IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,	)	
	)	
AND	)	
	)	
THE STATE OF INDIANA,	)	
	)	
PLAINTIFFS,	)	
	)	
v.	)	Civil Action No.: _____
	)	
HOOSIER ENERGY RURAL ELECTRIC COOPERATIVE, INC.	)	
	)	
Defendant.	)	
	)	
_____	)	

CONSENT DECREE

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APPENDIX A -- ENVIRONMENTAL MITIGATION PROJECTS

APPENDIX B – MEROM FGD OPERATION

WHEREAS, Plaintiff, the United States of America ("the United States"), on behalf of the United States Environmental Protection Agency ("EPA"), and Plaintiff, the State of Indiana, are concurrently filing a Complaint and Consent Decree for injunctive relief and civil penalties pursuant to Sections 113(b)(2) and 167 of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7413(b)(2) and 7477, and 326 Indiana Administrative Code sections 2-2 and 2-7, alleging that Defendant, Hoosier Energy Rural Electric Cooperative, Inc. ("Hoosier") has undertaken construction projects at a major emitting facility in violation of the Prevention of Significant Deterioration ("PSD") provisions of Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, and in violation of the federally approved and enforceable Indiana State Implementation Plan ("Indiana SIP");

WHEREAS, EPA issued a Notice of Violation and Finding of Violation ("NOV/FOV") to Hoosier with respect to such allegations on August 26, 2009;

WHEREAS, EPA provided Hoosier and the State of Indiana with actual notice pertaining to Hoosier's alleged violations, in accordance with Section 113(a)(1) and (b) of the Act, 42 U.S.C. § 7413(a)(1) and (b);

WHEREAS, in the Complaint, the United States and the State of Indiana (collectively "Plaintiffs") allege, *inter alia*, that Hoosier failed to obtain the necessary permits and install the controls necessary under the Act to reduce sulfur dioxide ("SO_2"), oxides of nitrogen ("NO_x"), and particulate matter ("PM"), and that Hoosier failed to obtain an operating permit under Title V of the Act that reflects applicable requirements imposed under Part C of Subchapter I of the Act for its Merom Generating Station ("Merom"), located in Sullivan County, Indiana;

WHEREAS, in the Complaint, the Plaintiffs allege claims upon which relief can be granted against Hoosier under Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477;

WHEREAS, the Plaintiffs and Hoosier (collectively, the "Parties") have agreed that settlement of this action is in the best interests of the Parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

WHEREAS, this Consent Decree requires Hoosier to, *inter alia*, upgrade Flue Gas Desulfurization Systems ("FGDs") that were installed at Merom in 1982 and 1983 and upgrade Selective Catalytic Reduction devices ("SCRs") that were installed at Merom in 2004;

WHEREAS, this Consent Decree provides Hoosier with an affirmative defense to stipulated penalties pursuant to Section XIV (Stipulated Penalties) based upon EPA's Excess Emissions Policies, including the policy titled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," issued on September 20, 1999, which describes the conditions under which an owner or operator of a source, bearing the burden of proof, may avail itself of an affirmative defense in a civil or administrative action, other than a judicial action for injunctive relief, if the owner or operator of the source has emissions in excess of an applicable emission limitation due to malfunction, startup, or shutdown; and EPA will interpret the affirmative defense contained herein consistent with its Excess Emissions Policies;

WHEREAS, the Parties have agreed, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and at arm's length and that this Consent Decree is fair, reasonable, in the public interest, and consistent with the goals of the Act;

WHEREAS, Hoosier has cooperated in the resolution of this matter;

WHEREAS, Hoosier denies the violations alleged in the Complaint, and nothing herein shall constitute an admission of liability;

WHEREAS, Hoosier maintains that its agreement in this Consent Decree to install, correlate, maintain, and operate Particulate Matter Continuous Emissions Monitoring Systems ("PM CEMS") shall not prevent Hoosier in any future proceedings from challenging the relationship between the data generated from such PM CEMS, including the averaging period for which such data is reported pursuant to Paragraph 129, and the results of performance tests for PM (e.g., Method 5); and

