Respondent requests a hearing as discussed in paragraph 55 above.

61. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order

becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

62. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Nidhi K. O'Meara at the address or phone number specified in paragraph 53, above.

63. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

64. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9-29-00
Date

Bharat Mathur, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CAA-5- 2000-0 16

In the Matter of
Docket No: CAA-5- 2000-0 16

CERTIFICATE OF FILING AND MAILING

I, Betty Williams, do hereby certify that I hand delivered the original and one copy of the Administrative Complaint, docket number CAA-5- 2000-0 16 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies, along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22), and copies of the Penalty Policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Rajeshwar Rao, President
Indiana Municipal Power Agency
11610 North College Avenue
Carmel, Indiana 46032

Mr. Anthony Sullivan
Barnes and Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204

I also certify that a copy of the Administrative Complaint was sent by First Class Mail to:

David McIver, Chief
Air Section
Office of Enforcement
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 62072

on the 29th Day of September 2000.

Betty Williams

Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: P140895519

CAA-5- 2000-0 16

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	**Docket No.**
	)	
Indiana Municipal Power Agency, Carmel, Indiana at its Anderson Combustion Turbine Facility, Anderson, Indiana and Richmond Combustion Turbine Facility, Richmond, Indiana,	)	**Proceeding to Assess an Administrative Penalty under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)**
Respondent.	)	

Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On , EPA filed the complaint in this action against Respondent Indiana Municipal Power Agency. The complaint alleges that IMPA violated Sections 412 and 821 of the Act, 42 U.S.C. §§ 7401-7671q, and 40 C.F.R. Part 72 and 75 at its facilities in Anderson and Richmond.

Stipulations

3. IMPA admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

4. IMPA waives its right to a hearing pursuant to 40 C.F.R. § 22.15(c), and waives its right to appeal pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

5. IMPA certifies that it is complying fully with 40 C.F.R. Parts 72 and 75.

6. The parties consent to the terms of this Consent Agreement and Final Order (CAFO).

7. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

8. In consideration of IMPA's voluntary written and timely self-disclosure of it violations through letters dated February 10, 2000, February 14, 2000 and April 14, 2000 in accordance with the procedures set forth in the February 22, 1995 "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" policy (60 F.R. 66706), EPA agrees to mitigate the proposed penalty to $74,289.00, which represents the economic benefit gained by IMPA for its failure to comply with the provisions of the Acid Rain Program. The gravity portion of the penalty was mitigated by 100% due to the above referenced Self-Policing Policy. Respondent consents to the assessment of and agrees to pay this mitigated civil penalty. 40 C.F.R. § 22.18(b)(3).

9. IMPA shall pay the $74,289.00 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

10. IMPA shall send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

11. A transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document number must accompany the payment. Respondent shall write the case docket number and the billing document number on the face of the check. Respondent shall send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Nidhi K. O'Meara,(C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

12. This civil penalty is not deductible for federal tax purposes.

13. If IMPA does not timely pay the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

14. Interest shall accrue on any amount overdue from the date the payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2). IMPA shall pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. IMPA shall pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty shall be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

15. This CAFO settles EPA's claims for civil penalties for the violations alleged in the complaint.

16. Nothing in this CAFO shall restrict EPA's authority to seek IMPA's compliance with the Act and other applicable laws and regulations.

17. This CAFO does not affect IMPA's responsibility to comply with the Act and other applicable federal, state and local laws and regulations.

18. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine IMPA's "full compliance history" pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e).

19. The terms of this CAFO bind IMPA, its officers, directors, agents, successors, authorized representatives, and assigns.

20. Each person signing this Consent Agreement certifies that he or she has the authority to sign this Consent Agreement for the party whom he or she represents and to bind that party to its terms.

21. Each party shall bear its own costs and fees in this action.

22. This CAFO constitutes the entire agreement between the parties.

6

U.S. Environmental Protection Agency, Complainant

Date: _____ By: _____

Bharat Mathur, Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5 (A-18J)

Indiana Municipal Power Agency, Respondent

Date:_____ By: _____

Rajeshwar Rao, President
Indiana Municipal Power Agency

CONSENT AGREEMENT AND CONSENT ORDER
Indiana Municipal Power Agency
Docket No.

Consent Order

It is ordered as agreed to by the parties and as stated in the Consent Agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This Order disposes of the matter pursuant to 40 C.F.R. § 22.18(c).

Date: _____

_____
Francis X. Lyons
Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Indiana Municipal Power Agency and Indiana Municipal Power Agency's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Mr. Rajeshwar Rao, President
Indiana Municipal Power Agency
11610 North College Avenue
Carmel, Indiana 46032

Mr. Anthony Sullivan
Barnes and Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204

on the _____ day of _____, 2000.

_____
Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER:_____

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Rajeshwar Rao, President
Indiana Municipal Power Agency
11610 North College Avenue
Carmel, Indiana 46032

Dear Mr. Rao:

Enclosed is a file stamped Consent Agreement and Consent Order (CACO) which resolves Indiana Municipal Power Agency . As indicated by the filing stamp on its first page, we filed the CACO with the Regional Hearing Clerk on .

Pursuant to paragraph 8 of the CACO, Indiana Municipal Power Agency must pay the civil penalty within 30 days of . Your check must display the case docket number, , and the billing document number, .

Please direct any questions regarding this case to Nidhi O'Meara, Assistant Regional Counsel, at (312) 886-0568.

Sincerely yours,

Brent Marable, Section Chief
Air Enforcement and Compliance Assurance Branch (IL/IN Section)

Enclosure

standard bcc's: official file copy w/ attachment(s)

other bcc's: Nidhi O'Meara (C-14J)
Shirley Bendnarz/Steve Slone, MF-10J (with cover letter)
Jodi Swanson-Wilson

Creation Date:	August 7, 2008
Filename:	F:\CO2 and GHGs - PSD\Deseret - EAB appeal\Supplemental Briefing\Enforcement docs\Indiana Cafo (unsigned - unentered).wpd
Legend:	ARD:AECAB:AECAS(IL/IN) N Autry

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 1 0 2004

REPLY TO THE ATTENTION OF:
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Christopher S. Ammerman
Senior Assistant Corporation Counsel
City Of Detroit
660 Woodward Avenue
First National Building
Detroit, Michigan 48226-4550

Re: Mistersky Power Station

Dear Mr. Ammerman:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves violations at the City of Detroit, Department of Public Lighting's Misterksy Power Station, CAA Docket No. ~~CAA-05-~~ 2004 0027. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on MAY 1 0 2004.

Pursuant to paragraph 49 of the CAFO, Detroit must pay the civil penalty within 90 days of MAY 1 0 2004. Your check must display the case docket number, ~~CAA-05-~~ 2004 0027 and the billing document number, 050304024.

Please direct any questions regarding this case to Cynthia A. King, Associate Regional Counsel, (312) 886-6831.

Sincerely yours,

Linda Rosen, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	**Docket No.** ~~CAA-05-~~ 2004 0027
	)	
City of Detroit, Department of Public Lighting Mistersky Power Station Detroit, Michigan	)	**Consent Agreement and Final Order**
Respondent.	)	

US ENVIRONMENTAL PROTECTION AGENCY REGION V '04 MAY 10 P 3:28 RECEIVED REGIONAL HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTIONAL AUTHORITY

1. This is a civil administrative action instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.34 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (the Consolidated Rules).

2. Section 22.13(b) of the Consolidated Rules provides that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO).

3. Complainant is, by lawful delegation, the Director of the Air and Radiation Division, U.S. EPA, Region 5.

4. Respondent is the City of Detroit, which is, and was at all times relevant to this CAFO, a municipality (municipal corporation), operating under the laws of the State of Michigan.

II. REGULATORY BACKGROUND

5. The Acid Rain Program, which implements the Acid Deposition Control provisions found in Subchapter IV-A of the Clean Air Act, 42 U.S.C. §§ 7651-7651o, is codified at 40 C.F.R. Parts 72 through 78. The Acid Rain Program sets forth permitting, operating, monitoring, certification, recordkeeping and reporting requirements for "affected units," as that term is defined under the program.

6. Pursuant to 40 C.F.R. § 72.6, any unit listed in table 2 or 3 of § 73.10 is considered an "affected unit" subject to the requirements of the Acid Rain Program.

7. The Acid Rain Program requires, among other things, that the owner or operator of an affected unit monitor, record and report sulfur dioxide (SO_2), nitrogen oxides (NOx) and carbon dioxide (CO_2) emissions, volumetric flow and opacity data.

8. 40 C.F.R. § 75.20, requires that the owner or operator shall ensure that each continuous emission or opacity monitoring system required meets the initial certification requirements of this section.

9. 40 C.F.R § 75.21, requires that each continuous emission monitoring system shall be operated, calibrated and maintained according to the quality assurance and quality control procedures outlined in Appendix B of Part 75.

10. Appendix B § 2.3.1 requires that each primary and redundant backup monitoring system, perform relative accuracy test audits (RATA) semiannually or annually if the monitoring system meets accuracy requirements and qualifies for less frequent testing.

11. Appendix B § 2.3.3(a) allows for a grace period following the operating quarter in which the owner or operator of an affected unit must conduct the required RATA.

12. Appendix B § 2.3.3(c) states that if at the end of the grace period, the RATA has not been completed, data from the monitoring system shall be invalid.

13. 40 C.F.R. § 75.64, requires the owner or operator to submit quarterly EDRs for each affected unit to the Administrator.

14. The Administrator of U.S. EPA may promulgate regulations establishing standards of performance for new sources (NSPS) under Section 111 of the Act, 42 U.S.C. § 7411.

15. Under Section 111 of the Act, 42 U.S.C. § 7411, the Administrator promulgated the *Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is*

Commenced After August 17, 1971 at 40 C.F.R. Part 60, Subpart D.

16. 40 C.F.R. § 60.40, states that any fossil-fuel-fired steam generating unit of more than 73 megawatt heat input is considered an "affected unit" subject to the requirements of the NSPS, Subpart D.

17. 40 C.F.R. § 60.45, requires that affected units install, calibrate, maintain and operate continuous emission monitoring systems for measuring NOx and CO_2 emissions.

18. 40 C.F.R. §§ 60.7(c) and 60.45(g), require that the owner or operator of an affected unit submit semiannual emission and monitoring system performance reports.

19. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to $27,500 per day of violation up to a total of $220,000 for violations of the Act that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

20. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

21. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

III. STIPULATED FACTS

22. Detroit owns and operates an emission source, known as the Mistersky Power Station, located at 5425 West Jefferson, Detroit, Michigan (Mistersky Facility).

23. The Mistersky Facility Boiler Unit 7 is an "affected unit" as that term is defined at 40 C.F.R. § 72.2 and as such, is subject to the Acid Rain Program at 40 C.F.R. Parts 75 through 78.

24. The Mistersky Facility Boiler Unit 7 is an "affected unit" as that term is defined at 40 C.F.R. § 60.40, and as such, is subject to the NSPS regulations at 40 C.F.R. Part 60, Subparts A and D.

25. 40 C.F.R. § 75.4 requires that initial certification on Boiler Unit 7 was required to be completed before January 1, 1995.

26. Initial certification testing was not conducted on Boiler Unit 7 until January 14, 1996.

27. Every quarter since at least the 4th quarter of 1998, the RATAs and EDRs for Boiler Unit 7 have been late, missing, in

unacceptable, incompatible or unreadable format, or missing data (quality assurance and quality control testing).

28. Since at least the 4th quarter of 2001, and through the 2nd quarter of 2003, quarterly NSPS reports for Boiler Unit 7 have been late, missing, in unacceptable, incompatible or unreadable format.

29. On August 10, 2001, U.S. EPA issued an Administrative Order, under Section 113(a)(1) of the Act, to Detroit. The Administrative Order required the submittal of electronic data reporting records and annual compliance certification reports by August 20, 2001. The reports were not submitted until December 21, 2001.

30. On August 6, 2003, representatives from U.S. EPA, the Michigan Department of Environmental Quality, and Detroit met to discuss the violations at the Mistersky Facility and steps that Detroit would take to achieve compliance with the Act.

IV. VIOLATIONS

31. Detroit failed to submit its initial certification by January 1, 1995 in violation of 40 C.F.R. § 75.4.

32. Detroit failed to submit complete and timely RATAs for Boiler Unit 7 at the Mistersky Facility in violation of 40 C.F.R. § 75.21 and Appendix B.

33. Detroit failed to file complete and timely quarterly EDRs for Boiler Unit 7 at the Mistersky Facility in violation of 40 C.F.R. § 75.64.

34. Detroit failed to submit complete and timely NSPS, Subpart D quarterly emission and monitoring system performance reports for Boiler Unit 7 at the Mistersky Facility in violation of 40 C.F.R. §§ 60.7(c) and 60.45(g).

35. Detroit failed to submit EDRs and annual compliance certification reports by the due date in the 113(a)(3)(B) Order in violation of Section 113 of the Act, 40 U.S.C. § 7413(a)(3)(B).

V. TERMS OF SETTLEMENT

36. The parties agree that settling this action is in the public interest, that the entry of this CAFO without the filing of a Complaint or engaging in further litigation is the most appropriate means of resolving this matter, and that the purpose of this CAFO is to ensure compliance with the Act and the terms of this CAFO;

NOW, THEREFORE, before the taking of any testimony, upon the alleged violations, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

37. This settlement is pursuant to, and in accordance with, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

38. Detroit admits the jurisdictional allegations in this CAFO and admits the facts stipulated in this CAFO.

39. Detroit consents to the issuance of this CAFO and the assessment of a civil penalty.

40. Detroit consents to all of the conditions in this CAFO.

41. Detroit waives its right to a hearing as provided at 40 C.F.R. § 22.15(c).

42. Detroit waives its right to contest the allegations in this CAFO, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

43. Detroit certifies that Boiler 7 is complying fully with the Acid Rain Program and NSPS, Subpart D of the Act.

44. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to the Act, for the violations alleged in Section IV of this CAFO. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Detroit arising from the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by U.S. EPA, and it is the responsibility of Detroit to comply with such laws and regulations.

45. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party

represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

46. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

47. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

48. "Parties" shall mean U.S. EPA and Detroit.

VI. CIVIL PENALTY

49. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors as justice may require), the size of Detroit's business, the economic impact of the penalty on Detroit's business, Detroit's full compliance history and good faith efforts to comply, the duration of the violations, the economic benefit of noncompliance, and the seriousness of the violations. Based on an analysis of the above factors, including, Detroit's cooperation, U.S. EPA has determined that an appropriate civil penalty to settle this action is Sixty One Thousand Six Hundred Dollars ($61,600).

50. Detroit must pay the $61,600 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America" within ninety (90) calendar days after this CAFO is filed with the Regional Hearing Clerk, U.S. EPA, Region 5.

51. Detroit must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

52. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Cynthia A. King, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

53. This civil penalty is not deductible for federal tax purposes.

54. If Detroit does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the

penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

55. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Detroit will pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. Detroit will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

VII. GENERAL PROVISIONS

56. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in Sections III and IV of this CAFO. Full payment of the penalty identified in Paragraph 49 shall resolve Detroit's liability for these alleged violations and facts.

57. Nothing in this CAFO restricts U.S. EPA's authority to seek Detroit's compliance with the Act and other applicable laws and regulations.

58. This CAFO does not affect Detroit's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

59. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Detroit's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

60. The terms of this CAFO bind the parties, and their successors, and assigns.

61. This CAFO constitutes the entire agreement between the parties.

U.S. Environmental Protection Agency, Complainant

Date: 5/3/04

Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

City of Detroit, Respondent

Date:_____

Victor Mercado
Utilities Operations Chief
735 Randolph Street, Room 506
Detroit, Michigan 48226-2830

CONSENT AGREEMENT AND FINAL ORDER
City of Detroit, Department of Public Lighting
Mistersky Power Station
Docket No.

Final Order

It is ordered as agreed to by the parties and as stated in the Consent Agreement, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk.

Dated: 5/6/04

for Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CAA-05- 2004 0027

CERTIFICATE OF MAILING

I, Shanee Rucker, certify that I sent a Consent Agreement and Final Order, Docket No. CAA-05-2004-0027, by Certified Mail, Return Receipt Requested, to:

Christopher S. Ammerman
Senior Assistant Corporation Counsel
City Of Detroit
660 Woodward Avenue
First National Building
Detroit, Michigan 48226-4550

and

City of Detroit, Department of Public Lighting
Mistersky Power Station
5427 West Jefferson
Detroit, Michigan 48213-1176

I also certify that I sent a copy of the Consent Agreement and Final Order, Docket No. CAA-05-2004-0027, by First Class Mail to:

Teresa Seidel
District Supervisor
Detroit Office
Cadillac Place, Suite 2-300
3058 West Grand Blvd.
Detroit Michigan, MN 48202-6058

on the 10th day of May, 2004.

Shanee Rucker
Shanee Rucker, Secretary
AECAS, (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0177 3890

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	Civil Action No.
BLOCK ISLAND POWER COMPANY, INC., Defendant.	)	CA 98 045 ML

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

Nature of Action

1. This is a civil action instituted pursuant to Section 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(b), in which the United States seeks civil penalties and injunctive relief for Block Island Power Company, Inc.'s ("Defendant's") violations of the Prevention of Significant Deterioration and Nonattainment New Source Review provisions of the Act, EPA's regulations and the Rhode Island State

Implementation Plan, and violations of the Acid Deposition Control provisions of the Act and EPA's regulations.

Authority

2. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 305 of the Act, 42 U.S.C. § 7605, and 28 U.S.C. §§ 516 and 519.

Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter of this action and the defendant pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c), and 1395, because the defendant does business in, and the claims arose within, the District of Rhode Island.

Notice to the State of Rhode Island

5. The United States has notified the Rhode Island Department of Environmental Management of the commencement of this action pursuant to the requirements of Section 113(b) of the Act, 42 U.S.C. § 7413(b).

Notice to Defendant

6. On September 30, 1994, and on December 7, 1995, EPA issued Notices of Violation to Defendant with respect to the violations alleged in this complaint pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), relating to violations of the Rhode Island State Implementation Plan. Pursuant to Section 113(a)(1), the United States may bring a civil action after the expiration of 30 days following the date on which such notice was issued.

Defendant

7. Defendant is a Rhode Island corporation with its principal place of business located on Block Island in the State of Rhode Island.