WHEREAS, the Parties have consented to entry of this Consent Decree without trial of any issues;

NOW, THEREFORE, without any admission of fact or law, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and pursuant to Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477. Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c). Solely for the purposes of this Consent Decree and the underlying Complaint, and for no other purpose, Hoosier waives all objections and defenses that it may have to the Court's jurisdiction over this action, to the Court's jurisdiction over Hoosier, and to venue in this district. Hoosier consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Except as expressly provided for herein, this Consent Decree shall not create any rights in or obligations of any party other than the Parties to this Consent Decree. Except as provided in Section

XXVI (Public Comment) of this Consent Decree, the Parties consent to entry of this Consent Decree without further notice.

II. APPLICABILITY

2. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the Parties, their successors and assigns, and upon Hoosier's directors, officers, employees, servants, and agents solely in their capacities as such.

3. Hoosier shall provide a copy of this Consent Decree to all vendors, suppliers, consultants, contractors, agents, and any other company or other organization retained to perform any of the work required by this Consent Decree. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under this Consent Decree, Hoosier shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree, Hoosier shall not assert as a defense the failure of its officers, directors, employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree, unless it is determined to be a Force Majeure Event as defined in Paragraph 178 of this Consent Decree.

III. DEFINITIONS

4. Every term expressly defined by this Section shall have the meaning given that term herein. Every other term used in this Consent Decree that is also a term used under the Act or in a federal regulation implementing the Act shall mean in this Consent Decree what such term means under the Act or those regulations.

5. A “1-Hour Average NOx Emission Rate” for a gas-fired, electric generating unit shall be expressed as the average concentration in parts per million (ppm) by dry volume, corrected to 15% O_2, as averaged over one (1) hour. In determining the 1-Hour Average NOx Emission Rate, Hoosier shall use CEMS in accordance with the procedures specified in 40 C.F.R. Part 60 to calculate emissions for each 15 minute interval within each clock hour, except as provided in this Paragraph. Compliance with the 1-Hour Average NO_x Emission Rate shall be demonstrated by averaging all 15-minute CEMS interval readings within a clock hour, except that any 15-minute CEMS interval that contains any part of a startup or shutdown shall not be included in the calculation of that 1-hour average. A minimum of two 15-minute CEMS interval readings within a clock hour, not including startup or shutdown intervals, is required to determine compliance with the 1-Hour Average NOx Emission Rate. All emissions recorded by CEMS shall be reported in 1-hour averages.

6. A “30-Day Rolling Average NO_x Emission Rate” for a Unit shall be expressed in lb/mmBTU and calculated in accordance with the following procedure: first, sum the total pounds of NO_x emitted from the Unit during the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days; second, sum the total heat input to the Unit in mmBTU during the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days; and third, divide the total number of pounds of NO_x emitted during the thirty (30) Unit Operating Days by the total heat input during the thirty (30) Unit Operating Days. A new 30-Day Rolling Average NO_x Emission Rate shall be calculated for each new Unit Operating Day. Each 30-Day Rolling Average NO_x

Emission Rate shall include all emissions that occur during all periods within any Unit Operating Day, including emissions from startup, shutdown, and malfunction.

7. "Available" means, with regard to the coal necessary to achieve and maintain a 30-Day Rolling Average SO_2 Emission Rate of no greater than 2.00 lb/mmBTU as specified in Paragraph 85, such coal that: (1) is available for sale to Hoosier in a sufficient quantity to enable Hoosier to meet the emissions limitation in Paragraph 85; (2) is located at mines within 100 miles of Ratts; (3) has a low enough sulfur content to enable Hoosier to meet the emissions limitation in Paragraph 85; (4) meets the Ratts coal quality specifications for ash fusion, BTU content, moisture, ash content, grindability, percent fines, volatile matter, fixed carbon, and other environmental requirements; (5) is able to be transported to Ratts; and (6) is available at a cost which is no more than 20 percent higher than the delivered price per ton for the calendar year for 11,500 BTU/lb, 2.5 lb/ SO_2 coal transported out of the Illinois Basin by rail, as published in Platts Coal Outlook under the Weekly Price Survey for the relevant week.

8. A "30-Day Rolling Average SO_2 Removal Efficiency" means the percent reduction in the mass of SO_2 achieved by a Unit's FGD system over a thirty (30) Unit Operating Day period and shall be calculated as follows: step one, sum the total pounds of SO_2 emitted as measured at the outlet of the FGD system for the Unit during the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days as measured at the outlet of the FGD system for that Unit; step two, sum the total pounds of SO_2 delivered to the inlet of the FGD system for the Unit during the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days as measured at the inlet to the FGD system for that Unit (this shall be calculated by measuring the ratio of the lb/mmBTU

SO_2 inlet to the lb/mmBTU SO_2 outlet and multiplying the outlet pounds of SO_2 by that ratio); step three, subtract the outlet SO_2 emissions calculated in step one from the inlet SO_2 emissions calculated in step two; step four, divide the difference calculated in step three by the inlet SO_2 emissions calculated in step two; and step five, multiply the quotient calculated in step four by 100 to express the emission limit as a removal efficiency percentage. A new 30-Day Rolling Average SO_2 Removal Efficiency shall be calculated for each new Unit Operating Day. Each 30-Day Rolling Average SO_2 Removal Efficiency shall include all emissions that occur during all periods within any Unit Operating Day, including emissions from startup, shutdown, and malfunction.

9. A "30-Day Rolling Average SO_2 Emission Rate" for a Unit shall be expressed in lb/mmBTU and calculated in accordance with the following procedure: first, sum the total pounds of SO_2 emitted from the Unit during the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days; second, sum the total heat input to the Unit in mmBTU during the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days; and third, divide the total number of pounds of SO_2 emitted during the thirty (30) Unit Operating Days by the total heat input during the thirty (30) Unit Operating Days. A new 30-Day Rolling Average SO_2 Emission Rate shall be calculated for each new Unit Operating Day. Each 30-Day Rolling Average SO_2 Emission Rate shall include all emissions that occur during all periods within any Unit Operating Day, including emissions from startup, shutdown, and malfunction.

10. "Baghouse" means a full stream (fabric filter) particulate emissions control device.

11. "Biomass" means any organic matter that is available on a renewable basis from non-federal land, including: renewable plant material; waste material, including crop residue;

other vegetative waste material, including wood waste and wood residues; animal waste and byproducts; construction, food, and yard waste; and residues and byproducts from wood pulp or paper products facilities. Biomass is "available on a renewable basis" if it originates from forests that remain forests, or from croplands and/or grasslands that remain croplands and/or grasslands or revert to forests. Biomass "residues and byproducts from wood pulp or paper products facilities" includes byproducts, residues, and waste streams from agriculture, forestry, and related industries.

12. "Boiler Island" means a Unit's (a) fuel combustion system (including bunker, coal pulverizers, crusher, stoker, and fuel burners); (b) combustion air system; (c) steam generating system (firebox, boiler tubes, and walls); and (d) draft system (excluding the stack), all as further described in "Interpretation of Reconstruction," by John B. Rasnic, U.S. EPA (November 25, 1986) and attachments thereto.

13. "CEMS" or "Continuous Emission Monitoring System," means, for obligations involving the monitoring of NO_x and SO_2 emissions under this Consent Decree, the devices defined in 40 C.F.R. § 72.2, the inlet SO_2 lb/mmBTU monitors, and the computer system for recording, calculating, and storing data and equations required by this Consent Decree.