8. Defendant is a "person" as defined by Section 302(e) of the Act, 42 U.S.C. § 7602(e).

Background

9. Defendant has at all relevant times owned and operated a facility on Block Island, Rhode Island ("Facility") for the purpose of generating electricity for Block Island residents through the use of diesel generators. Among the air pollutants emitted by the diesel generators are nitrogen oxides

("NO_x"). NO_x is an ozone precursor which means that, once emitted, NO_x is transformed in the atmosphere into ozone.

10. Defendant's violations arise out of (a) its installation of a series of seven diesel generators (Units 13 through 15 and 17 through 20) over the period from 1981 to 1993 without applying for a permit as required of new or modified stationary sources of air emissions, and (b) its operation of the two most recently installed generators (Units 19 and 20) without completing installation and certification testing of continuous emissions monitors as required under the acid deposition control requirements of the Act.

Statutory and Regulatory Background

I. National Ambient Air Quality Standards

11. Section 109 of the Act, 42 U.S.C. § 7409, requires the EPA Administrator to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for certain criteria air pollutants. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

12. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each listed pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area; one that does not is termed a "nonattainment" area.

13. Under Section 181 of the Act, 42 U.S.C. § 7511, each area designated nonattainment for ozone is further divided into five area classifications based on ambient ozone concentrations: marginal, moderate, serious, severe, and extreme.

14. Defendant is located in an area designated attainment for NO_x and serious nonattainment for ozone, pursuant to Sections 107(d) and 181 of the Act, 42 U.S.C. §§ 7407(d) & 7511, as described in 40 C.F.R. § 81.340.

II. Prevention of Significant Deterioration

15. Part C of the Act, 42 U.S.C. §§ 7470-7492, sets forth the new source review ("NSR") requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as attaining the ambient air quality

standards. These provisions are referred to herein as the "PSD NSR" program.

16. Section 165(a) of the Act, 42 U.S.C. § 7475(a), prohibits the construction of a "major stationary source" or any "major modification" of a major stationary source, in an area designated as attainment unless a PSD NSR permit has been issued. 40 C.F.R. § 52.21(i)(3).

17. Section 169(2) of the Act, 42 U.S.C. § 7479(2), defines "construction" to include the "modification" of any source or facility, as defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a).

18. A "major stationary source" is defined by 40 C.F.R. § 52.21(b)(1)(i)(b), as a stationary source that emits, or has the potential to emit, 250 tons per year of a regulated pollutant. A "major modification" is defined by 40 C.F.R. § 52.21(b)(2)(i), as any physical change or change in the method of operation of a major stationary source that would result in a "significant net emissions increase" of any air pollutant subject to regulation under the Act. A significant net emissions increase for NO_x is any increase of 40 tons per year or greater. 40 C.F.R. § 52.21(b)(23).

19. Pursuant to 40 C.F.R. § 52.21(j), a new major stationary source shall apply best available control technology ("BACT") for each pollutant subject to regulation under the Act that it would have the potential to emit in significant quantities.

III. Nonattainment New Source Review Requirements

20. Part D of the Act, 42 U.S.C. §§ 7501-7515, sets forth the new source review requirements for achieving reductions of emissions of air pollutants in areas which are not in attainment of the national ambient air quality standards. These requirements are referred to herein as the "nonattainment NSR" requirements.

21. Section 172(c)(5) of the Act, 42 U.S.C. §7502(c)(5), requires that permits be issued for the construction and operation of new or modified major stationary sources in nonattainment areas.

22. Section 173 of the Act, 42 U.S.C. § 7503, provides that construction and operating permits may only be issued if:

(a) sufficient offsetting emission reductions have been obtained to reduce existing emissions to the point where "reasonable further progress" towards meeting the ambient air quality standards is maintained; and,

(b) the pollution controls to be employed will reduce emissions to the "lowest achievable emission rate."

23. Sections 182(c) and (f) of the Act, 42 U.S.C. § 7511a(c) and (f), set forth requirements to take effect no later than November 15, 1992, relating to the construction and operation of new or modified major stationary sources of NO_x located within nonattainment areas for ozone. For the purposes of Section 182, 42 U.S.C. § 7511a, a "major stationary source" of NO_x is one that emits 50 tons per year or more, and a "significant net emissions increase" of NO_x is one that results in increased emissions or potential emissions of 25 tons per year or more.

III. Rhode Island State Implementation Plan

24. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to submit to the Administrator for approval, a plan for the implementation, maintenance, and enforcement of the national ambient air quality standards.

25. Under Section 110(a)(2) of the Act, 42 U.S.C. § 7410(a)(2), each state implementation plan ("SIP") must include a permit program to provide for the regulation of the modification, construction, and operation of any stationary source of air pollution. This program must be consistent with the requirements of Part C of the Act, 42 U.S.C. §§ 7470-7479, relating to the prevention of significant deterioration of air

quality in attainment areas, and Part D of the Act, 42 U.S.C. §§ 7501-7515, relating to regulation of air pollution in nonattainment areas.

26. The State of Rhode Island has adopted an "applicable implementation plan" within the meaning of Section 113(a) of the Act, 42 U.S.C. § 7413(a). The plan includes the Rhode Island Air Pollution Control Regulations containing Regulation No. 9 entitled "Approval to Construct, Install, Modify or Operate." Regulation No. 9 includes permitting provisions implementing the PSD and nonattainment NSR programs. Regulation No. 9 was originally approved by EPA on May 31, 1972. 37 Fed. Reg. 10842. The PSD NSR amendments to Regulation No. 9 were approved by EPA on July 6, 1984. 49 Fed. Reg. 27749. Prior to July 6, 1984, the PSD NSR program was in effect in Rhode Island pursuant to a Federal Implementation Plan. 40 C.F.R. § 52.21. The nonattainment NSR amendments were approved by EPA on June 28, 1983. 48 Fed. Reg. 29690. The nonattainment NSR provisions of Regulation No. 9 relating to major new and modified stationary sources of NO_x in ozone nonattainment areas were further amended to comply with the requirements of Sections 172(c)(5), 173, and 182(c) and (f), 42 U.S.C. §§ 7502(c)(5),

7503, 7511a(c) and (f), and these amendments were approved by EPA on April 8, 1996. 61 Fed. Reg. 4353.

27. As contained in the federally-approved SIP, Rhode Island's PSD and nonattainment NSR requirements are federally enforceable. 40 C.F.R. § 52.23.

28. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to commence a civil action seeking an injunction or the assessment of a civil penalty of up to $25,000 per day for each violation of the Act or an applicable implementation plan for violations occurring prior to January 30, 1997 and, pursuant to Section 113(b) of the Act, Pub. L. 104-134 and 61 Fed. Reg. 69360, defendant is liable for a civil penalty of up to $27,500 per violation for violations occurring on or after January 30, 1997.

IV. Acid Deposition Control

29. Section 412 of the Act, 42 U.S.C. § 7651k, and 40 C.F.R. Part 75, require the owner or operator of a "new affected unit" regulated under Subchapter IV-A of the Act, 42 U.S.C. §§ 7651 to 7651o, relating to the reduction of acid rain, to install, certify, operate, and maintain continuous emission monitoring systems at each affected unit for sulfur dioxide, nitrogen oxides, opacity and carbon dioxide.

30. Pursuant to Sections 402(2) and 402(10) of the Act, 42 U.S.C. §§ 7651a(2) and 7651a(10), and Title 40, Sections 70.2 and 72.6 of the Code of Federal Regulations, 40 C.F.R. §§ 70.2 and 72.6, the term "new affected unit" encompasses fossil fuel-fired combustion devices installed after November 15, 1990 and used to generate electricity.

31. Under Section 412(c) of the Act, 42 U.S.C. § 7651k(c), and 40 C.F.R. § 75.4, the owner or operator of each new affected unit shall install and perform certification tests for required continuous emission monitoring systems by January 1, 1995.

32. Section 412(e), 42 U.S.C. § 7651k(e), makes it unlawful for the owner or operator of any source subject to Subchapter IV-A of the Act to operate a source without complying with Section 412 of the Act and 40 C.F.R. Pt. 75.

First Claim For Relief

33. The allegations set forth in Paragraphs 1 through 19 are realleged and incorporated herein by reference.

34. At all times relevant to the violations alleged in this action, the Facility was a "major stationary source" of NO_x emissions for the purposes of the PSD NSR program because it

emitted, or had the potential to emit, 250 tons or more of NO_x per year.

35. In or about 1981, Defendant installed and subsequently operated two diesel generators (Units 13 and 14), each with the potential to emit equal to or more than 40 tons of NO_x per year. The installation of each diesel generator was a major modification of the Facility and was subject to the applicable PSD NSR permitting requirements. Defendant failed to obtain a PSD NSR permit prior to installing either diesel generator.

36. In or about 1982, Defendant installed and subsequently operated a diesel generator (Unit 15) with the potential to emit equal to or more than 40 tons of NO_x per year. The installation of this diesel generator was a major modification of the Facility and was subject to the applicable PSD NSR permitting requirements. Defendant failed to obtain a PSD NSR permit prior to installing this diesel generator.

37. In or about 1987, Defendant installed and subsequently operated a diesel generator (Unit 17) with the potential to emit equal to or more than 40 tons of NO_x per year. The installation of this diesel generator was a major modification of the Facility and was subject to the applicable

PSD NSR permitting requirements. Defendant failed to obtain a PSD NSR permit prior to installing this diesel generator.

38. In or about 1990, Defendant installed and subsequently operated a diesel generator (Unit 18) with the potential to emit equal to or more than 40 tons of NO_x per year. The installation of this diesel generator was a major modification of the Facility and was subject to the applicable PSD NSR permitting requirements. Defendant failed to obtain a PSD NSR permit prior to installing this diesel generator. Unit No. 18 was removed from the Facility in 1993.

39. In or about 1993, Defendant installed and subsequently operated two diesel generators (Units 19 and 20), each with the potential to emit equal to or more than 40 tons of NO_x per year. The installation of each diesel generator was a major modification of the Facility and was subject to the applicable PSD NSR permitting requirements. Defendant failed to obtain a PSD NSR permit prior to installing either diesel generator.

40. Defendant violated the Act, EPA's regulations, and Rhode Island's SIP by failing to obtain PSD NSR permits prior to constructing the seven diesel generators referenced in Paragraphs 35 through 39.

41. Defendant's violations of the PSD NSR requirements render it liable to the United States for injunctive relief and for a civil penalty of up to $25,000 for each day of each such violation for violations occurring prior to January 30, 1997, pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and $27,500 for each day of each such violation for violations on or after January 30, 1997, pursuant to Section 113(b) of the Act, Pub. L. 104-134 and 61 Fed. Reg. 69360.

Second Claim for Relief

42. The allegations set forth in Paragraphs 1 through 28 and 34 through 39 are realleged and incorporated herein by reference.

43. The Facility is currently a "major stationary source" of NO_x emissions for the purposes of nonattainment NSR because it emits, or has the potential to emit, 50 tons or more of NO_x per year.

44. Each of the diesel generators remaining at the Facility and installed since 1981 have the potential to emit greater than 25 tons of NO_x per year and so are subject to the nonattainment NSR provisions of the Act. Defendant has not obtained a nonattainment NSR permit for any of the remaining generators.

45. Defendant is in violation of the Act, EPA's regulations, and Rhode Island's SIP because it has failed to obtain a nonattainment NSR permit for any of the generators installed since 1981 remaining at the Facility.

46. Defendant's violations of the nonattainment NSR requirements render it liable to the United States for injunctive relief and for a civil penalty of up to $25,000 for each day of each such violation for each violation prior to January 30, 1997, pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and $27,500 for each day of each such violation on or after January 30, 1997 pursuant to Section 113(b) of the Act, Pub. L. 104-134 and 61 Fed. Reg. 69360.

Third Claim for Relief

47. The allegations set forth in Paragraphs 1 through 10 and 29 through 32 are realleged and incorporated herein by reference.

48. Defendant installed two diesel generators after November 15, 1990, Units 19 and 20, and so is the owner or operator of two "new affected units" subject to the requirements of Subchapter IV-A of the Act.

49. Defendant has violated Section 412 of the Act, 42 U.S.C. § 7651k, and 40 C.F.R. Part 75, by operating Units 19 and

20 on and after January 1, 1995 without completing installation or certification testing of the required emissions monitors for each unit.

50. Defendant's violations of the acid deposition control requirements of Subchapter IV-A of the Act render it liable to the United States for injunctive relief and for a civil penalty of up to $25,000 for each day of each such violation for each violation prior to January 30, 1997, pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and $27,500 for each day of each such violation on or after January 30, 1997 pursuant to Section 113(b) of the Act, Pub. L. 104-134 and 61 Fed. Reg. 69360.

Prayer for Relief

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

A. Assess civil penalties upon defendant of up to $25,000 per violation per day for each violation of the Act, EPA's regulations and the Rhode Island SIP prior to January 30, 1997 and $27,500 per violation per day for each violation of the Act, EPA's regulations and the Rhode Island SIP on or after January 30, 1997;

B. Require Defendant to comply with all applicable requirements of the Act, EPA's regulations and the Rhode Island SIP;

C. Award the United States its costs and disbursements; and

D. Award such other relief as this Court may deem appropriate.

Respectfully Submitted,

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

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JS 44
(Rev. 07/89)

CIVIL COVER SHEET

CA 98 0453 ML

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

UNITED STATES

DEFENDANTS

BLOCK ISLAND POWER COMPANY , Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Washington (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David K. Mears
U.S. Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, DC 20044
(202) 514-1671

ATTORNEYS (IF KNOWN)

Sean O. Coffey
Hinckley, Allen & Snyder
1500 Fleet Center
Providence, RI 02903

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only) (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

The United States is seeking penalties and injunctive relief under Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury—Med Malpractice
- ☐ 365 Personal Injury—Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- Habeas Corpus
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Other

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☒ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION ☐ UNDER F.R.C.P. 23

DEMAND $

Check YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See instructions)

JUDGE _____ DOCKET NUMBER _____

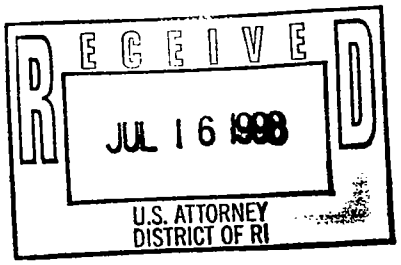
DATE
May 23, 1997

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

FPI-LEX 3/91

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND



UNITED STATES OF AMERICA,

Plaintiff,

v.

BLOCK ISLAND POWER COMPANY, INC.,

Defendant.

Civil Action No.

CA 98 045 ML

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed contemporaneously with this Consent Decree a Complaint in this action against Defendant, the Block Island Power Company, Inc. ("BIPCO"), alleging that BIPCO's installation and operation of various diesel generators from 1981 to the present resulted in violations of the Prevention of Significant Deterioration ("PSD") and Nonattainment New Source Review ("NSR") provisions of the Clean Air Act ("CAA" or "Act"), EPA's implementing regulations, and the Rhode Island State Implementation Plan;

WHEREAS, the Complaint further alleges that BIPCO's operations violated the Acid Deposition Control provisions of the Act and EPA's implementing regulations;

WHEREAS, the United States and BIPCO (together, "the parties") agree, and the Court finds, that settlement of this matter without further litigation is in the public interest, and that the entry of this Consent Decree is the most appropriate means of resolving the matter; and,

WHEREAS, the parties, without the necessity of trial or adjudication of any issues of fact or law and without any admission of liability by BIPCO, consent to entry of this Consent Decree;

NOW, THEREFORE IT IS ADJUDGED, ORDERED AND DECREED AS FOLLOWS:

I. BACKGROUND

1. BIPCO is a Rhode Island corporation with its principal place of business located on Block Island in the State of Rhode Island, and has at all relevant times owned and operated a facility on Block Island for the purpose of generating electricity for Block Island residents through the use of diesel generators. These generators emit various air pollutants, including nitrogen oxides ("NOx").

2. BIPCO's alleged NSR violations arise from its failure to obtain NSR permits for eight diesel generators that BIPCO installed and operated between approximately 1981 and 1993, which caused emissions of NOx above NSR statutory and regulatory thresholds.

3. Specifically, the Complaint alleges that BIPCO has been a major stationary source of NOx under the PSD NSR program since at least 1981, because BIPCO has the potential to emit NOx in quantities of 250 tons per year ("tpy") or more. Each of the eight generators BIPCO installed from 1981 to 1993 required a PSD NSR permit because each generator had the potential to emit NOx in quantities of 40 tpy or more.

4. Further, the Complaint alleges that BIPCO is a major stationary source of NOx under the Nonattainment NSR program, because BIPCO has emitted, or has the potential to emit, NOx in quantities of 50 tpy or more. Each of the generators installed from 1981 to the present and remaining at the facility requires a Nonattainment NSR permit because each such generator has the potential to emit more than 25 tpy of NOx. These NOx thresholds apply because NOx emissions contribute to ozone and because Rhode Island has not attained the national ambient air quality standards for ozone.

5. Finally, the Complaint alleges BIPCO violated the Acid Deposition Control (a/k/a "Acid Rain") requirements by failing to install and certify continuous emissions monitoring systems ("CEMS") to measure sulfur dioxide and NOx emissions, and monitoring systems to measure carbon dioxide and opacity (smoke density).

6. EPA, pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), issued Notices of Violation to BIPCO on September 30, 1994 and December 7, 1995, regarding the PSD and Nonattainment NSR violations alleged in the Complaint, and the United States, pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), notified the Rhode Island Department of Environmental Management ("Rhode Island DEM") of the commencement of this action.

II. DEFINITIONS

7. This Consent Decree incorporates the definitions set forth in the Act, 42 U.S.C. § 7401 et seq., and in the regulations promulgated under the Act, unless otherwise provided below.

8. The terms "cable" and "underwater cable" refer to an underwater power cable, proposed by BIPCO in November 1996 and approved by the Rhode Island Public Utilities Commission ("Rhode

Island PUC") in an open meeting on June 10, 1997 and written order issued on August 22, 1997, that will carry electricity from the mainland to Block Island and serve as the primary source of electric power to Block Island.

9. The term "emergency generator" shall mean a generator whose sole function is to provide back-up power when BIPCO's normal source(s) of electric power are interrupted and which is subject to a federally-enforceable limit restricting the operation of each such generator to less than five hundred (500) hours during any twelve (12) month period.

10. The term "Section", when capitalized and followed by a Roman numeral (e.g., Section X), refers to the corresponding section of this Consent Decree; when capitalized and not followed by a Roman numeral, the term shall mean the section of this Consent Decree in which the term occurs. The term "Paragraph", when followed by an Arabic numeral (e.g., Paragraph 12), refers to the corresponding paragraph of this Consent Decree; when capitalized and not followed by an Arabic numeral, the term shall mean the paragraph of this Consent Decree in which the term occurs.