14. "Clean Air Act" or "Act" means the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q, and its implementing regulations.

15. "Consent Decree" means this Consent Decree and the Appendices hereto, which are incorporated into the Consent Decree.

16. "Continuously Operate" or "Continuous Operation" means that when an SCR, SNCR, FGD, RI, ESP, Baghouse (if applicable), or Low NOx Burner Combustion System is

used at a Unit, except as otherwise provided by Section XV (Force Majeure), it shall be operated at all times such Unit is in operation, consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for such equipment and the Unit so as to minimize emissions to the greatest extent practicable.

17. "Date of Entry" means the date this Consent Decree is approved or signed by the United States District Court Judge.

18. "Date of Lodging" means the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Southern District of Indiana.

19. "Day" means calendar day unless otherwise specified in this Consent Decree.

20. "Electrostatic Precipitator" or "ESP" means a device for removing particulate matter from combustion gases by imparting an electric charge to the particles and then attracting them to a metal plate or screen of opposite charge before the combustion gases are exhausted to the atmosphere.

21. "Emission Rate" for a given pollutant means the number of pounds of that pollutant emitted per million British thermal units of heat input (lb/mmBTU), measured in accordance with this Consent Decree.

22. "Environmental Mitigation Projects" or "Projects" means the projects set forth in Appendix A to this Consent Decree.

23. "EPA" means the United States Environmental Protection Agency.

24. "Flue Gas Desulfurization System" or "FGD" means a pollution control device that employs flue gas desulfurization technology, including an absorber utilizing lime, fly ash, or limestone slurry, for the reduction of SO_2 emissions.

25. “Fossil Fuel” means any hydrocarbon fuel, including coal, petroleum coke, petroleum oil, or natural gas.

26. “H_2SO_4” means sulfuric acid, measured in accordance with the provisions of this Consent Decree.

27. “H_2SO_4 Emission Rate” means the number of pounds of H_2SO_4 emitted per million BTU of heat input (lb/mmBTU), as measured in annual stack tests in accordance with Paragraph 116.

28. “Hoosier” or “Defendant” means Hoosier Energy Rural Electric Cooperative, Inc.

29. “Hoosier System” means the Merom and Ratts facilities as defined herein.

30. “IDEM” means the Indiana Department of Environmental Management.

31. “Indiana SIP” means the Indiana State Implementation Plan, and any amendments thereto, as approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410.

32. “Low NO_x Combustion System” means burners and associated combustion air control equipment, including overfire air, for combusting pulverized coal, which control mixing characteristics of the pulverized coal and oxygen, lower the combustion rate, lower oxygen concentration and heat temperature during the initial phase of combustion, and thereby restrain the formation of NO_x created by both the nitrogen content of the pulverized coal and by heat.

33. “Merom” means Hoosier’s Merom Generating Station consisting of two dry-bottom turbo-fired boilers designated as Unit 1 (547 Gross MW) and Unit 2 (547 Gross MW) and related equipment, which is located in Sullivan County, Indiana.

34. “Netting” shall mean the process of determining whether a particular physical change or change in the method of operation of a major stationary source results in a net emissions

increase, as that term is defined at 40 C.F.R. § 52.21(b)(3)(i) and at 326 IAC 2-2-1(jj) of the Indiana SIP.

35. "NO_x" means oxides of nitrogen, measured in accordance with the provisions of this Consent Decree.

36. "NO_x Allowance" means an authorization to emit a specified amount of NO_x that is allocated or issued under an emissions trading or marketable permit program of any kind that has been established under the Clean Air Act or a state implementation plan.

37. "Nonattainment NSR" means the new source review program within the meaning of Part D of Subchapter I of the Act, 42 U.S.C. §§ 7501-7515, and the federal regulations codified at 40 C.F.R. Part 51, and the federally approved provisions of the Indiana SIP, 326 IAC 2-3.