11. The term "provide written notice" shall mean, unless otherwise specified, that information and documents shall

be transmitted in accordance with the procedures specified in Section XI (Notices).

12. The term "unexempted new utility unit" shall mean an affected unit subject to the Acid Rain provisions of Subchapter IV-A of the Act, 42 U.S.C. §§ 7651 to 7651o, and to EPA regulations set out in the Code of Federal Regulations, 40 C.F.R. Parts 70, 72 and 75.

III. JURISDICTION AND VENUE

13. This Court has jurisdiction over the subject matter of this action and the parties hereto pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and to 28 U.S.C. §§ 1331, 1345 and 1355. Venue properly lies in this Court pursuant to 42 U.S.C. § 7413, and to 28 U.S.C. §§ 1391(b) and (c), and 1395.

14. BIPCO waives any objections it may have to jurisdiction and venue regarding this action.

15. Until this Consent Decree is terminated, the Court shall retain jurisdiction over the parties and this Consent Decree in order to enforce its terms and to take any other action necessary or appropriate to effectuate it. Neither the United States nor BIPCO shall challenge the Court's jurisdiction to enforce or to take any other action to effectuate this Consent

Decree except that the United States reserves the right to withhold its consent after lodging and before entry of this Consent Decree in accordance with Section XVII (Public Notice Requirements).

IV. CLAIMS FOR RELIEF

16. The Complaint states claims that, if proven, would constitute grounds for which relief could be granted pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b).

V. APPLICABILITY

17. The provisions of this Consent Decree shall apply to and be binding upon the United States, on behalf of EPA, and upon BIPCO, its officers, directors, successors, assigns, employees, and agents. In the event that BIPCO sells, transfers or assigns any interest in the operational control of its facility on Block Island, including but not limited to the facility's sale or lease, BIPCO shall advise in writing the purchaser(s), transferee(s) or assignee(s), prior to such sale, transfer or assignment, of the existence of this Consent Decree and simultaneously provide written notice to EPA and the United States Department of Justice ("DOJ") of the name(s) and address(es) of such purchaser(s), transferee(s) or assignee(s). BIPCO may sell, transfer, or assign an interest in the facility

only to persons who agree, in writing, to be bound by the obligations of this Consent Decree.

VI. COMPLIANCE PROVISIONS

A. NSR COMPLIANCE

18. BIPCO shall either (a) install and operate an underwater cable, and re-permit any diesel generators remaining at the facility as emergency backup units, or (b) install and operate lowest achievable emission rate ("LAER") control technology on the facility's diesel generators and obtain any required emissions offsets, in accordance with the requirements, conditions and schedules set out below. BIPCO represents that it has chosen to install an underwater cable in lieu of continuing operation of the facility's diesel generators.

19. BIPCO shall install and begin operation of the underwater cable in accordance with the schedules set out in Appendix I (Schedule of Interim Milestones for Cable Installation and Operation) and Appendix II (Schedule of Critical Milestones for Cable Installation and Operation) of this Consent Decree. BIPCO shall be subject to stipulated penalties in accordance with Section VIII (Stipulated Penalties) for failure to meet the deadlines in the Appendix II schedule.

20. Unless excused under Section X (Force Majeure), if BIPCO fails to meet any of the dates identified as Critical Milestones in Appendix II of this Consent Decree, BIPCO shall, (a) within ten (10) calendar days after the Critical Milestone, provide written notice via facsimile and mail to EPA and DOJ of the missed Critical Milestone; (b) immediately begin preparations to install and operate LAER control technology on the facility's diesel generators; (c) install and operate LAER on the generators as soon as possible and no later than eighteen (18) months after the missed Critical Milestone; and (d) obtain emissions offsets, if any, required by the Act and its implementing regulations within this same eighteen (18) month time period. BIPCO shall be subject to stipulated penalties in accordance with Section VIII (Stipulated Penalties) for failure to install and operate LAER and obtain any required offsets within eighteen (18) months after the missed Critical Milestone. Notwithstanding the above, BIPCO need not install and operate LAER and obtain any required offsets for any generators that are permitted or re-permitted as emergency generators by the end of this same eighteen (18) month time period.

21. BIPCO shall install and operate such pollution control equipment on its generators, as EPA, determines to be

LAER in accordance with the Act and its implementing regulations. EPA's LAER determination shall not be subject to dispute resolution under Section IX (Dispute Resolution). However, if BIPCO disputes EPA's determination, (a) regarding which pollution control equipment constitutes LAER, or (b) regarding whether LAER is required for any generator(s) that are installed at the facility after entry of this Consent Decree, BIPCO may seek to resolve the dispute by providing written notice to EPA Region I's Director of the Office of Environmental Stewardship within fourteen (14) calendar days of receipt of EPA's determination. BIPCO's written objections shall identify the dispute and state the basis of BIPCO's objections. Such objections shall be limited to the issue of which pollution control equipment constitutes LAER or whether LAER is required for generators installed after entry of this Consent Decree and shall not extend to EPA's determination that LAER is required for generators installed prior to entry of this Consent Decree. Following EPA's receipt of BIPCO's objections, EPA and BIPCO shall have fourteen (14) calendar days to reach agreement. This fourteen (14) day period may be extended by agreement of the parties. If an agreement regarding the dispute is not reached within this period, BIPCO may, within ten (10) calendar days thereafter,

request a determination by the EPA Regional Administrator for Region I and the Assistant Administrator for Enforcement and Compliance Assurance. Such a request shall be made in writing, and shall identify the dispute, the basis of BIPCO's objections, and BIPCO's arguments for its position. The decision by the EPA Regional Administrator for Region I and Assistant Administrator for Enforcement and Compliance Assurance shall be EPA's final decision, and BIPCO shall abide by it.

22. If at any time BIPCO decides to abandon the cable project, BIPCO shall provide written notice to EPA and DOJ within ten (10) calendar days of its decision. BIPCO shall prepare to install and operate LAER on its generators, install and operate LAER, and obtain any required offsets on the same schedule and with the same exceptions as set out in Paragraph 20, except that the eighteen (18) month time period shall be measured from the date of BIPCO's decision to abandon the cable project. BIPCO shall be subject to stipulated penalties in accordance with Section VIII (Stipulated Penalties) for failure to install and operate LAER and obtain any required offsets within eighteen (18) months of BIPCO's decision to abandon the cable project.

23. BIPCO shall submit quarterly reports to EPA, with the first report due on January 1, 1998, and the following

reports submitted every three months thereafter, setting forth the following: (a) the progress made to date in completing the tasks identified in Appendices I and II; (b) documentation evidencing the progress toward meeting the dates identified as Critical Milestones in Appendix II or the Interim Milestones set out in Appendix I; (c) reasons for any expected future delays in meeting the dates identified as Critical Milestones in Appendix II; and (d) reasons for any past or expected future delays in meeting dates identified as Interim Milestones in Appendix I or for completion of any of the tasks therein.

B. ACID RAIN COMPLIANCE

24. BIPCO shall petition the Rhode Island DEM to obtain, for the two diesel generators that BIPCO has installed since November 15, 1990 (Units Nos. 19 and 21), an exemption from the Acid Rain regulations pursuant to 40 C.F.R. § 72.7. Pending a decision on BIPCO's petition, BIPCO shall burn in Units Nos. 19 and 21 only those fuels with a sulfur content of 0.05 percent or less by weight, as determined in accordance with 40 C.F.R. § 72.7(d)(2).

25. If the Rhode Island DEM denies BIPCO's petition for an exemption, BIPCO, after exhaustion of all rights of appeal, shall treat Units Nos. 19 and 21 as unexempted new

utility units and shall commence activities to come into compliance with all Acid Rain requirements for such units, including, but not limited to, the installation, certification, operation and maintenance of all monitoring systems required pursuant to 40 C.F.R. Parts 72 and 75. BIPCO shall install, certify and begin operation of all such monitoring systems within one hundred and eighty (180) days of the date that Rhode Island DEM denies BIPCO's petition or, in the event that BIPCO appeals Rhode Island DEM's denial, within 180 days of the date any such appeals are exhausted. In the event that Rhode Island DEM denies BIPCO's petition, BIPCO shall provide written notice to EPA and DOJ within ten (10) calendar days of such denial.

VII. CIVIL PENALTY

26. In settlement of the civil violations alleged in the Complaint through the date of lodging of this Consent Decree, BIPCO shall pay to the United States a civil penalty of ninety thousand dollars ($90,000), plus all applicable interest, accruing from the date of lodging of this Consent Decree.

27. BIPCO shall pay the above-described civil penalty in five installments of eighteen thousand dollars ($18,000) each, plus all applicable interest. The first installment shall be paid within thirty (30) days of entry of this Consent Decree; the

other four installments shall be paid at yearly intervals thereafter.

28. BIPCO shall pay interest on the five penalty installments in accordance with the interest rate provided in 28 U.S.C. § 1961. Such interest shall begin to accrue on the date of lodging of this Consent Decree.

29. BIPCO shall pay the penalty installments by electronic funds transfer, in accordance with written instructions to be provided by the United States Attorney's Office for the District of Rhode Island after this Consent Decree is lodged with the Court. The cost of such electronic funds transfer shall be BIPCO's responsibility. Within one (1) business day of each such payment, BIPCO shall provide written notice of payment to EPA, DOJ, and the United States Attorney, District of Rhode Island via facsimile and mail. The written notice shall also contain a statement showing the calculation of any interest that is included in the payment.

30. BIPCO shall pay to the United States additional interest for late payment of any amount of the above-described civil penalty. The additional interest shall be calculated in accordance with 28 U.S.C. § 1961. Moreover, for every 30-day period that payment of any amount of the civil penalty remains

overdue, BIPCO shall pay a late payment handling charge of $15.00.

31. Payments made pursuant this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax deductible expenditures for purposes of federal law.

VIII. STIPULATED PENALTIES

32. BIPCO shall be liable for stipulated penalties to the United States for failure to comply with the Critical Milestones in Appendix II, or with Paragraphs 20, 22, 25, or 27, unless excused under Section X (Force Majeure), in accordance with the following matrix:

Period of Failure To Comply	Penalty Per Violation Per Day
1st through 15th day	$ 1,000.00
16th through 30th day	$ 2,000.00
31st day and beyond	$ 5,000.00.

BIPCO shall be liable for stipulated penalties to the United States for failure to comply with Paragraph 23, unless excused under Section X (Force Majeure), in accordance with the following matrix:

Period of Failure To Comply	Penalty Per Violation Per Day
1st through 30th day	$ 250.00
30th through 60th day	$ 500.00
60th day and beyond	$ 1,000.00.

33. Stipulated penalties shall begin to accrue on the day that the violation of this Consent Decree first occurs, and shall continue to accrue for each day until the day upon which the violation is fully corrected. Separate stipulated penalties may accrue simultaneously for separate violations of this Consent Decree. Stipulated penalties shall accrue regardless of whether EPA or the United States has notified BIPCO that a violation of this Consent Decree has occurred.

34. Stipulated penalties shall become due and owing, and shall be paid, by BIPCO to the United States not later than thirty (30) days after EPA or the United States issues BIPCO a written demand for them. If such stipulated penalties are not paid in full within thirty (30) days of EPA or the United States' demand, BIPCO shall owe interest on the unpaid penalties from the 30th day after the demand at the rate established in accordance with 28 U.S.C. § 1961. In addition, for every 30-day period that payment of any amount of the stipulated penalty remains overdue, BIPCO shall owe a late payment handling charge of $15.00.

35. BIPCO shall pay the full amount of any stipulated penalties due by electronic funds transfer in accordance with written instructions to be provided by the United States Attorney's Office for the District of Rhode Island or by certified check payable to "Treasurer, United States of America" delivered by overnight or certified mail to the Office of the United States Attorney for the District of Rhode Island, referencing USAO File No. 97V0049 and DOJ Case No. 90-5-2-1-2021 after this Consent Decree is lodged with the Court. If payment is by electronic funds transfer, the cost of such transfer shall be the responsibility of BIPCO. Within one business day of each such payment, BIPCO shall provide written notice of payment to EPA, DOJ, and the United States Attorney, District of Rhode Island. The written notice shall also contain a statement showing the calculation of any interest that is included in the payment.

36. Payments made pursuant this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax deductible expenditures for purposes of federal law.

37. If the United States must bring an action to collect any portion of the civil penalty that BIPCO is required

to pay pursuant to Section VII (Civil Penalty), or any payment of stipulated penalties determined to be due and owing pursuant to Sections VIII (Stipulated Penalties) and IX (Dispute Resolution), BIPCO shall reimburse the United States for all costs related to such collection action, including but not limited to costs of attorney time, but not including costs related to resolution of disputes pursuant to Section IX (Dispute Resolution).

38. The stipulated penalty provisions of this Section shall be in addition to any rights reserved by the United States pursuant to Section XIII (Reservation of Rights). Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek other remedies or sanctions available by virtue of BIPCO's violation(s) of this Consent Decree or of the statutes and regulations referenced within it.

IX. DISPUTE RESOLUTION

39. Except as otherwise provided, if BIPCO disputes any determination made by EPA pursuant to this Consent Decree, BIPCO shall provide written notice to EPA outlining the nature of the dispute and requesting informal negotiations to resolve the dispute. Except as otherwise provided, if BIPCO is seeking additional time to meet a scheduled deadline in Section VI

(Compliance Provisions), or a date identified as a Critical Milestone in Appendix II, BIPCO shall provide written notice to EPA containing a detailed explanation of why the deadline or Critical Milestone was or will be missed, the steps BIPCO will take to complete the task, when the task will be completed, and requesting informal negotiations to obtain an extension of time. The informal negotiations period shall not extend beyond twenty (20) days of the date that the dispute arose or beyond the date of the missed deadline or Critical Milestone, whichever is earlier, unless both EPA and BIPCO agree in writing to extend the period.

40. If EPA and BIPCO cannot resolve the dispute or reach agreement on an extension of time within the informal negotiations period, EPA will issue a written interpretation regarding the dispute or request for additional time and this interpretation shall be considered binding unless BIPCO exercises its right to petition the Court in accordance with this Section. For purposes of this Section, a demand for stipulated penalties made by EPA or the United States pursuant to Section VIII (Stipulated Penalties) constitutes a written interpretation.

41. Within thirty (30) days after EPA issues its written interpretation, BIPCO may file with the Court and serve

upon DOJ and EPA a petition describing the nature of any remaining dispute and proposing a means of resolving it. The United States shall have thirty (30) days to respond to the petition. In any such dispute resolution, BIPCO shall bear the burden of proving to the Court that: (a) BIPCO did not violate the terms and conditions of this Consent Decree; or (b) in disputes regarding Section X (Force Majeure), (i) that the noncompliance or missed Critical Milestone was or will be caused by circumstances beyond the control of BIPCO and any entity controlled by BIPCO, including its contractors and consultants; (ii) that BIPCO or any entity controlled by BIPCO could not reasonably have foreseen and prevented such noncompliance or missed Critical Milestone; and (iii) the number of days of unavoidable delay that were or will be caused by such circumstances.

42. If BIPCO does not file a petition with the Court within the thirty (30) calendar day time period, BIPCO will have waived its right to challenge EPA's resolution of any matter that could have been addressed in dispute resolution. In the event that the Court denies BIPCO's petition, in whole or in part, any stipulated penalties shall be paid as provided in Section VIII (Stipulated Penalties), except that such penalties shall be paid

within fifteen (15) calendar days of the Court's denial of the petition.

43. The submittal of a written notice of dispute or request for additional time to EPA, or the filing of a petition asking the Court to resolve a dispute, shall not in itself postpone the requirements of this Consent Decree with respect to the disputed issue. However, the providing of written notice requesting an extension of a date identified as a Critical Milestone in Appendix II shall postpone the effect of Paragraph 20 for that Critical Milestone pending agreement to an extension of time by EPA or resolution by the Court in the event of a dispute, subject to the eighteen (18) month limitation described in Paragraph 44. Postponement of a Critical Milestone or other deadline pursuant to this Section shall not automatically extend subsequent Critical Milestones or other deadlines under this Consent Decree. BIPCO must make a separate request regarding each Critical Milestone or other deadline for which an extension is sought.

44. Notwithstanding the provisions of this Section, if BIPCO secures informal agreement from EPA or a dispute resolution ruling from the Court that extends one of the dates identified as a Critical Milestone in Appendix II, no such extension or series

of extensions shall allow BIPCO more than eighteen (18) months from the date of the Critical Milestone to complete the scheduled task. Should BIPCO not have completed the scheduled tasks within this eighteen (18) month period, EPA shall have the discretion to immediately order BIPCO to install and operate LAER and obtain any required offsets for them in accordance with the Act and its implementing regulations, within eighteen (18) months, except for any generators that have been permitted or re-permitted as emergency backup generators by the end of this same eighteen (18) month time period. Should EPA issue such an order, BIPCO shall install and operate LAER and obtain offsets in accordance with Paragraphs 20 and 21.

X. FORCE MAJEURE

45. If any event occurs which is beyond the control of BIPCO or any entity controlled by BIPCO, including BIPCO's consultants and contractors, and which causes or may cause BIPCO to fail to fully comply in a timely manner with any provision of this Consent Decree, including meeting any of the dates identified as Critical Milestones in Appendix II of this Consent Decree, BIPCO shall provide written notice via facsimile transmission and mail within ten (10) calendar days of when BIPCO first knew or should have known of the event. In the notice,

BIPCO shall specifically reference this Section of the Consent Decree and describe the expected length of time the delay or impediment to performance may persist; the known or suspected causes of the delay or impediment; the measures taken or to be taken by BIPCO to prevent or minimize the delay or impediment; and the timetable by which those measures will be implemented.

46. Failure by BIPCO to fully comply with the notice requirements set out in Paragraph 45 shall render the remainder of this Section void and of no effect as to the particular event involved, and shall constitute a waiver of BIPCO's rights under this Consent Decree to obtain an extension of time based on such event.

47. If EPA agrees that BIPCO's failure to comply with a provision of this Consent Decree or to meet a date identified as a Critical Milestone in Appendix II of this Consent Decree has been or will be caused by circumstances beyond the control of BIPCO and any entity controlled by BIPCO, including BIPCO's consultants and contractors, and that BIPCO or any such entity controlled by BIPCO could not reasonably have foreseen and prevented such noncompliance or missed Critical Milestone, EPA and BIPCO shall stipulate in writing to an extension of time for the performance of the affected requirements of this Consent

Decree, not to exceed the amount of time lost due to the actual unavoidable delay resulting from such circumstances. Stipulated penalties shall not accrue and, in the event of a missed Critical Milestone, the requirements of Paragraph 20 shall not be triggered, for the number of days constituting the actual unavoidable delay caused by such circumstances.

48. If the parties are unable to agree as to: (a) whether BIPCO's failure to comply with a provision of this Consent Decree or to meet a date identified as a Critical Milestone in Appendix II of this Consent Decree was or will be caused by circumstances beyond the control of BIPCO and any entity controlled by BIPCO, including BIPCO's consultants and contractors; (b) whether BIPCO and any entity controlled by BIPCO, including BIPCO's consultants and contractors, could not reasonably have foreseen and prevented such noncompliance or missed Critical Milestone; or (c) the number of days of noncompliance that were or will be caused by such circumstances; the matter shall be subject to the dispute resolution provisions of Section IX (Dispute Resolution).

49. In any such dispute resolution proceeding conducted in accordance with Section IX (Dispute Resolution), BIPCO shall bear the burden of proving to the Court: (a) that

the noncompliance or missed Critical Milestone was or will be caused by circumstances beyond the control of BIPCO and any entity controlled by BIPCO, including its contractors and consultants; (b) that BIPCO or any entity controlled by BIPCO could not reasonably have foreseen and prevented such noncompliance or missed Critical Milestone; and (c) the number of days of unavoidable delay that were or will be caused by such circumstances. If BIPCO fails to sustain its burden of proof under this Paragraph, BIPCO shall be liable for stipulated penalties for each day of noncompliance not excused by the Court and, in the event of a missed Critical Milestone, shall also be immediately required to comply with the requirements of Paragraph 20.

50. If the Court determines that the failure to comply was or will be caused by circumstances beyond the control of BIPCO and any entity controlled by BIPCO, including BIPCO's consultants and contractors, and that BIPCO and any entity controlled by BIPCO could not reasonably have foreseen and prevented such noncompliance, BIPCO shall be excused as to the failure to comply for a period not to exceed the amount of time lost due to the actual unavoidable delay resulting from such circumstances. Stipulated penalties shall not accrue for the

number of days of noncompliance caused by such circumstances, but shall accrue for each day of noncompliance beyond the number of days of delay caused by such circumstances.

51. An extension of one Critical Milestone or other deadline pursuant to this Section shall not automatically extend subsequent Critical Milestones or other deadlines under this Consent Decree. BIPCO must make a separate showing of proof regarding each Critical Milestone or other deadline for which an extension is sought.

XI. NOTICES

52. Whenever under the terms of this Consent Decree written notice is required to be given or written information is required to be sent to EPA, DOJ, the United States Attorney, District of Rhode Island, or BIPCO, it shall be mailed via overnight or certified mail to the individuals and addresses specified below, unless any such individual or such individual's successor gives notice in writing to the other party that notice should be mailed to a different individual or to a different address, or unless this Consent Decree specifically provides otherwise.

As to DOJ:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
DOJ No. 90-5-2-1-2021

As to EPA:

Director
Office of Environmental Stewardship
U. S. Environmental Protection Agency
John F. Kennedy Federal Building (SAA)
Boston, Massachusetts 02203

As to the United States Attorney, District of Rhode Island:

Sheldon Whitehouse
United States Attorney
District of Rhode Island
Westminster Square Building
10 Dorrance Street, 10th Floor
Providence, Rhode Island 02903.

As to BIPCO:

Jerome Edwards, President
Block Island Power Company
P.O. Box 518
100 Ocean Avenue
Block Island, Rhode Island 02807

Sean O. Coffey, Esq.
Hinckley, Allen and Snyder
1500 Fleet Center
Providence, Rhode Island 02903

Michael R. McElroy, Esq.
Schacht & McElroy
P.O. Box 6721
Providence, Rhode Island 02940-6721

53. Whenever written notice is required to be sent by facsimile transmission, the notice should be sent to the entities or individuals set out in Paragraph 52, using the following facsimile telephone numbers: for DOJ, (202) 616-2427; for EPA, (617) 565-1141; for the United States Attorney, District of Rhode Island, (401) 528-5474, and for BIPCO, (401)466-5068 (Edwards), (401)277-9600 (Coffey), and (401)421-5696 (McElroy). These numbers are furnished for the convenience of the parties; it remains the responsibility of any party sending a facsimile to ensure that the relevant facsimile number is correct, and that the facsimile was fully transmitted and received.

54. All notices, reports or any other submission required by this Consent Decree to be sent by BIPCO to EPA and/or DOJ shall contain the following certification:

> I certify that the information contained in or accompanying this submission is true, accurate and complete. As to any marked and identified portions of the submission for which I cannot personally verify truth and accuracy, I certify, as the company official having supervisory responsibility for the person(s) who verified those portions, that the information contained therein is true, accurate and complete.

55. BIPCO shall ensure that such certified statement is signed by a responsible corporate officer, i.e., a president, vice-president, secretary, treasurer, or other person responsible for a principal business function, or a senior manager responsible for environmental policy-making and decision-making.

XII. EFFECT OF SETTLEMENT

56. This Consent Decree constitutes a settlement by the Plaintiff of all civil judicial claims for the violations alleged in the Complaint through the date of lodging of this Consent Decree. Plaintiff specifically reserves any criminal enforcement claims that may arise from any facts, circumstances, or law at issue or in any way involved in this civil judicial action or otherwise related to BIPCO.

57. Except as specifically provided herein, this Consent Decree shall not affect BIPCO's obligations to obtain NSR or other CAA-based permits for any equipment, operation or process at BIPCO's facility, or to otherwise comply with any requirements of the Clean Air Act, EPA's implementing regulations, and the Rhode Island State Implementation Plan, including, but not limited to, any requirements relating to the installation of reasonably available control technology ("RACT") on any of BIPCO's generators or operations, or with any

requirements relating to any equipment, operation or process remaining at the facility if the cable is installed.

58. Upon approval and entry, this Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure and the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001 et. seq.

59. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54(b).

XIII. RESERVATION OF RIGHTS

60. Nothing in this Consent Decree shall be construed to limit any statutory or regulatory authorities, rights, remedies, or sanctions, including all criminal enforcement authorities and sanctions, or any equitable rights or remedies, available to the United States regarding (a) any violation of this Consent Decree, or (b) any violation of any federal, state, or local law, regulation, or permit, except as specifically provided in Section XII (Effect of Settlement).

XIV. COSTS

61. Except as described in Paragraph 37, each party shall bear its own costs, disbursements and attorney's fees in

this action, and specifically waives any right to recover such costs, disbursements or attorneys fees from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law for costs, disbursements and attorney's fees incurred through the date of entry of this Consent Decree.

XV. MODIFICATION

62. Any material modification of this Consent Decree, must be agreed to by the parties, set out in writing, and approved by the Court. Material modifications shall become effective upon approval by the Court

. 63. Any non-material modifications of this Consent Decree must be agreed to by the parties and set out in writing. Non-material modifications shall become effective upon filing with the Court.

XVI. EFFECTIVE AND TERMINATION DATES

64. This Consent Decree shall be effective upon the date of its entry by the Court, and shall terminate upon joint motion of the United States and BIPCO after EPA and DOJ have determined that BIPCO has achieved compliance with the requirements of this Consent Decree and has paid all civil and stipulated penalties as required by this Consent Decree. In determining whether to join such a motion, the United States in

its sole discretion may require BIPCO to make a certification, in accordance with Paragraphs 54 and 55, as to BIPCO's compliance with any or all provisions of this Consent Decree. If the motion is granted, the Consent Decree shall terminate on the date ordered by the Court.

XVII. PUBLIC NOTICE REQUIREMENTS

65. The United States consents to the entry of this Consent Decree subject to the requirements of 28 C.F.R. § 50.7. That regulation provides for publication of a notice of this proposed Consent Decree in the Federal Register. The public shall have thirty (30) days from the date of publication in the Federal Register to comment on the settlement. All written comments received, along with any responses to them, shall be provided to the Court prior to entry. The United States reserves the right to withdraw or withhold its consent to entry if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. BIPCO consents to the entry of this Consent Decree without further notice.

JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE FOREGOING CONSENT DECREE THIS 14th DAY OF July, 1998.

Thomas M. Lisi
UNITED STATES DISTRICT JUDGE

United States v. Block Island Power Company, Inc.
Consent Decree

FOR PLAINTIFF THE UNITED STATES OF AMERICA

1/15/98
DATE

LOIS J. SCHIFFER
Assistant Attorney General
Environment & Natural Resources
Division
United States Department of Justice

1/22/98
DATE

DAVID K. MEARS
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources
Division
United States Department of Justice

SHELDON WHITEHOUSE
United States Attorney

MICHAEL IANNOTTI
Assistant United States Attorney
District of Rhode Island

United States v. Block Island Power Company, Inc.
Consent Decree

For EPA:

11/17/97
DATE

Patricia L. Meaney
PATRICIA L. MEANEY
Senior Advisor for Management and
Assistant Regional Administrator
United States Environmental
Protection Agency - Region I

12/2/97
DATE

Bruce C. Buckheit
BRUCE BUCKHEIT
Director, Air Enforcement Division
Office of Enforcement and
Compliance Assurance
United States Environmental
Protection Agency

United States v. Block Island Power Company, Inc.
Consent Decree

FOR DEFENDANT BLOCK ISLAND POWER COMPANY, INC.

11-3-97
DATE

Jerome D. Edwards
JEROME EDWARDS
President
Block Island Power Company, Inc.

APPENDIX I: SCHEDULE OF INTERIM MILESTONES FOR CABLE INSTALLATION AND OPERATION

1. BIPCO shall complete preparation of the work plan, power requirement study, and environmental assessment for obtaining financing from the Rural Utilities Service ("RUS") within 30 days from the date of entry of this Consent Decree.

2. BIPCO shall complete a detailed survey of the cable route and engineering plans by April 1, 1998.

3. BIPCO shall apply for alternate financing within sixty (60) days of denial of RUS financing, or by March 1, 1999 if RUS financing has not yet been approved, whichever is earlier.

4. BIPCO shall apply for Rhode Island Division of Public Utilities and Carriers approval of financing within sixty (60) days of obtaining RUS or alternate financing.

5. BIPCO shall apply for permits or approvals from local authorities, including permits or approvals from the Building Inspector, Planning Commission, Conservation Commission, Historic District Commission, and Zoning Board for both the Towns of Charlestown and New Shoreham within thirty (30) days of completion of the cable route survey and engineering plans.

6. BIPCO shall apply for permits or approvals from state and federal authorities including the Rhode Island Department of Transportation, Rhode Island Department of Environmental Management, and United States Army Corps of Engineers, but not the Coastal Resources Management Council ("CRMC"), within 30 days of completion of the cable route survey and engineering plans.[1/]

7. BIPCO shall apply for a permit from CRMC within thirty (30) days of approval of the federal, state and local permits and approvals identified in Paragraphs 5 and 6 of this Appendix.

[1/]It is understood by the parties that the Narragansett Electric Company will independently pursue such permits and easements as may be necessary to insure construction of the above ground cable on the mainland from the Narragansett Electric Company's substation to a point on Charlestown Beach where it will be connected to the submarine cable being installed by BIPCO.

8. BIPCO shall order the cable within thirty (30) days of approval of the CRMC permit or of obtaining financing, whichever is later, and shall complete manufacture of the cable within six months thereafter.

9. BIPCO shall begin installation of the cable within sixty (60) days of completing the manufacture of the cable or within the time period set forth in the CRMC permit, if later.

10. BIPCO shall complete the installation and commence full operation of the cable not later than December 30, 2000.

APPENDIX II: SCHEDULE OF CRITICAL MILESTONES FOR CABLE INSTALLATION AND OPERATION

1. BIPCO shall obtain all local, state and federal permits or approvals identified in Appendix I, except the Coastal Resources Management Council ("CRMC") permit and reviews or approvals associated with the CRMC permit, by November 30, 1998.

2. BIPCO shall obtain cable financing by September 30, 1999.

3. BIPCO shall obtain the CRMC permit by January 30, 2000.

4. BIPCO shall complete installation and commence full operation of the cable by December 30, 2000.

Gathered from j4802.enc (J4802.ASC) (12-May-97)
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<<TOC>> Public Service Company of Colorado, Inc.
ENVIRES REF #: J4802

DATE ENTERED/APPROVED:

DATE FILED/LODGED: 5/22/96

DOCKET: CAA,

FACILITY:

FACILITY ID:

TEXT:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 93-B-1749

SIERRA CLUB,

Plaintiff.

vs.

PUBLIC SERVICE COMPANY OF COLORADO, INC.,
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT, and PACIFICORP,

Defendants,

UNITED STATES OF AMERICA and
STATE OF COLORADO,

Plaintiff-Intervenors.

CONSENT DECREE

Date lodged in Court 5/22/96

Date entered by Court

TABLE OF CONTENTS

I. BACKGROUND

WHEREAS, on August 18, 1993, plaintiff Sierra Club, Inc. ("Sierra Club") filed a Complaint against Public Service Company of Colorado, Inc., Salt River Project Agricultural Improvement and Power District, and PacifiCorp ("Defendants") pursuant to Section 304 of the Clean Air Act (the "Act"), 42 U.S.C. § 7604, alleging, inter alia, violations of: (1) the Colorado State Implementation Plan, Colorado Air Pollution Prevention and Control Act, §§ 25-7-1-1 through 25-7-609, C.R.S., and its implementing regulations, 5 C.C.R. 1001-1 et seq.; (2) the Standards of Performance for New Stationary Sources ("NSPS"), 40 C.F.R. §§ 60.11 (d), promulgated under Section 111 of the Act, 42 U.S.C. § 7411, and incorporated in Colorado's State Implementation Plan; and (3) Defendants' emission permit, all in connection with Defendants' Hayden Station power plant in Routt County, Colorado. Sierra Club filed its First amended complaint on September 7, 1993;

WHEREAS, Sierra Club's amended complaint alleged that Defendants violated the opacity limit repeatedly from 1988 through the second quarter of 1993, that Defendants failed to operate Hayden Station consistent with good air pollution control practices for minimizing emissions, and that Defendants had violated the Act by modifying Hayden Station Unit 2 by operating it without properly functioning air pollution control equipment for over two weeks in November and December of 1992;

WHEREAS, Sierra Club's amended complaint sought declaratory and injunctive relief, the imposition of civil penalties, and its costs of litigation;

WHEREAS, on July 12, 1994 and August 1, 1994, Sierra Club moved for partial summary judgment on its claims;

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WHEREAS, on July 21, 1995, the court granted partial summary judgment in favor of Sierra Club finding Defendants liable for over 17,000 separate violations of the opacity limit, and for continuously failing to maintain and operate Hayden Station in a manner consistent with good air pollution control practices for minimizing emissions, and directed that its decision be published at Sierra Club v. Public Service Company of Colorado, et al. 894 F. Supp. 1455 (D. Colo. 1995);

WHEREAS, Defendants petitioned for leave to take an interlocutory appeal of the District Court's decision and the United States Court of Appeals for the Tenth Circuit denied the petition (No. 95-523);

WHEREAS, on January 18, 1996, the United States Environmental Protection Agency issued a Notice of Violation under the Act to Defendants alleging violations off (1) the opacity limit applicable to Hayden Station by virtue of the State implementation Plan and the NSPS; (2) the obligation to operate Hayden Station consistent with good air pollution control practices for minimizing emissions; and (3) the opacity limits applicable to Hayden Station Unit 2 by virtue of its emission permit, for the time period between 1993 and 1995;

WHEREAS, the United States moved under the Act without opposition to intervene in the Sierra Club's action as a party plaintiff pursuant to Sections 304(c) and 113(b) of the Act, 42 U.S.C. §§ 7604(c) and 7413(b), and file a complaint for Defendants' violations of: (1) the Colorado State Implementation Plan, Colorado Air Quality Control Act, §§ 25-7-1-I through 25-7-609, C.R.S. and its implementing regulations, 5 C.C.R. 1001-1 et seq.; (2) the NSPS, 40 C.F.R. § 60.1 l(d), promulgated under Section 111 of the Act, 42 U.S.C. § 7411; and (3) Defendants' emission permit;

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WHEREAS, Colorado moved under the Act without opposition to intervene in Sierra Club's action as a party plaintiff pursuant to Sections 304(a) and 113(b) of the Act, 42 U.S.C. §§ 7604(a) and 7413(b), and to file a complaint for Defendants' violations off the NSPS, 40 C.F.R. § 60.1 l(d), promulgated under Section 111 of the Act, 42 U.S.C. § 7411;

WHEREAS, Defendants deny all allegations in Plaintiffs' complaints, and do not admit liability with respect t.o any claims or assertions in such complaints;

WHEREAS, Plaintiffs and Defendants agree that the Settlement of this action through this Consent Decree without further litigation is in the public interest, and is a fair, reasonable and appropriate means of resolving all claims in Plaintiffs' complaints that have been alleged through the date of lodging of this Decree;

WHEREAS, Plaintiffs and Defendants consent to the entry of this Decree without further trial or appeal;

NOW, THEREFORE, it is hereby ORDERED AND DECREED as follows:

II. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Decree that are defined in the Clean Air Act, 42 U.S.C. § 7401 et seq., or regulations implementing the Clean Air Act, shall have the meaning set forth in the Act or regulations.