38. "Operational or Ownership Interest" means part or all of Hoosier's legal or equitable operational or ownership interest in any Unit at Merom or Ratts.

39. "Parties" means the United States of America on behalf of EPA, the State of Indiana, including the Indiana Attorney General and the Indiana Department of Environmental Management, and Hoosier. "Party" means one of the named "Parties."

40. "PM" means total filterable particulate matter, measured in accordance with the provisions of this Consent Decree.

41. "PM CEMS" or "PM Continuous Emission Monitoring System" means, for obligations involving the monitoring of PM emissions under this Consent Decree, the equipment that samples, analyzes, measures, and provides, by readings taken at frequent intervals, an electronic and/or paper record of PM emissions.

42. “PM Emission Rate” means the number of pounds of PM emitted per million BTU of heat input (lb/mmBTU), as measured in annual stack tests in accordance with Paragraph 123.

43. “Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation” at Ratts means the sum of the tons of SO_2 emitted from Ratts Unit 1 and Unit 2 in the most recent complete month and the previous eleven (11) months. A new Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation shall be calculated for each new complete month in accordance with the provisions of this Consent Decree. Each Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation shall include all emissions that occur during all periods of operation, including startup, shutdown, and malfunction.

44. “Prevention of Significant Deterioration” or “PSD” means the new source review program within the meaning of Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, the federal regulations codified at 40 C.F.R. Part 52, and the federally approved provisions of the Indiana SIP, 326 IAC 2-2.

45. “Project Dollars” means Hoosier’s expenditures and payments incurred or made in carrying out the Environmental Mitigation Projects identified in Section IX (Environmental Mitigation Projects) of this Consent Decree to the extent that such expenditures or payments both: (a) comply with the requirements set forth in Section IX and Appendix A of this Consent Decree, and (b) constitute Hoosier’s direct payments for such projects, or Hoosier’s external costs for contractors, vendors, and equipment.

46. “Ratts” means Hoosier’s Ratts Generating Station consisting of two dry-bottom wall-fired boilers designated as Unit 1 (132 MW) and Unit 2 (132 MW) and related equipment, which is located in Pike County, Indiana.

47. “Reagent Injection” or “RI” means an H_2SO_4 control system consisting of the injection of a reagent in the flue gas stream to react with the acid gases and reduce the outlet H_2SO_4 Emission Rate.

48. “Removal Efficiency” for a given pollutant means the percentage of that pollutant removed by the applicable emission control device, measured in accordance with the provisions of this Consent Decree.

49. “Repower” or “Repowered” means that a Unit is either Repowered to Biomass or Repowered to Natural Gas within the meaning of this Consent Decree.

50. “Repowered to Biomass” means, for purposes of this Consent Decree, a Unit at Ratts that is repowered to exclusively combust Biomass and that shall achieve and maintain the following emissions limitations: A 30-Day Rolling Average NO_x Emission Rate of no greater than 0.100 lb/mmBTU; a 30-Day Rolling Average SO_2 Emission Rate of no greater than 0.100 lb/mmBTU; and a PM Emission Rate of no greater than 0.015 lb/mmBTU.

51. “Repowered to Natural Gas” means the modification of a Unit, or removal and replacement of Unit components, such that the modified or replaced Unit generates electricity solely through the combustion of natural gas rather than coal and without the use of combustion turbine technology, where such natural gas contains no more than 0.5 grains of sulfur per 100 standard cubic feet of natural gas, and the Unit at a minimum achieves and maintains a 1-Hour Average NO_x Emission Rate of no greater than 4.5 ppm.

52. “Retire” means that Hoosier shall permanently shutdown and cease to operate the Unit such that the Unit cannot legally burn any fuel nor produce any steam for electricity production and that Hoosier shall comply with applicable state and federal requirements

for permanently retiring a coal-fired electric generating unit, including removing the Unit from Indiana's air emissions inventory, and amending all applicable permits so as to reflect the permanent shutdown status of such Unit.