2. Whenever the terms set forth below are used in this Decree, the following definitions shall apply:

a. "Act" shall mean the Clean Air Act, 42 U.S.C. § 7401, et seq.

b. "Boiler operating day" for coal shall mean any calendar day in which coal is combusted in the boiler of a unit for more than 12 hours. If coal is combusted for more than

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12 but less than 24 hours during a calendar day, the calculation of that day's SO(2) emissions for the unit shall be based solely upon the average of hourly CEMS data collected during hours in which coal was combusted in the unit, and shall not include any time in which coal was not combusted. "Boiler operating day" for natural gas shall mean any calendar day in which natural gas was combusted in a boiler of a unit for 24 hours.

c. "Business day" shall mean all work days of the week except Saturday, Sunday and all Colorado and federal holidays.

d. "Calendar day" shall mean any 24 hour period between 12:00 midnight and the following midnight in Colorado.

e. "CEMS" shall mean continuous emissions monitoring system, which consists of all equipment used to sample, analyze, and record on a

continuous basis, opacity, SO(2), NO(x), or any other emissions-related parameters that may be required.

f. "Coal" shall mean all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials, Designation D388-77.

g. "Co-tire" shall mean when a unit at the Hayden Station is combusting coal and natural gas simultaneously, other than during periods of startup.

h. "Colorado" shall mean the State of Colorado and the Colorado Department of Public Health and Environment, Air Pollution Control Division;

i. "Day" shall mean a calendar day. In computing any period of time under this Decree, except in computing compliance with emission limitations, where the last day would fall

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on a Saturday, Sunday or federal or Colorado holiday, the period shall run until the close of the next business day.

j. "Decree" shall mean this Consent Decree, including Exhibit A, and any written modifications of such Decree.

k. "Defendants" shall mean Public Service Company of Colorado, Inc., Salt River Project Agricultural Improvement and Power District, and PacifiCorp.

l. "Division" shall mean the Colorado Air Pollution Control Division.

m. "EPA" shall mean the United States Environmental Protection Agency.

n. "Excess opacity reading" shall mean each six-minute period of time during which the opacity of emissions from Unit 1 or Unit 2 at Hayden Station exceeds 20.0%, as determined by the opacity CEMS.

o. "FFDC" shall mean Fabric Filter Dust Collector.

p. "Fossil-fuel" shall mean natural gas, petroleum, coal, and any form of solid, liquid. or gaseous fuel derived from such materials for the purpose of creating useful heat.

q. "Hayden Station" shall mean the fossil-fuel fired steam generating plant located near the town of Hayden, Colorado, consisting of two boilers and related electric generators and all ancillary process and air pollution emission control equipment known as Unit 1 and Unit 2.

r. "NO(x)" shall mean nitrogen oxides.

s. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral.

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t. "Parties" shall mean Sierra Club, the United States of America, on behalf of EPA, Colorado, and Defendants.

u. "Plaintiffs" shall mean the Sierra Club, the United States of America, on behalf of EPA, and Colorado.

v. "QA/QC" shall mean the quality assurance and quality control measures to ensure the accuracy of CEMS required by this Decree.

w. "Quarter" shall mean a calendar quarter Consisting of three full months, beginning on the first day of either January, April, July or October.

x. "Rolling average basis" shall mean an average over a period of time consisting of the last 30 or 90 boiler operating days, with a new daily average generated each successive boiler operating day, based on the sum of the daily averages for the last 30 or 90 boiler operating days.

y. "Section" shall mean a portion of this Decree identified by a capital roman numeral.

z. "Shutdown" shall mean the cessation of operation of Unit 1 or Unit 2 at Hayden Station for any purpose or reason.

aa. "SIP" shall mean Colorado's EPA-approved State Implementation Plan.

bb. "Startup" shall mean the setting in operation of Unit 1 or Unit 2.at Hayden Station for any purpose or reason.

cc. "SO(2)" shall mean sulfur dioxide.

dd. "Title V" shall mean Title V of the Clean Air Act, 42 U.S.C. § 7661 through § 7661f.

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ee. "Unit 1" shall mean the 180 megawatt steam generating unit and related electric generating and air pollution emission control equipment for which construction was completed at the Hayden Station in 1965, including all changes made, and to be made, to such equipment thereafter.

ff. "Unit 2" shall mean the 260 megawatt steam generating unit and related electric generating and air pollution emission control equipment for which construction was completed at the Hayden Station in 1976, including all changes made, and to be made, to such equipment thereafter.

III. JURISDICTION AND VENUE

3. This Court has jurisdiction over the Parties to and the subject matter of this action under Section 304 of the Act, 42 U.S.C. § 7604, the citizen suit provision of the Act, Section 113 of the Act, 42 U.S.C. § 7413, and under 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in this Judicial District under Sections 304(c) and 113(b) of the Act, 42 U.S.C. §§ 7604(c) and 7413(b), and under 28 U.S.C. §§ 1391 and 1395.

IV. APPLICABILITY

5. The provisions of this Decree shall apply to and be binding upon the Sierra Club, the United States of America, Colorado, and Defendants, as well as the Defendants' officers, employees, agents, successors and assigns. Defendants shall provide a copy of this Decree to each contractor supplying or installing the FFDCs, lime spray dryers, low NO(x) burners and overfire air equipment, natural gas pipeline and natural gas boiler modifications, and CEMS required by or necessary to comply with this Decree.

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6. Until termination of this Decree pursuant to Section XXIV,

Defendants remain jointly and severally obligated to meet all requirements of this Decree. Without modifying the foregoing, nothing in this Decree shall be construed to alter the contractual rights or obligations of any Defendant in relation to any other Defendant under any agreement between them. Nothing in this Decree shall be interpreted as requiring Defendants to continue operating the Hayden Station.

V. EMISSION CONTROLS AND LIMITATIONS

7. Defendants shall, at all times, maintain and optimally operate the boilers and all pollution control equipment installed at the Hayden Station consistent with good air pollution control practices for minimizing emissions. Without limitation, this shall include returning the control equipment to optimum efficiency as soon as practicable during boiler startup or following control equipment outage or impairment, and maintaining the control equipment at optimum efficiency as long as possible while shutting down the boiler.

8. Defendants shall install the following control equipment, and shall achieve the following emission limitations for each Unit at the Hayden Station, in accordance with the deadlines set forth in Sections VII and VIII:

a. Sulfur Dioxide (SO(2))

i. Unless Defendants elect to switch to natural gas pursuant to paragraph 24, Defendants shall install and operate lime spray dryer technology on Unit 1 and Unit 2 at the Hayden Station. Defendants shall design and construct such lime spray dryer technology to meet the emission limitations, including the percentage reduction requirement, set forth below.

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ii. The sulfur dioxide mass emission limitations for each unit at the Hayden Station shall be as follows:

(1) 0.160 pounds per million Btu heat input on a 30 boiler operating day rolling average basis;

(2) 0.130 pounds per million Btu heat input on a 90 boiler operating day rolling average basis.

iii. Compliance with the SO(2) mass emission limitations in subparagraphs (a)(ii)(1) and (2) herein shall be determined using data from the SO(2) CEMS that Defendants are required to maintain, calibrate and operate pursuant to Section VI.

iv. Sulfur dioxide controls on each unit at the Hayden Station shall achieve at least an 82% reduction of sulfur dioxide on a 30 boiler operating day rolling average basis.

v. Compliance with the SO(2) percentage reduction requirement in subparagraph (a)(iv) above shall be determined using data from the SO(2) CEMS that Defendants are required to maintain, calibrate and operate pursuant to Section VI. Continuous emission monitor data taken from the inlet flue gas stream to the lime spray dryer shall be compared to continuous emission monitor data taken from the outlet flue gas stream at the stack to determine the percentage reduction in sulfur dioxide concentrations (based on pounds per million Btu at the inlet continuous emission monitor versus pounds per million Btu at the outlet continuous emission monitor). If the Defendants elect to switch to or co-fire with natural gas, an adjustment shall be made in the calculation of this percentage reduction requirement to provide Defendants credit for the decrease in the SO(2) concentrations in the inlet stream resulting from the

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introduction of the natural gas component of the fuel, provided that Defendants first submit, and obtain Plaintiffs' approval of, a detailed protocol setting forth the method by which such adjustments will be made. Upon approval by Plaintiffs, such protocol shall become an enforceable part of this Decree.

vi. The first two hours after the first coal feeder on a unit has started during startup shall be excluded from the calculation of that day's SO(2) emissions for such unit.

vii. Regardless of Defendants' compliance With (and without relieving Defendants of the obligation to comply with) the emission limitations and other requirements set forth in this Section, in no event shall Defendants operate any boiler for more than 72 consecutive hours at a unit without an SO(2) control system achieving some reduction of SO(2) emissions at that unit. Following shutdown pursuant to this subparagraph, Defendants shall only restart the boiler on a unit when any malfunctioning control equipment has been repaired.

viii. During any boiler operating day, as defined in this Decree, all emissions of SO(2) from the stack of any unit shall be included in the determination of Defendants' compliance with the SO(2) emission limitations set forth in this paragraph, unless excluded as the first two hours during startup, excluded pursuant to paragraph 29 during the first six months after the compliance date established in Section VIII, or as a result of a "catastrophic failure" as defined below.

ix. Catastrophic Failure.

(1) A "catastrophic failure," for purposes of this

paragraph, shall mean a complete failure of the SO(2) emission control equipment at a Hayden Station unit that is directly caused by a force that Defendants could neither have controlled nor reasonably

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anticipated, and that could not have been prevented through the exercise of good air pollution control practices for minimizing emissions.

(2) Without limitation, a catastrophic failure shall not include SO, emissions that are related to unit startup or shutdown; load fluctuations; operator failure; upsets; design, construction, or equipment defects that Defendants could have controlled or reasonably anticipated; or the failure of any SO(2) emission control equipment components due to ordinary wear and tear, irrespective of Defendants' efforts to maintain and/or replace such components.

(3) For purposes of determining Defendants' compliance with the SO(2) emission limitations set forth in this paragraph, no more than 24 tours of SO(2), data shall be excluded for any single "catastrophic failure".

(4) For any boiler operating day for which data is excluded due to a catastrophic failure, the calculation of that day's average SO(2) emissions for the unit shall be based solely upon hours of nonexcluded CEMS data that would otherwise be counted under this Decree. Days in which all such hours are excluded as a result of a catastrophic failure pursuant to this paragraph shall not be counted in calculating compliance with the SO(2) emission limitations.

(5) If Defendants wish to invoke the catastrophic failure exception they first must notify the Division by phone immediately, but no later than two hours after the start of the next business day following such failure. Second, within 30 days of such failure. Defendants must provide a written report to Plaintiffs that contains: (a) all hourly SO(2) CEMS data Defendants wish to have excluded, (b) evidence of Defendants' notification to the Division. and (c) all evidence that demonstrates the failure is a "catastrophic failure" as defined

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above. Plaintiffs shall notify Defendants within 30 days of receipt of Defendants' written report whether they agree or disagree with Defendants' characterization of the event as a "catastrophic failure", and, if they agree, the number of hours of uncontrolled emissions to be

excluded from the determination of Defendants' compliance with the SO(2) emission limitations set forth in this paragraph. If Plaintiffs disagree, they shall state in writing the basis for such disagreement. If Defendants fail to follow the notice and/or reporting requirements of this paragraph, the catastrophic failure exception shall not apply.

b. Nitrogen Oxides {NO(x))

i. Defendants shall select, install and operate state-of-the-art, most-advanced generation low NO(x) burners and overfire air equipment on Unit 1 and Unit 2 at the Hayden Station from a list of such equipment that Defendants have identified in Exhibit A attached to this Decree. Defendants shall design and construct such control equipment to meet the emission limitations set forth below and any other applicable requirements. The design of such equipment may be modified to meet the requirements of each Unit's boiler. Defendants may substitute any low NO(x) burner or overfire air equipment for the equipment identified by Defendants in Exhibit A only if such equipment has been demonstrated in other commercial utility applications to meet or exceed the NO(x) reduction capabilities of the equipment identified in Exhibit A. Defendants shall notify Plaintiffs of any equipment chosen that is not.identified in Exhibit A, and provide any performance specifications regarding such equipment if requested by Plaintiffs, prior to entering into a contract for such equipment.

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ii. The NO(x) limitation for each unit at the Hayden Station shall be as follows, unless more stringent NO(x) limitations are promulgated as final Colorado or federal regulations, in which case the more stringent limitation shall apply to each unit separately:

(1) Unit 1 - 0.50 pounds per million Btu heat input on a calendar year annual average basis;

(2) Unit 2 - 0.45 pounds per million Btu heat input on a calendar year annual average basis.

iii. Notwithstanding the foregoing, Defendants do not waive any right they might have to seek an alternative NO(x) emission limit pursuant to applicable federal regulations.

iv. Compliance with the NO(x) emission limitations in this paragraph, or any substitute or alternative NO(x) emission limitations contemplated by this paragraph, shall be determined on a unit-specific basis using data from the NO(x) CEMS that' Defendants are required to maintain. calibrate and operate pursuant to Section VI of this Decree.

c. Particulates

i. Unless Defendants elect to switch to natural gas pursuant to paragraph 24, Defendants shall install and operate Fabric Filter Dust Collectors (also known as FFDCs or baghouses) on Unit 1 and Unit 2 at the Hayden station. Defendants shall design and construct such FFDCs to meet the emission limitations set forth below.

ii. The particulate matter limitations for each unit at the Hayden Station shall be as follows:

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(1) 0.03 pounds of primary particulate matter per million Btu heat input, as averaged over six (6) hours of EPA's reference method for particulate testing; and

(2) opacity of 20.0 percent, as averaged over each separate 6-minute period within an hour, beginning each hour on the hour. Notwithstanding the foregoing, during periods of building a new fire, cleaning of fire boxes, startup, soot blowing, any process modification or adjustment or occasional cleaning of control equipment, Defendants shall not cause or allow the emission of air pollutants in excess of 30 percent opacity for a period or periods aggregating more than 6 minutes in any 60 consecutive minutes.

iii. Any opacity reading in excess of the limitations set forth in subparagraph (ii)(2) above may be excused if Plaintiffs agree that Defendants have demonstrated such reading was the result of an unpredictable failure of air pollution control or process equipment that was not due to poor maintenance, improper or careless operations, or otherwise could not have been prevented through the exercise of reasonable care. If Defendants seek to excuse any such excess opacity reading, they must notify the Division as soon as possible by telephone. but no later than two hours after the start of the next business day. In addition, for purposes of this Decree, any claim of excuse must be made in writing in Defendants' next quarterly report following such condition, and must describe: (a) the date and time telephone notification was given to the Division, and the person to whom notification was given, (b) the cause of the condition, (c) all actions Defendants took to correct the condition, and (d) all actions Defendants will take to prevent the condition from recurring.

iv. Compliance with the primary particulate emission limitation in subparagraph (c)(ii)(1) herein shall be determined according to EPA Method 5, 40 C.F.R.

Part 60, Appendix A, or in accordance with a compliance assurance monitoring plan as may be set forth in Defendants' Title V operating permit. Defendants shall conduct a Method 5 test on each unit at the Hayden Station within 100 days after flue gas is first passed through the FFDC, and thereafter as directed by Colorado or EPA, and submit all results and a complete description of the tests to the Plaintiffs in the next quarterly report following Defendants' receipt of the results.

v. Compliance with the opacity emission limitation in subparagraph (c)(ii)(2) herein shall be determined on a continuous basis using data from the opacity CEMS that Defendants are required to maintain, calibrate and operate pursuant to Section VI of this Decree, and may be verified on an intermittent basis by EPA Method 9, 40 C.F.R. Part 60, Appendix A.

vi. Until such time as Defendants either replace: the electrostatic precipitators with FFDCs, or convert the Hayden Station to natural gas, Defendants shall, at all times. optimally operate the electrostatic precipitators and all other equipment at Hayden Station to minimize opacity and particulate emissions.

VI. CONTINUOUS EMISSION MONITORS

9. At all times after entry of this Decree, Defendants shall maintain, calibrate and operate CEMS for each unit of the Hayden Station to measure accurately SO(2) and NO(x) emissions from each such unit, as well as flow and carbon dioxide, in full compliance with the requirements found at 40 C.F.R. Part 75. Nothing herein shall preclude Defendants from installing, certifying and operating integrated CEMS equipment to measure SO(2), NO(x) or opacity, or any combination thereof.

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10. At all times after entry of this Decree, Defendants shall maintain, calibrate and operate CEMS to measure accurately the opacity of emissions from each unit at the Hayden Station in full compliance with the requirements found at 40 C.F.R. Part 60, Appendix B, Specification 1, and 5 C.C.R. 1001-3, IV.A and B.

11. Upon signing this Decree, Defendants shall begin an analysis of the Unit 2 SO(2) CEMS to reconcile the coal analyses data with respect to sulfur content with the CEMS data with respect to SO(2) emissions. Defendants shall also analyze the accuracy of the Unit 2 NO(x) CEMS. Within six months of signing this Decree, Defendants shall submit a report to Plaintiffs containing the conclusions of Defendants' analyses. Defendants shall make any and all necessary repairs, modifications, or improvements in the Unit 2 SO(2) and NO(x) CEMS within 12 months of

signing this Decree in order to ensure the accuracy of the data.

12. Prior to initial startup of the SO(2) control equipment at each unit as required by this Decree, Defendants shall, in addition to other CEMS required by this Decree: (a) install and thereafter maintain, calibrate and operate an accurate CEMS at the inlet flue gas stream to the lime spray dryer on each unit to measure accurately SO(2) concentrations in pounds per million Btu heat input, and (b) tie the coal feeders on each unit into the SO(2) CEMS such that the CEMS accurately reflect the date and time when the first coal feeder on each unit has started during each startup.

13. Except as provided in paragraph 11, Defendants shall ensure that any modifications to any CEMS necessitated by Defendants' actions under or in furtherance of this Decree shall be completed prior to the completion of construction of the SO(2), NO(x), and particulate control systems for Unit 1 and Unit 2, respectively.

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14. Defendants shall recertify all CEMS, and perform an initial certification on the inlet SO(2) CEMS, on Unit 1 and Unit 2 by the following dates:

SO(2) CEMS: Within 30 boiler operating days after passing flue gas through the lime spray dryer for each unit.

NO(x) CEMS: Within 30 boiler operating days after the low NO(x) burner and overfire air equipment is first started on each unit.

Opacity CEMS: Within 30 boiler operating days after passing; flue gas through the FFDC for each unit.

Notwithstanding the foregoing, if Defendants elect to switch to natural gas as the primary fuel source, Defendants shall recertify all CEMS on Units 1 and 2 within 30 days after the date Defendants commence use of natural gas as the primary fuel source.

15. In recertifying or certifying such CEMS, Defendants shall meet all requirements in 40 C.F.R. Part 75 for initial certification. Without limiting the foregoing, Defendants shall demonstrate that the CEMS are accurately reflecting SO(2) concentrations at the inlet to the SO(2) control equipment, SO(2) concentrations exiting the stack, NO(x) concentrations exiting the stack, and the opacity of emissions in the stack, and that Defendants have resolved any problems with laminar or cyclonic flow or any other problem that may be affecting the performance of the CEMS. On at least a quarterly basis during the first year after recertification of the CEMS, Defendants shall perform a quality assurance check on the inlet SO(2) CEMS for each unit comparing the sulfur content of as-fired coal with inlet CEMS readings to ensure that

the inlet CEMS are not over reporting SO(2) emissions from the boiler. Defendants shall report the results of such analyses in their quarterly reports. Defendants shall provide at least 30 days prior written

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notice to Plaintiffs of the date(s) Defendants intend to perform the recertification or certification tests required by this paragraph and shall allow Plaintiffs to be present for such tests.

16. Beginning within 30 boiler operating days from the date flue gas is first passed through the SO(2) control equipment for each unit, Defendants shall calculate hourly average SO(2) concentrations in pounds per million Btu at the inlet and outlet continuous emission monitors for each unit, in accordance with the requirements of 40 C.F.R. Part 75.

a. For each boiler operating day, Defendants shall use the inlet and outlet hourly averages to calculate the following at each unit: hourly SO(2) average percentage removal, daily SO(2) average percentage removal based on the hourly averages, and 30 day rolling SO(2) average percentage removal based on the daily averages.

b. For each boiler operating day, Defendants shall use the outlet hourly averages to calculate the following at each unit: daily average SO(2) emissions based on the hourly averages, and 30 day and 90 day rolling averages based on the daily averages.

c. As provided in paragraph 8(a)(vi), during startup of the unit, the first two hours after the first coal feeder has started shall be excluded from the calculation of that boiler operating day's SO(2) emissions for the unit.

d. Notwithstanding the foregoing, if Defendants elect to switch to natural gas as the primary fuel source, beginning within 30 days of the date Defendants commence use of natural gas as the primary fuel source, Defendants shall calculate hourly average SO(2) concentrations in pounds per million Btu at the outlet continuous emission monitor at each unit, in accordance with the requirements of 40 C.F.R. Part 75, and shall calculate the averages required by paragraph 16(b).

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17. Defendants shall report to Plaintiffs on a quarterly basis each 30 day rolling average and each 90 day rolling average during the prior quarter that exceeded or failed to comply with the SO(2) emission

limitations contained in this Decree. Each quarterly report shall include all times the coal feeders have started during startup as reported through the CEMS. This report shall also include a list of the days and hours excluded for any reason from the determination of Defendants' compliance with the SO(2) limits.

18. Beginning within 30 boiler operating days of the date Defendants first start the low NO(x) burner and overfire air equipment for each unit (or within 30 days of the date Defendants commence use of natural gas as the primary fuel source, if Defendants elect to switch to natural gas as the primary fuel source), Defendants shall calculate hourly average NO(x) concentrations in pounds per million Btu, in accordance with the requirements of 40 C.F.R. Part 75. Defendants shall use the hourly averages to calculate quarterly averages for each unit in accordance with the requirements of 40 C.F.R. Part 75. In the first year after installation of NO(x) controls on each unit annual average NO(x) emissions shall be calculated based upon hourly average emissions during the remainder of the calendar year following recertification of the NO(x) CEMS pursuant to paragraph 14.

19. Defendants shall report to Plaintiffs on a quarterly basis Defendants' year-to-date annual average NO(x) emissions for that calendar year.

20. For any hour that valid, quality-assured continuous emission monitor data for a unit is unavailable, SO, and NO(x) emissions shall be calculated in accordance with the missing data substitution procedures contained in 40 C.F.R. Part 75.

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21. Defendants shall calculate opacity based on CEMS data for each six-minute period of time any boiler is operating, in the manner, frequency and interval as prescribed in the applicable regulations.

22. Defendants shall report to Plaintiffs on a quarterly basis all excess opacity readings from each unit, and shall state the cause of each excess opacity reading and Defendants' efforts to minimize such readings.

23. Defendants shall ensure that the opacity CEMS On Unit 1 and Unit 2 are properly recording data at least 98.0% of each unit's operating time each quarter; provided, however, that if final federally-enforceable regulations are promulgated that impose new CEMS QAJQC requirements that have the effect of increasing the proportion of CEMS QAJQC activity time in relation to unit operating time, then the Parties shall meet and confer with respect to making a minor modification of this Decree to amend the 98.0% CEMS availability requirement accordingly.

VII. CONSTRUCTION SCHEDULE

24. No later than 180 days after Defendants sign this Decree, Defendants shall notify Plaintiffs of Defendants' decision concerning the primary fuel source for the Hayden Station. If Defendants decide to continue using coal as the primary fuel source, the schedule in paragraph 25(a) shall apply. If Defendants decide to switch to natural gas as the primary fuel source. the schedule in paragraph 25(b) shall apply.

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25. The schedules are as follows, subject to force majeure:

a. Schedule, Coal as Primary Fuel. If Defendants continue to operate Hayden Station. using coal, Defendants shall meet the following deadlines for design, construction, and startup testing of the emission control equipment required by Section V of this Decree:

UNIT 1.

	Activity	Deadline
(i)	Initiate design activities for FFDC	6/30/96
(ii)	Issue binding contract to design and procure the SO(2) control system	9/30/96
(iii)	Substantially complete design' activities required for commencement of construction of FFDC and SO(2) control equipment	5/31/97
(iv)	Commence physical, on-site construction of FFDC and SO(2) control equipment	6/30/97
(v)	Issue binding contract to design and procure the NO(x) control system	9/30/97
(vi)	Provide an opportunity for on-site inspection by Plaintiffs of control equipment installation	5/31/98
(vii)	Commence tie-in of FFDC, SO(2) and NO(x) control equipment	9/30/98

(viii)	Commence startup testing of the FFDC, SO(2) and NO(x) control equipment	12/31/98

UNIT 2.

Activity		Deadline
(i)	Initiate design activities for FFDC	4/30/97
(ii)	Issue binding contract to design and procure the SO(2) control system	8/30/97
(iii)	Substantially complete design activities required for commencement of construction of FFDC and SO(2) control equipment	5/31/98
(iv)	Commence physical, on-site construction of FFDC and SO(2) control equipment	6/30/98
(v)	Issue binding contract to design and procure the NO(x) control system	9/30/98
(vi)	Provide an opportunity for on-site inspection by Plaintiffs of control-equipment installation	5/31/99
(vii)	Commence tie-in of FFDC, SO(2) and NO(x) control equipment	9/30/99
(viii)	Commence startup testing of the FFDC, SO(2) and NO(x) control equipment	12/31/99

b. Schedule - Natural Gas as Primary Fuel. If Defendants elect to convert Hayden Station to natural gas, Defendants shall meet the following deadlines for conversion of the Hayden Station to natural gas:

Activity		Deadline
(i)	Initiate permitting activities for construction of natural gas pipeline	10/30/96

(ii) Commence design for natural gas pipeline and boiler modifications — 6/30/97

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(iii) Initiate construction of natural gas pipeline to Hayden Station — 5/30/98

(iv) Complete construction of pipeline and boiler modifications, and commence use of natural gas as primary fuel source — 12/31/98

26. Upon initiation of startup of the Hayden Station using natural gas as the fuel source, Defendants shall thereafter monitor on a quarterly basis the quality of the natural gas being burned. Results of such monitoring shall be sent to Plaintiffs on a quarterly basis.

a. The natural gas burned at the Hayden Station shall be of the following quality: no more than 5 grains of total sulfur per 100 cubic feet at 14.73 p.s.i. and 60 degrees F.

b. The natural gas quality shall be determined by the following method: ASTM D-5504-94, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, or equivalent method.

27. Defendants shall provide at least 30 days prior written notice to Plaintiffs of the date(s) Defendants intend to start up any new control equipment or natural gas-fired boiler on a unit and shall allow Plaintiffs to attend equipment startup activities.

VIII. EMISSION LIMITATION COMPLIANCE DEADLINES

28. Defendants' obligation to meet the SO(2), NO(x), and particulate emission limitations set forth in Section V shall commence on the dates listed below, subject to a force majeure event as provided for in Section XIV.

a. SO(2):

i. For Unit 1, within 180 days after flue gas is passed through the SO(2) control equipment, or by July 1, 1999, whichever date is earlier; and

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ii. For Unit 2, within 180 days after flue gas is passed through the SO(2) control equipment, or by July 1, 2000, whichever date is earlier.

b. NO(x):

i. For Unit 1, on January 1, 1999,

ii. For Unit 2, on January 1, 2000.

c. Particulates:

i. For Unit 1, within 90 days after flue gas is passed through the FFDC control equipment, or by April 1, 1999, whichever date is earlier; and

ii. For Unit 2, within 90 days after flue gas is passed through the FFDC control equipment, or by April 1, 2000, whichever date is earlier.

29. During the first six months following the dates listed in paragraphs 28(a)(i) and (ii) above, Defendants may request in writing that Plaintiffs, in determining compliance with the SO(2) emission limitations set forth in Section V, exclude periods during which the control equipment fails to meet an SO(2) emission limitation due to a design or construction defect beyond Defendants' control. During the first four months following the dates listed in paragraphs 28(c)(i) and (ii) above, Defendants may request in writing that Plaintiffs, in determining compliance with the particulate emission limitations set forth in Section V, exclude periods during which the control equipment fails to meet a particulate emission limitation due to a design or construction defect beyond Defendants' control.

a. Any request made by the Defendants shall identify the times proposed for exclusion and provide the reasons for the failure to meet the limitation, including all evidence that demonstrates the failure was caused by a design or construction defect beyond Defendants'

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control. The request shall also describe all actions taken and to be taken to correct the failure, and a schedule to complete such actions.

b. Upon receipt of any request described above, Plaintiffs shall determine whether Defendants' failure to meet an emission limitation was due to a design or construction defect beyond Defendants' control, and the applicable time period, if any, that should be excluded due to such a defect, and shall promptly notify Defendants in writing of their determination, including the basis for any denial of the request for exclusion.

30. Notwithstanding the foregoing, if Defendants elect to convert the Hayden Station to natural gas. Defendants' obligation to meet the SO(2), NO(x) and particulate emission limitations set forth in Section V shall commence on the earlier of February 1, 1999 or 30 days after the date Defendants commence use of natural gas as the primary fuel source, subject to a force majeure event as provided in Section XIV.

IX. REPORTING

31. Within 30 days after the end of each quarter, beginning with the report for the third quarter of 1996 and continuing until this Decree is terminated, Defendants shall provide a quarterly report to Plaintiffs regarding the immediately preceding quarter that contains all of the information this Decree requires Defendants to report on a quarterly basis.

32. Each quarterly report shall begin with a cover letter that summarizes the information contained in the report. The cover letter shall include a description of all underlying requirements to which a reporting requirement applies pursuant to paragraph 33 below that Defendants were not meeting at the close of the quarter, and may include, at Defendants'

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election, any defenses Defendants may have with respect to their inability to meet such requirements. This cover letter shall be signed by a representative of Defendants.

33. In specific, each quarterly report shall include:

a. A description of construction deadlines achieved, progress made toward meeting future deadlines, and any actual, expected or reasonably likely delays;

b. All elements of the excess opacity quarterly report;

c. After installation of the SO(2) control equipment, the required quarterly reports for SO(2) emissions (including information regarding excluded periods), coal sulfur analyses and CEMS quality

assurance reports;

d. After installation of the NO(x) control equipment, the required year-to-date quarterly reports for NO(x) emissions;

e. If Defendants elect to convert Hayden Station to natural gas, all information required to be included in the natural gas quarterly reports; and,

f. All stipulated penalties paid, either directly to Colorado and/or the United States, or into escrow, including the reason for such payment and the total amount held in escrow at the end of each quarter.

34. If any Plaintiff requests clarification of any quarterly report, or any of its information on computer diskette, Defendants promptly shall provide such clarification or information. Defendants shall also supply any CEMS data on hard copy or computer diskette not otherwise provided in a quarterly report, including any data excluded from Defendants' determination of compliance with the emission limits in this Decree, upon the request of any Plaintiff. Defendants shall also retain significant documents that evidence or relate to compliance with the construction

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deadlines contained in Section VII, including, without limitation, contracts, plans and specifications. Defendants shall supply a copy of any such document, or specific type of documents, to Plaintiffs upon request, subject to Section XVII regarding confidential business information.

35. Defendants' requirement to provide quarterly reports is in addition to any other notification or report.required by this Decree, unless such notification or report is required on a quarterly basis. Furthermore, nothing in this Decree shall be interpreted to either excuse or diminish Defendants' obligation to provide any other reports, notices or other documents to the public, or local, state or federal officials.

X. CIVIL PENALTIES

36. Within 30 days of entry of this Decree, Defendants shall pay a civil penalty pursuant to Section 113 of the Act, 42 U.S.C. § 7413, to the United States Treasury in the amount of $2,000,000. Payment shall be made by cashier's check, certified check, or electronic funds transfer, referencing DOJ No. 90-5-2-1-2069, payable to "Treasurer, United States of America", and delivered to the United States Attorney for the District of Colorado. A copy of the transmittal letter and check (or letter notification upon completion of an electronic fund transfer) shall be sent to all representatives of Plaintiffs identified in Section

XV.

37. Defendants shall not deduct the payment of the civil penalty provided for above for any tax purpose or otherwise obtain any favorable tax treatment of, or for, such civil penalty payment.

38. In determining the civil penalty amount to be paid by Defendants set forth above, Plaintiffs considered, among other factors, the gravity of the violations found by the Court and

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otherwise alleged by Plaintiffs. the economic benefit or savings resulting from such violations, the duration of such violations, the size of Defendants' businesses, Defendants' history of compliance with the Act and the SIP, actions taken to remedy the violations, penalties paid for similar violations in the past, and the effect of the penalty on Defendants' ability to continue in business. Plaintiffs also considered Defendants' obligations in this Decree, including but not limited to their obligation: (a) to expend substantial resources to procure, install and operate SO, and NO(x) pollution control equipment at the Hayden Station in a timely manner, or convert the Hayden Station to natural gas in a timely fashion, which actions Defendants are not now otherwise required to take; (b) to provide money both for the purchase of land and/or conservation easements in the Yampa Valley and for the conversion of vehicles and/or wood burning appliances to natural gas in the Yampa Valley, to enhance the air quality and related values in the region, including the Yampa Valley and surrounding mountains; and (e) to convey the SO(2) allowances applicable to the Hayden Station to Sierra Club if Defendants decide not to operate and thus retire the facility.

XI. BENEFICIAL ENVIRONMENTAL PROJECTS

39. Within 30 days after Defendants sign this Decree, they shall deposit the sum of $2,000,000, payable to "Clerk, U.S. District Court", into an interest bearing escrow account within the court registry. Such amount shall be dedicated solely to the purchase of land and/or conservation easements in the Yampa Valley by one or more nonprofit organizations, that have been in existence for at least one year for the purpose of purchasing and holding such interests in land, to protect and enhance the air quality and related values of the Yampa Valley and surrounding mountains. After entry of this Decree, transfer of such sum, including all accrued

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interest, minus any District Court assessment fee, shall be made to "Land Trust Fund" for the purposes specified above. Such transfer shall occur when Sierra Club notifies the Court and the Court issues an order authorizing such transfer. If the Court does not enter this Decree, such sum, including all accrued interest, shall be returned to Defendants.

40. Within 30 days after Defendants sign this Decree, they shall deposit the sum of $250,000, payable to "Clerk, U.S. District Court", into an interest beating escrow account within the court registry. Such amount shall be dedicated solely for the conversion to natural gas of vehicles and/or wood burning appliances in the Yampa Valley to protect and enhance the air quality and related values of the Yampa Valley and surrounding mountains. After entry of this Decree, transfer of such sum, including all accrued interest, minus any District Court assessment fee, shall be made to an entity to be designated by the Parties for the purposes specified above. Such transfer shall occur when Sierra Club notifies the Court and the Court issues an order authorizing such transfer. If the Court does not enter this Decree, such sum, including all accrued interest, shall be returned to Defendants.

41. If, prior to installing the pollution control equipment or converting the Hayden Station to natural gas as required by Sections V and VII, Defendants decide for any reason to no longer operate and thus retire the Hayden Station, Defendants shall convey to the Sierra Club all year 2000 and beyond Phase II SO(2) allowances applicable to the Hayden Station. Such allowances shall be held by Sierra Club, and neither used, sold nor conveyed.

XII. STIPULATED PENALTIES

42. Defendants shall pay stipulated penalties for each failure by the Defendants to comply with the terms of this Decree as follows, unless excused by the force majeure or dispute resolution provisions of this Decree:

a. For each failure to meet the interim coat construction deadlines specified in Section VII, paragraph 25(a)(i) - (vii) applicable to Unit 1 and Unit 2, separately, per day, and for each failure to meet the natural gas interim construction deadlines in Section VII, paragraph 25(b)(i) - (iii), per day, per unit:

i. 1st through 30th day after deadline - $1,000
ii. 31st through 60th day after deadline - $5,000
iii. Beyond 60th day - $10,000

b. For each failure to meet the final coal construction deadline specified in Section VII, paragraph 25(a)(viii) applicable to Unit 1 and Unit 2, separately, per day, and for each failure to meet the natural gas final construction deadline as specified in Section VII,

paragraph 25(b)(iv), per day, per unit:

i. 1st through 30th day after deadline - $2,000
ii. 31st through 60th day after deadline - $10,000
iii. Beyond 60th day - $15,000

c. Defendants shall place any penalties due under subparagraph (a) above, without written demand therefor into a commercial escrow account, within 30 days of the end of each quarter, and such penalties and all accrued interest shall be returned to Defendants if they

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meet the final deadlines referenced in subparagraph (b) above; otherwise such penalties and all accrued interest shall be paid as provided in paragraph 43.

d. For each failure to comply with the SO(2) emission limitations in Section V at any unit, provided that only one stipulated penalty may be assessed per unit for any day in which there are one or more violations of the emission limitations set forth in such Section:

i. During the first six months following the compliance date set forth in Section VIII, paragraph 28(a):

Violations	Amount
1 - 5 in any calendar quarter	$500 per violation/per unit
6 - 19 in any calendar quarter	$2,500 per violation/per unit
20 and above in any quarter	$5,000 per violation/per unit

ii. After the first six months following the compliance date set forth in Section VIII, paragraph 28(a)(or after the date set forth in paragraph 30, if Defendants elect to switch to natural gas as the primary fuel source), $5,000 per violation, per unit.

e. For each failure to comply with the NO(x) emission limitation in Section V, paragraph 8(b), $20,000 per unit per year.

f. For each failure to comply with the particulate emission limitations in Section V, paragraph 8(c)(ii)(1), $2,500 per unit per day; with the period of noncompliance commencing with the failure of the reference test specified in Section V, paragraph 8(c)(iv) and ending when a reference test demonstrates compliance, except for periods when the unit is shut down.