53. "SCR" or "Selective Catalytic Reduction" means a pollution control device for reducing NO_x emissions through the use of selective catalytic reduction technology.

54. "SNCR" or "Selective Non-Catalytic Reduction" means a pollution control device for the reduction of NO_x emissions through the use of selective non-catalytic reduction technology that utilizes ammonia or urea injection into the boiler.

55. "SO_2" means sulfur dioxide, measured in accordance with the provisions of this Consent Decree.

56. "SO_2 Allowance" means an authorization or credit to emit a specified amount of SO_2 that is allocated or issued under an emissions trading or marketable permit program of any kind that has been established under the Clean Air Act or the Indiana SIP.

57. "State" means the State of Indiana.

58. "Super-Compliant NO_x Allowance" means a NO_x Allowance attributable to reductions beyond the requirements of this Consent Decree, as described in Paragraph 79.

59. "Surrender" or "Surrender of Allowances" means, for purposes of SO2 or NOx Allowances, permanently surrendering allowances from the accounts administered by EPA and Indiana for all Units in the Hoosier System, so that such allowances can never be used thereafter to meet any compliance requirements under the Clean Air Act, a state implementation plan, or this Consent Decree.

60. "System-Wide Annual NO_x Tonnage Limitation" means the limitations, as specified in this Consent Decree, on the number of tons of NO_x that may be emitted from Merom

Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2, collectively, during the relevant calendar year (i.e., January 1 through December 31), and shall include all emissions of NO_x during all periods of operations, including startup, shutdown, and malfunction.

61. "System-Wide Annual SO_2 Tonnage Limitation" means the limitations, as specified in this Consent Decree, on the number of tons of SO_2 that may be emitted from Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2, collectively, during the relevant calendar year (i.e., January 1 through December 31), and shall include all emissions of SO_2 during all periods of operations, including startup, shutdown, and malfunction.

62. "Title V Permit" means the permit required of Merom and Ratts under Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

63. "Unit" means collectively, the coal pulverizer, stationary equipment that feeds coal to the boiler, the boiler that produces steam for the steam turbine, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine, and boiler, and all ancillary equipment, including pollution control equipment and systems necessary for production of electricity. An electric steam generating station may comprise one or more Units.

64. "Unit Operating Day" means, for Merom Unit 1, any Day on which Merom Unit 1 fires Fossil Fuel, and, for Merom Unit 2, any Day on which Merom Unit 2 fires Fossil Fuel, and for Ratts Unit 1, any Day on which Ratts Unit 1 fires Fossil Fuel, and, for Ratts Unit 2, any Day on which Ratts Unit 2 fires Fossil Fuel.

IV. NO_x EMISSION REDUCTIONS AND CONTROLS

A. NO_x Emission Limitations and Control Requirements

1. Selective Non-Catalytic Reduction Installation, Operation, and Performance Requirements at Ratts Unit 1 and Unit 2

65. By no later than December 31, 2011, and continuing thereafter, Hoosier shall install and commence Continuous Operation of SNCRs at Ratts Unit 1 and Unit 2.

66. By no later than June 1, 2012, and continuing through December 30, 2014, Hoosier shall Continuously Operate the SNCRs at Ratts Unit 1 and Unit 2 so that each Unit achieves and maintains a 30-Day Rolling Average NO_x Emission Rate of no greater than 0.250 lb/mmBTU.

67. By no later than December 31, 2014, and continuing thereafter, Hoosier shall Continuously Operate the SNCRs at Ratts Unit 1 and Unit 2 so that each Unit achieves and maintains a 30-Day Rolling Average NO_x Emission Rate of no greater than 0.230 lb/mmBTU.

2. SCR Operation and Performance Requirements at Merom Unit 1 and Unit 2

68. By no later than the Date of Entry of this Consent Decree, Hoosier shall commence Continuous Operation of the SCRs at Merom Unit 1 and Unit 2.