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g. For each excess opacity reading from Unit 1, stipulated penalties shall be determined on a quarterly basis for the period of time between the entry of this Decree and when flue gas first passes through the FFDC, or the unit is converted to natural gas, as follows:

i. For each excess opacity reading between 600 and 700 in a quarter, the stipulated penalty shall be $100/excess opacity reading;

ii. For each excess opacity reading between 701 and 800 in a quarter, the stipulated penalty shall be $200/excess opacity reading;

iii. For each excess opacity reading 801 or greater in a quarter, the stipulated penalty shall be $400/excess opacity reading;

h. For each excess opacity reading from Unit 2, stipulated penalties shall be determined on a quarterly basis for the period of time between the entry of this Decree and when flue gas first passes through the FFDC, or the trait is converted to natural gas, as follows:

i. For each excess opacity reading between 800 and 1000 in a quarter, the stipulated penalty shall be $100/excess opacity reading;

ii. For each excess opacity reading between 1001 and 1200 in a quarter, the stipulated penalty shall be $200/excess opacity reading;

iii. For each excess opacity reading 1201 or greater in a quarter, the stipulated penalty shall be $400/excess opacity reading.

i. Payment of all stipulated penalties pursuant to subparagraphs (g)(i) and (ii) and (h)(i) and (ii) above shall be paid, without written demand therefor into a commercially available escrow account within 30 days of the end of the previous quarter.

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j. Payment of all stipulated penalties pursuant to subparagraphs (g)(iii) and (h)(iii) shall be paid, without written demand therefor, directly to the United States pursuant to paragraph 43 within 30 days of the end of the previous quarter.

k. For Unit 1, if the average number of excess opacity readings per quarter, from the entry of this Decree through the date of installation of the FFDC or conversion to natural gas, is 600 or less, all stipulated penalties and interest which have accrued in the escrow account pursuant to subparagraph (i) shall be returned to the Defendants. However, if the average number of excess opacity readings per quarter, from the date of entry of this Decree through the date of installation of the FFDC or conversion to natural gas, exceeds 600, all such stipulated penalties and interest accrued in the escrow account shall be paid to ate United States pursuant to paragraph 43. In no event will any stipulated penalties paid pursuant 1Lo subparagraph (j) be returned to Defendants;

l. For Unit 2, if the average number of excess opacity readings per quarter, from the date of entry of this Decree through the date of installation of the FFDC or conversion to natural gas, is 800 or less, all stipulated penalties and interest which have accrued in the escrow account pursuant to subparagraph (i) shall be returned to the Defendants. However, if the average number of excess opacity readings per quarter, from the date of entry of this Decree through the date of installation of the FFDC or conversion to natural gas, exceeds 800, all such stipulated penalties and interest accrued in the escrow account shall be paid to the United States pursuant to paragraph 43. In no event will any stipulated penalties paid pursuant to subparagraph (j) be returned to Defendants.

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m. For each failure to comply with the opacity emission limitation in Section V, after the compliance date set forth in Section VIII, the stipulated penalty Shall be $200 per violation during periods when fossil fuel is combusted at any unit.

n. For each failure to submit reports, as specified in Section IX of this Decree, per day per report:

i. 1st through 30th day after deadline - $250
ii. 31st through 60th day after deadline - $500
iii. Beyond 60th day - $1,000

o. For each failure to maintain minimum opacity CEMS availability, as specified in paragraph 23 of this Decree, $2,500 per each. 1% below 98.0% availability per quarter per Unit.

p. For failure to pay the civil penalty as specified in Section X of this Decree, $25,000 per day plus interest on the amount overdue at the rate specified in 31 U.S.C. § 3717.

43. Stipulated penalties payable pursuant to paragraphs 42(a)

through 42(f) and 42(n) shall be payable one half to Colorado and one half to the United States. Stipulated penalties payable pursuant to paragraphs 42(g) through 42(m), 42(0) and 42(p) shall be payable to the United States. Except for stipulated penalties which Defendants must pay without written demand as provided for in this Section, Defendants shall pay stipulated penalties within 30 days of written demand therefor by Plaintiffs. Payment shall be made to the United States in the same manner as that described in Section X above. Payment to Colorado shall be by cashiers' check, or certified check, payable to Colorado Department of Public Health mad Environment ("CDPHE"), and delivered to the representative of CDPHE identified in paragraph 65. A copy of

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each check and transmittal letter shall be sent to the legal representatives for the United States, Colorado, and Sierra Club.

44. The commencement of liability for stipulated penalties shall not be dependent upon the date written demand therefor is received. During any period of dispute resolution where a stipulated penalty may run, Defendants may request that the court reduce or eliminate any such penalty that accrued during the dispute resolution period if the court deems that although Defendants did not prevail in the dispute, the Defendants pursued the dispute in good faith and not for purposes of delay. If Defendants prevail in any such dispute, no stipulated penalties shall be due.

45. Stipulated penalties are not the Plaintiffs' exclusive remedy for violations of this Decree. Plaintiffs reserve the right to pursue any other remedies to which they are entitled, including but not limited to additional injunctive relief or statutory penalties for Defendants' violations of the Decree or the Act. The obligation to pay stipulated penalties under this Decree shall not relieve Defendants from any obligation to pay penalties for violations of any term or condition of any permit issued under the Act or the Colorado Air Pollution Prevention and Control Act, including any Title V permit. Any amounts paid by Defendants as stipulated penalties may be asserted by Defendants in response to any action requesting the imposition of additional civil penalties for the matter for which stipulated penalties were paid.

XIII. DISPUTE RESOLUTION

46. Defendants may only invoke the dispute resolution procedures of this Section in response to Plaintiffs' determinations pursuant to the following provisions of this Decree: (a) Section XIV [force majeure]; (b) Section V, paragraph 8(a)(ix) [relating to catastrophic

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failure]; (c) Section V, paragraph 8(b)(i) [alternate NO(x) equipment selection]; (d) Section VIII. paragraph 29 [relating to possible exclusion of certain periods in determining compliance following the startup period]; and (e) Section XII [liability for, and amount of, any stipulated penalty. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between Plaintiffs and Defendants arising under or with respect to Such provisions of this Decree. Plaintiffs' determinations regarding such provisions of this Decree shall be binding on Defendants, unless Defendants successfully challenge such a determination through these dispute resolution procedures. Defendants may only challenge Plaintiffs' determinations under or with respect to other provisions of this Decree in defense to an action to enforce this Decree brought by one or more of the Plaintiffs.

47. Defendants must notify Plaintiffs in writing within 10 clays of receipt from Plaintiffs of any determination subject to this Section that Defendants wish to dispute. Failure by Defendants to fulfill this notification requirement shall constitute a waiver of Defendants' right to dispute such determination.

48. Any dispute that arises under or with respect to this Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed 30 days from the time Defendants send written notice to Plaintiffs of the dispute, unless this time limitation is modified by written agreement of the Parties.

49. If the Parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then the position advanced by the Plaintiffs shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, Defendants invoke the formal dispute resolution procedures of this Section by serving on the Plaintiffs a written Statement of

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Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Defendants.

50. Within 20 days after receipt of a written Statement of Position as required above, Plaintiffs shall serve on Defendants their decision, including, but not limited to, any factual data, analysis, or opinion supporting the decision and any supporting documentation. Any Plaintiff not joining in Plaintiffs' decision may submit a Statement of Position to the other Parties within the same 20-day time frame.

51. Plaintiffs' decision shall be considered binding on Defendants,

unless Defendants file a petition with the Court and serve it on all Plaintiffs within 20 days of receipt of Plaintiffs' decision. The petition shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Decree. The Plaintiffs shall have 30 days from receipt of Defendants' petition to file a response, and such timeframe shall be Stated in Defendants' petition. Any Plaintiff not joining in Plaintiffs' response may file a separate response with the Court.

52. In judicial proceedings on any dispute under this Section, Defendants shall carry the burdens of proof and persuasion. Judicial review of Plaintiffs' decision shall be on the record, which shall consist of Defendants' Statement of Position, Plaintiffs' decision, and any separate Statement of Position filed by a Plaintiff.

53. The invocation of dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Defendants under this Decree not directly in

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dispute, unless Plaintiffs or the Court agrees otherwise. Except as provided in paragraph 96, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute as provided in this Section. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Decree. In the event that the Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII.

54. Defendants shall pay Sierra Club's reasonable costs, including attorney and expert witness fees, expended in any informal dispute resolution process initiated by Defendants, and shall pay such costs and fees if Sierra Club prevails in any formal dispute resolution process.

XIV. FORCE MAJEURE

55. For the purposes of this Decree, a "force majeure event" is defined as any event arising from causes wholly beyond the control of Defendants or any entity controlled by Defendants (including, without limitation, Defendants' contractors and subcontractors, and any entity in active participation or concert with Defendants with respect to the obligations to be undertaken by the Defendants pursuant to this Decree), that delays or prevents or can reasonably be anticipated to delay or prevent compliance with the construction deadlines in Section VII and the initial compliance deadlines in Section VIII, despite Defendants' best efforts to meet such deadlines. The requirement that Defendants exercise "best efforts" to meet the deadlines includes using best efforts to avoid any force majeure event before it occurs, and to use

best efforts to mitigate the effects of any force majeure event as it is occurring, and after it has occurred. such that any delay is minimized to the greatest extent possible.

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56. Without limitation, unanticipated or increased costs or changed financial circumstances shall not constitute a force majeure event. The absence of any administrative, regulatory, or legislative approval shall not constitute a force majeure event, unless Defendants demonstrate that, as appropriate to the approval: (a) they made timely and complete applications for such approval(s) to meet the deadlines set forth in Sections VII and VIII of this Decree; (b) they complied with all requirements to obtain such approval(s); (c) they diligently sought such approval; (d) they diligently and timely responded to all requests for additional information; and (e) without such approval, Defendants will be required to act in violation of law to meet one or more of the deadlines in Sections VII and .VIII of this Decree. Notwithstanding the foregoing, if Defendants have elected to continue using coal as the primary fuel source at Hayden Station, and if Defendants demonstrate that they have fulfilled the requirements of subparagraphs (a) - (d) above, and of paragraphs 74 and 75:

(i) the existence, but not the duration, of a force majeure event shall be established if by January 31, 1997 for Unit 1, or by January 31, 1998 for Unit 2, EPA has not issued at least a conditional approval of the revisions to the visibility SIP contemplated by this Decree where final unconditional EPA approval is only contingent upon an enactment of the Colorado General Assembly under C.R.S. 25-7-133 approving the SIP revisions; or,

(ii) the existence, but not the duration, of a force majeure event shall be established if the Colorado General Assembly has approved the revisions to the visibility SIP as conditionally approved by EPA, yet EPA has not issued a final unconditional SIP approval prior to June 30, 1997 for the commencement of construction of the control equipment for Unit 1, or June 30,

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1998 for the commencement of construction of the control equipment for Unit 2, consistent with the deadlines found in Section VII.

57. In no event shall paragraphs 56(i) and (ii) above be used to, extend the deadlines in Section VII related to FFDC design and construction and Section VIII related to particulates by more than six months. Nothing herein shall relieve Defendants from having to meet the

requirements of 40 C.F.R. Part 76 by the deadlines specified in such regulation. Nothing herein shall be construed to limit or modify in any fashion EPA's discretion under Sections 11 O, 169A, and 301 of the Act, 42 U.S.C. §§ 7410, 7491, and 7601, or general principles of administrative law.

58. If any event occurs which causes or may cause a delay by Defendants in meeting any deadline in Sections VII and VIII of this Decree, whether or not attributable to a force majeure event, Defendants shall notify all Plaintiffs in writing within five days of the time Defendants first knew, or within 30 days of when Defendants reasonably should have known, that the event is likely to cause a delay. Defendants shall be deemed to have notice of any circumstance of which its contractors or subcontractors had or reasonably should have had notice, provided that those contractors or subcontractors were retained by Defendants to implement, in whole or in part the requirements of this Decree. Within 15 days thereafter, Defendants shall provide in writing to all Plaintiffs a report containing: (a) an explanation and description of the reasons for the delay; (b) the anticipated length of the delay; (c) a description of the activity(ies) that will be delayed: (d) all actions taken and to be taken to prevent or minimize the delay; (e) a timetable by which those measures will be implemented; and (f) a schedule that fully describes when Defendants propose to meet any deadlines in this Decree which have been or will be affected by

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the claimed force majeure event. Defendants shall include with any notice its rationale and all available documentation supporting its claim that the delay was or will be attributable to a force majeure event.

59. If the Plaintiffs agree that the delay has been or will be caused by a force majeure event, the Parties may stipulate to an extension of the deadline for the affected activity(ies) as is necessary to complete the activity(ies). Plaintiffs shall take into consideration, in establishing any new deadline(s), evidence presented by Defendants relating to weather, outage schedules and remobilization requirements. In the event the Parties cannot agree to the length of the extension, Defendants may invoke the dispute resolution procedures set forth in this Decree. Notwithstanding the foregoing, if any Plaintiff finds that a force majeure event may delay Defendants' compliance with the terms of this Decree for more than six months, that Plaintiff may seek further relief from the Court to fulfill the purposes of this Decree.

60. If the Plaintiffs do not agree that the delay or anticipated delay has been or will be caused by a force majeure event, they will notify Defendants in writing of this decision within 20 days after receiving Defendants' report alleging a force majeure event, and will not extend the deadline for any activity identified in Section VII or VIII of this Decree. If Defendants seek review of this decision, the matter shall be resolved through the dispute resolution procedures set forth in this Decree.

61. At all times, Defendants shall have the burden of proving that any delay was caused by a force majeure event (including proving that Defendants had given proper notice and had made "best efforts" to avoid and/or mitigate such event), and of proving the duration and extent of any delay(s) attributable to such event.

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62. Failure by Defendants to fulfill in any way the notification and reporting requirements of this Section shall constitute a waiver of any claim of a force majeure event as to which proper notice and reporting was not provided.

63. Any extension of one deadline based on a particular incident does not necessarily constitute an extension of any subsequent deadline(s) unless agreed to by the Parties 'or directed by this Court.

64. If Defendants fail to perform an activity by a deadline in this Decree due to a force majeure event, Defendants may only be excused from performing that activity or activities, and paying stipulated penalties for such failure, for that period of time excused by the force majeure event.

XV. NOTIFICATIONS AND RECORDKEEPING

65. All notifications, submittals, reports, and other information required by this Decree shall be directed to the individuals at the addresses and/or fax numbers specified below, unless those individuals or their successors give notice of a change to the other Parties in writing.

As to the Sierra Club:

Reed Zars
Attorney at Law
2020 Grand Avenue, Suite 522
Laramie, WY 82070
Telephone: 307/745-7979
Fax: 307/745-7999

As to Colorado:

Director, Air Pollution Control Division
Colorado Department of Public Health and Environment
c/o Dan Ely
APCD-TS-B1
4300 Cherry Creek Drive South
Denver, CO 80222
Telephone: 303/692-3228
Fax: 303/782-5493

Martha Rudolph
First Assistant Attorney General
Natural Resources Section
Office of the Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203
Telephone: 303/866-5013
Fax: 303/866-3558

As to the United States:

Ron Rutherford (8ENF-T)
Office of Enforcement, Compliance and Environmental Justice
United States Environmental
Protection Agency, Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202-2466
Telephone: 303/312-6180
Fax: 303/312-6558

Section Chief, Environmental Enforcement
Section
Environment and Natural Resources Division
United States Department of Justice
Post Office Box 7611
Benjamin Franklin Station
Washington, D.C. 20044
Telephone: 202/514-3553
Fax: 202/514-0097

As to Defendants:

Linda Rockwood
Parcel, Mauro, Hultin & Spaanstra, P.C.
1801 California Street, Suite 3600
Denver, CO 80202
Telephone: 303/293-6515
Fax: 303/295-3040

Frank Prager
Associate General Counsel
Public Service Company of Colorado
P.O. Box 840
1225 17th Street
Denver, CO 80201
Telephone: 303/294-8108
Fax: 303/294-8255

Steve Dayney
Project Manager
Public Service Company of Colorado
550 15th Street, Suite 700
Denver, CO 80202-4256
Telephone: (303) 571-7094
Fax: (303) 571-7877

Jessica Youle
Legal Services
Salt River Project Agricultural Improvement
and Power District
P.O. Box 52025 (PAB-300)
Phoenix, AZ 85072-2025
Telephone: 602/236-5536
Fax: 602/236-5397

James Holtkamp
(for PacifiCorp)
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, UT 84111
Telephone: 801/578-6943
Fax: 801/578-6999

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66. Until three years after termination of this Decree, Defendants shall preserve and retain all records and documents, including monitoring data maintained electronically, which are referenced in or which provide the basis for reports required by this Decree, or which are referenced in the Decree.

67. In the event any Defendant proposes to sell or transfer any interest in its real property or operations subject to this Decree before its termination, it shall advise in writing the prospective owner or operator that the future operation of the facility is subject to the terms of this Decree and shall condition such sale or transfer on the prospective owner or operator's agreement to comply with the terms hereof. Further, such Defendant shall send a copy of such written notification by certified mail, return receipt requested, to Plaintiffs, attention of the individuals identified above, at least 30 days prior to the closing date of such sale or transfer. In no event shall the

conveyance of an interest in such real property or operations release such Defendant from, or alter such Defendant's obligations under, this Decree.

XVI. EFFECT OF SETTLEMENT

68. This Decree constitutes a complete and final release of all civil claims for violations alleged in the Sierra Club's amended complaint, in the United States' and Colorado's complaints, and EPA's Notice of Violation, through the date of lodging of this Decree. Nothing in this Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Plaintiffs expressly reserve any and all rights, defenses, claims, demands, and causes of action which they may have against Defendants with respect to any matter, transaction, or occurrence relating in

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any way to the Hayden Station that is not addressed in this Decree. Defendants expressly reserve any and all rights and defenses which they may have to any action or claim relating in any way to the Hayden Station that is not addressed in this Decree. Furthermore, each of the Parties expressly reserves any and all rights, defenses, claims, demands, and causes of action which each Party may have against any person not a Party hereto with respect to any matter, transaction, or occurrence relating in any way to the Hayden Station. Nothing in this Decree shall be construed as a waiver of any privilege by any Party.

69. The failure of any Party to comply with any requirement contained in this Decree will not excuse the obligation to comply with other requirements contained herein.

70. By entering into this Decree, Defendants do not admit any liability with respect to the allegations made in Plaintiffs' complaints. Furthermore, this Decree shall not be used to establish the liability of any Defendant in any action with respect to the Hayden Station or any other facility owned or operated by Defendants, except to enforce the provisions of this Decree.

71. Defendants and the Division hereby intend that, without further investigation or findingS, the requirements in this Decree (including the construction schedule in Section VII and the SO(2) and particulate emission limitations in Section v), if met by the Defendants, represent: (1) reasonable progress toward the national visibility goal under 40 C.F.R. Part 51, Subpart P and 5 C.C.R. 1001-4, Regulation 3; and (2) a reasonable and appropriate means of working towards resolution both of the U.S. Forest Service's certification of visibility impairment in the Mt. Zirkel Wilderness Area, but only with respect to Hayden Station, and of Colorado's visibility regulatory process that was triggered by the Forest Service's certification with respect to the Hayden Station. The

Division shall timely submit to the Colorado Air Quality Control Commission a

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revision or amendment to the visibility portion of the Colorado SIP that incorporates the findings of this paragraph.

72. EPA's preliminary analysis suggests that if the Colorado SIP is revised to include the SO(2) emission limits contained in this Decree, and Defendants meet such limits, such SIP revision will represent reasonable progress toward remedying the existing visibility impairment in the Mt. Zirkel Wilderness Area that is reasonably attributable to SO(2) emissions from the Hayden Station, in accordance with the federal regulations set out at 40 C.F.R. Part 51, Subpart P. Any final EPA judgment will be reached only after EPA reviews such SIP revision in a public rulemaking proceeding based on the administrative record before EPA, including all public comments. Nothing in this Decree shall be construed to limit or modify in any fashion EPA's discretion under Sections 110, 169A, and 301 of the Act, 42 U.S.C. §§ 7410, 7491, and 7601, or general principles of administrative law.

73. Nothing in this Decree shall preclude Defendants from commenting on or objecting to any administrative, legislative or regulatory action, proposed action, approval or proposed approval that is inconsistent with the requirements, including but not limited to the schedule and emission limitations, of this Decree.

74. The Division and Defendants shall use their best efforts to obtain, and Sierra Club shall not oppose, all regulatory, agency, and legislative approvals of the emission limitations set forth in Section V, that are required under state and federal air quality regulations, and specifically the visibility protection programs, as expeditiously as practicable.

75. Defendants and the Division shall exercise best efforts to secure Colorado legislative approval as early as possible in the 1996 or 1997 legislative session of any SIP revision adopted

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by the Colorado Air Quality Control Commission that incorporates into the Colorado SIP any SIP revisions contemplated by this Decree for the Hayden Station. Defendants shall support, and Sierra Club shall not object to, any action by the State or EPA to propose or approve a revision to the Colorado SIP that incorporates such SIP revisions

contemplated by this Decree.

76. Colorado and Defendants believe the emission limitations set forth in section V provide for reasonable progress in reducing any present or future impairment of non-visibility Air Quality Related Values ("AQRVs") in the Mt. Zirkel wilderness Area that may be attributed to emissions from the Hayden Station. Colorado and the Defendants agree to support, and Sierra Club agrees not to object, to a provision within any proposed Colorado AQRV legislation or regulation that would have the effect of exempting the Hayden Station, for ten years, from a requirement to install additional control equipment or to implement emission control strategies at the Hayden Station that are designed principally to protect AQRVs. This ten year period of time shall be measured from the date the control equipment required by this Decree is installed to the date any AQRV legislation or regulation would require the completion of the installation of additional control equipment or the completion of additional control strategies. Nothing in this Decree shall require or restrict the right of any Party to support or oppose the creation of any AQRV protection program or a specific AQRV protection bill or regulation. Except for any exemption of up to 10 years that may be enacted or adopted as Colorado law as described in this paragraph (which exemption shall not be deemed to affect the applicability of any federal requirements which may relate to AQRVs), nothing in this Decree shall be construed to exempt the Hayden Station from compliance with any statute or regulation that may be enacted or adopted to address AQRVs.

XVII. ENTRY AND INSPECTION

77. Commencing upon the date of lodging of this Decree and continuing until this Decree is terminated, and subject to the requirements in this Section, the Defendants agree that the Plaintiffs and their authorized representatives, including independent contractors, upon presentation of proper credentials, shall have the right of entry on the premises of the Hayden Station, at any reasonable time, with reasonable notice when practicable, for the purpose of monitoring compliance with and conducting any activity related to the provisions of this Decree including, but not limited to:

a. monitoring all work being conducted pursuant to this Decree;

b. verifying any data or information submitted by Defendants to Plaintiffs pursuant to this Decree;

c. inspecting air emissions generating, control and monitoring equipment at the Hayden Station; and

d. inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Defendants or their agents

relating to the Hayden Station.

78. After entry of this Decree, Sierra Club agrees to provide Defendants with a list of no more than five Sierra Club representatives and five experts for purposes of site inspections. At least ten days prior to any inspection, Sierra Club shall notify Defendants in writing of any changes or additions to such list. At the time of any inspection, Defendants may require Sierra Club representatives to sign a reasonable release form.

79. Defendants shall have the right promptly to provide a representative to accompany the Plaintiffs and their representatives during all inspections pursuant to this Decree.

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80. Notwithstanding any other provision of this Decree, Plaintiffs retain all of their access authorities and rights, including enforcement authorities related thereto, under the Act, the Colorado Air Pollution Prevention and Control Act, and any other applicable statute or regulation.

81. In the event Plaintiffs intend to bring legal counsel to any inspection of the Hayden Station, Plaintiffs will make best efforts to provide the Defendants with at least 72 hours advance notice of the site visit.

82. Sierra Club and its representatives agree to abide by reasonable, written rules and regulations applicable to plant site inspections including, but not limited to, rules and regulations related to occupational health and safety. Defendants shall provide a copy of all such written regulations and any necessary protective equipment at the time of any inspection.

83. In the event the United States or Colorado requests, or is provided, written information from the Defendants which the Defendants claim to contain confidential business information, the federal laws and regulations related to confidential business information shall apply to such information requested by or provided to the United States, and Colorado laws and regulations related to confidential business information shall apply to such information requested by or provided to Colorado.

84. For purposes of written information requested by, or provided to, the Sierra Club, the term "confidential business information" shall mean any written information in the possession of Defendants which is proprietary in nature and not otherwise publicly available.

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85. In the event Sierra Club requests, or is provided, any written information from Defendants pursuant to this Decree which Defendants consider to contain confidential business information, the Defendants shall abide by the following procedure:

a) Defendants shall clearly stamp or label any document containing such information as "CONFIDENTIAL BUSINESS INFORMATION";

b) Within seven days of any request for the written information by Sierra Club, the Defendants shall notify the Sierra Club, in writing, of the type of information for which the confidentiality claim is being asserted and the basis for Defendants' claim of confidential business information; and at Sierra Club's election Defendants shall either:

i) redact the portion of the written information containing confidential business information and provide all remaining portions of the written information to Sierra Club; or,

ii) provide all of the written information, including the confidential business information, to Sierra Club upon execution of a reasonable confidentiality agreement limiting disclosure of the confidential business information to any other person.

XVIII. COMPLIANCE WITH OTHER LAWS

86. This Decree in no way relieves Defendants of their responsibility to comply fully with all federal, state, and local laws and regulations, Orders of this Court, and the SIP, including any modifications or revisions thereto, and nothing in this Decree shall preclude Plaintiffs from bringing an action for any violation of any such laws, regulations or orders at either.the Hayden Station, or any other facility owned and operated by Defendants, including the United States from bringing an action pursuant to Section 303 of the Act, 42 U.S.C. § 7603, or Colorado from bringing an action pursuant to the Colorado Air Pollution Prevention and Control Act.

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87. This Decree is not a permit and compliance with its terms does not guarantee compliance with all applicable Federal, Slate and local laws and regulations. The emission limitations specified in Section V of this Decree are not intended to and shall not operate to require the United States, including EPA, to support, concur in, or approve the adoption of any particular emission limit or condition in a final permit for Hayden Station. Nothing in this Decree shall be construed to limit

or modify in any fashion EPA's discretion under Section 505 of the Act, 42 U.S.C. § 7661d, or general principles of administrative law.

88. Notwithstanding the foregoing, in the event of any conflict between the requirements of this Decree and applicable laws and regulations, the more stringent requirements shall apply. Furthermore, any change to currently applicable laws and regulations that would have the effect of relaxing Defendants' obligations under this Decree shall not apply the purposes of this Decree.

XIX. COSTS

89. The United States, Colorado and the Defendants shall bear their own costs and attorney's fees.

90. Defendants agree that, pursuant to 42 U.S.C. § 7604(d), Sierra Club is both eligible and entitled to recover its costs of litigation in this action, including reasonable attorney and expert witness fees. If Defendants and Sierra Club are unable to reach an agreement regarding the amount of such costs, Sierra Club may petition the Court for a determination of such amount. Sierra Club expressly reserves its right to petition the Court for recovery of additional costs and fees incurred after it signs this Decree, including but not limited to its costs and fees incurred in any dispute resolution process.

XX. MODIFICATION

91. Material modifications of this Decree must be in writing, signed by the Parties, and approved by this Court. No Party may petition this Court for a modification without having first made a good faith effort to reach agreement with the other Parties on the terms of such modification. Non-material modifications to this Decree may be made only upon written agreement of the Parties which shall be filed with the Court.

XXI. RETENTION OF JURISDICTION

92. Until termination of this Decree, this Court shall retain jurisdiction over both the subject matter of this Decree and the Parties to this Decree to enforce the terms and conditions of this Decree and to resolve disputes arising hereunder in accordance with Section XIII.

XXII. INTEGRATION INTO TITLE V PERMIT

93. The requirements contained in the following provisions shall be deemed applicable as federally enforceable requirements which Defendants shall include in an application for a modification to their Title V permit for the Hayden Station within 90 days after the last Unit 2 emission compliance deadline set forth in Section VIII: Section V [emission limitations], and paragraphs 2(b) [BOD definition], 2(x) [rolling average basis], 9 [SO(2) and NO(x) CEMS], 10 [opacity CEMS], 12 [SO(2) inlet CEMS], 16 [SO(2) averaging methodology], 17 [SO(2) reports], 18 [NO(x) emission calculation], 22 [reporting opacity], 23

[opacity CEMS availability], and if Defendants elect to convert the Hayden Station to natural gas, 26 [natural gas quality]. Such requirements shall be considered to be minimum elements of the Title V operating permit program. For purposes of the Title V permit only, the requirements referenced in this paragraph shall be modified in the Title V permit such that the roles of Plaintiffs under this Decree are

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assumed by the entities responsible for implementation of the Title V permitting program under applicable law. After termination of this Decree, Defendants shall include in every application for a modified or renewed Title V permit the federally enforceable requirements and obligations identified in this paragraph, which requirement shall survive as an enforceable agreement between Sierra Club and Defendants, subject to any modification agreed to by Sierra Club and Defendants. The term of such agreement shall be for 10 years after Defendants complete the installation of all emission control equipment required by this Decree.

XXIII. OFFICIAL COMMUNICATIONS BETWEEN PARTIES

94. Defendants may only rely on communications from Plaintiffs as representing the official position of Plaintiffs for purposes of this Decree if such communications are in-writing and are accompanied by a cover letter signed by all Plaintiffs.

95. Upon receipt of any request from Defendants seeking a determination or interpretation from Plaintiffs with respect to a matter addressed by this Decree, or upon request of any Plaintiff, Plaintiffs shall consult with one another as expeditiously as possible under the circumstances to attempt to reach a unanimous position. If Plaintiffs are unable to reach a unanimous decision regarding such a request, Plaintiffs shall determine which Plaintiff is asserting the most stringent interpretation of the Decree, and shall designate such Plaintiff to draft a communication to Defendants. Such Plaintiff shall draft and circulate the communication to the other Plaintiffs as expeditiously as possible under the circumstances, consider comments from the other Plaintiffs in creating an official Plaintiff communication, and circulate the final communication to the other Plaintiffs. As long as such communication represents the most stringent interpretation of the Decree among Plaintiffs, or if a unanimous decision has been

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reached, all Plaintiffs shall sign a cover letter for such communication

that reads substantially as follows:

> "The attached is an official Plaintiff communication under the Consent Decree in the Hayden Station case, Civil Action No. 93-B-1749. Defendants may rely on this communication for purposes of the Decree. The attached communication does not necessarily represent the position of all Plaintiffs."

Plaintiffs shall convey one official written communication to Defendants. This paragraph 95 may not be enforced by Defendants.

96. If Plaintiffs do not provide Defendants with an official Plaintiff communication within 20 days of receipt of a request from Defendants for a determination or interpretation under this Decree, unless a longer period of time for responding is provided for in this Decree, any stipulated penalties related to the subject matter of such communication shall be tolled until Defendants receive Plaintiffs' official communication. For purposes of this paragraph, the term "tolled" shall mean that stipulated penalties will not be assessed for the period of time from the day after the due date of Plaintiffs' official communication until such official communication is received by Defendants. In no event shall any failure by Plaintiffs to issue an official communication, within such 20-day or other time period provided by this Decree, be deemed agreement with or approval of the position asserted or action taken by Defendants, or excuse Defendants' obligation to comply with the requirements of this Decree.

97. If Plaintiffs do not provide Defendants with an official Plaintiff communication within 45 days of receipt of a request from Defendants for a determination or interpretation under this Decree, and Defendants are disadvantaged by such delay, Defendants may seek further relief from the Court.

XXIV. TERMINATION

98. This Decree shall remain an enforceable order of the Court until the Court determines in response to a petition by any Party, that all requirements of the Decree have been satisfied, that Defendants have demonstrated that Unit 1 and Unit 2 have achieved compliance with the emission limitations set forth in Section V of this Decree for 12 consecutive months, and the requirements of the Decree listed in paragraph 93 [Title V Integration] have been incorporated into Defendants' Title V permit for the Hayden Station. Termination of this Decree shall not affect any matter expressly set forth in this Decree that is to survive as an agreement between Sierra Club and Defendants or the recordkeeping requirements set forth in paragraph 66 of this Decree.

XXV. NOTICE OF DECREE

99. The Parties agree to cooperate in good faith in order to obtain the Court's review and entry of this Decree.

100. The Parties acknowledge and agree that the United States' final approval of this Decree is subject to the public notice and comment procedures of 42 U.S.C. § 7413(g) and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to the entry of this Decree if public comments regarding the Decree disclose facts or considerations which indicate that the entry of this Decree is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. The United States agrees promptly to distribute any public comments it receives regarding this Decree to the Parties, and the Parties thereafter agree promptly to discuss such comments and any revisions to the Decree as may be appropriate.

XXVI. SIGNATORIES

101. Each undersigned representative of Defendants, the Sierra Club and Colorado, and the Assistant Attorney General of the United States for the Environment and Natural Resources Division, certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such Party to this document.

102. Each Defendant hereby agrees not to oppose entry of this Decree by this Court or challenge any provision of this Decree.

XXVII. COUNTERPARTS

103. This Decree may be signed in counterparts.

THE UNDERSIGNED PARTIES enter into this Decree and submit it to this Court for approval and entry.

Dated this _____ day of _____,1996.

SO ORDERED:

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UNITED STATES DISTRICT JUDGE

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FOR THE SIERRA CLUB:

\s\ THOMAS P. QUINN Date: 5/30/96
Sierra Club, Rocky Mountain Chapter

As to form:

\s\ REED ZARS Date: 5/21/96
Attorney at Law
2020 Grand Avenue, Suite 522
Laramie, WY 82070
(307) 745-7979

As to form:

\s\ JOHN BARTH Date: 5/20/96
Attorney at Law
4150 Darley Avenue, #14
Boulder. CO 80303
(303) 543-8702

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FOR THE UNITED STATES:

\s\ LOIS J.SCHIFFER Date: May 20, 1996
Assistant Attorney General
Environment and Natural Resources Division

\s\ TOM C. CLARK, II Date: May 20, 1996
KAREN S. DWORKIN
WILLIAM J. MOORE, III
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611 - Ben Franklin Station
Washington, D.C. 20044
(202) 514-3553

HENRY L. SOLANO
United States Attorney
District of Colorado

By: \s\ LINDA A. SURBAUGH Date: May 21, 1996
Chief, Civil Division
United States Attorney
1961 Stout Street, Suite 1200
Denver, CO 80291
(303) 844-3885

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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

\s\ STEVEN A. HERMAN Date: 5/20/96
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

\s\ CAROL RUSHIN Date: 5/17/96
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice
United States Environmental Protection Agency,
Region VIII

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FOR THE STATE OF COLORADO:

OFFICE OF THE ATTORNEY GENERAL

\s\ MARTHA E. RUDOLPH Date: 5-21-96
First Assistant Attorney General
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Counsel for State of Colorado,
Colorado Department of Public Health
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COLORADO DEPARTMENT OF PUBLIC
HEALTH AND ENVIRONMENT, AIR
POLLUTION CONTROL DIVISION

\s\ PATTI SHWAYDER, Acting Executive Director Date: 5-21-96

Colorado Department of Public Health
and Environment

\s\ MARGIE PERKINS, Acting Director Date: 5-21-96
Air Pollution Control Division
Colorado Department of Public Health
and Environment

FOR PUBLIC SERVICE COMPANY OF COLORADO:

\s\ RALPH SARGENT Date: May 21, 1996
Vice President, Production and System Operations

As to form:

\s\ LINDA L. ROCKWOOD
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FOR PACIFICORP:

\s\ WILLIAM C. BRAUER
Senior Vice President

Date: May 17, 1996

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FOR SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT:

\s\ DAVID G. AREGHINI
Associate General Manager

Date; May 16, 1996

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EXHIBIT A

The list of potential vendors and equipment for low NO(x) burners and overfire air for the Hayden Station.

Manufacturers	Burners	Overfire air (OFA)

UNIT 1 - WALL FIRED BOILER

Babcock and Wilcox	DRB-XCL	Advanced OFA*
Foster Wheeler Energy Corporation	IFS or Control Flow Split Flame (CFSF) depending on boiler specific factors.	Advanced OFA
DB Riley, Inc.	Controlled Combusion Venturi (CCV)	Advanced OFA

UNIT 2 - TANGENTIALLY FIRED BOILER

ABB - Combusion Engineering	Low NO(x) Concentric Firing System (LNCFS) Level 3	Closed coupled and separated
Foster Wheeler Energy Corporation	Modified Tangentially Fired Controlled Flow Split (CFSF) System	Closed coupled and separated
International Combusion Limited (ICL)	EnviroNOx-T2	Closed coupled and separated

* Advanced overfire air refers generally to the class of overfire air technology using a separate wind box(es) as technically feasible and economically practical for each boiler.

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