69. By no later than December 31, 2010, and continuing thereafter, Hoosier shall Continuously Operate the SCRs at Merom Unit 1 and Unit 2 so that each Unit achieves and maintains a 30-Day Rolling Average NO_x Emission Rate of no greater than 0.120 lb/mmBTU.

70. By no later than December 31, 2012 for one Merom Unit and December 31, 2013 for the other Merom Unit, and continuing thereafter, Hoosier shall Continuously Operate the

SCRs at each Merom Unit so that each Unit achieves and maintains a 30-Day Rolling Average NO_x Emission Rate of no greater than 0.080 lb/mmBTU. During any 30-Day period used to calculate a 30-Day Rolling Average NO_x Emission Rate for Merom Unit 1 or Unit 2, if the dispatch of either Unit requires operation of such Unit(s) at a load level that results in flue gas temperature so low that it becomes technically infeasible to Continuously Operate the SCR despite Hoosier's best efforts to do so (including, but not limited to, maintaining minimum load operation which provides for achieving sufficient inlet temperatures for injection of ammonia to the SCR), Hoosier shall not be subject to stipulated penalties pursuant to Section XIV (Stipulated Penalties) for violating the Emission Rate required by this Paragraph provided that Hoosier's emissions do not exceed a 30-Day Rolling Average NO_x Emission Rate of 0.090 lb/mmBTU and Hoosier provides EPA with data and calculations to demonstrate that but for such low load operation, Hoosier would have achieved and maintained a 30-Day Rolling Average NO_x Emission Rate of no greater than 0.080 lb/mmBTU at such Unit(s).

3. <u>System-Wide Annual NO_x Tonnage Limitation</u>.

71. Beginning in calendar year 2011, and continuing through calendar year 2012, the Hoosier System, collectively, shall not exceed a System-Wide Annual NO_x Tonnage Limitation of 5,869 tons.

72. Beginning in calendar year 2013, and continuing through calendar year 2014, the Hoosier System, collectively, shall not exceed a System-Wide Annual NO_x Tonnage Limitation of 5,395 tons.

73. Beginning in calendar year 2015, and continuing each calendar year thereafter, the Hoosier System, collectively, shall not exceed a System-Wide Annual NO_x Tonnage Limitation of 4,800 tons.

B. <u>Monitoring of NO_x Emissions</u>

74. In determining a 30-Day Rolling Average NO_x Emission Rate, Hoosier shall use CEMS in accordance with the procedures of 40 C.F.R. Part 75, except that: (1) NO_x emissions data need not be bias adjusted; (2) for any CEMS with a span less than 100 parts per million ("ppm"), the calibration drift and out-of-control criteria in Procedure 1, section 4.3 of 40 C.F.R. Part 60, Appendix F shall apply in lieu of the specifications in 40 C.F.R. Part 75, Appendix B; (3) for any CEMS with a span less than or equal to 30 ppm the exemption from the 40 C.F.R. Part 75 linearity check will not apply and either the 40 C.F.R. Part 75 linearity check or the cylinder gas audit described in Procedure 1, section 5.1.2 of 40 C.F.R. Part 60, Appendix F shall be performed on a quarterly basis; and (4) for any Unit controlled by SCR, an annual relative accuracy test audit shall meet, at a minimum, a relative accuracy of less than 20% or an accuracy of less than 0.015 lb/mmBTU (expressed as the difference between the monitor mean and the reference value mean).

75. For purposes of calculating the System-Wide Annual NO_x Tonnage Limitation, Hoosier shall use CEMS in accordance with the procedures specified in 40 C.F.R. Part 75

C. <u>Use and Surrender of NO_x Allowances</u>

76. Except as may be necessary to comply with Section XIV (Stipulated Penalties), Hoosier shall not use NO_x Allowances to comply with any requirement of this Consent Decree, including by claiming compliance with any emission limitation required by this Consent

Decree by using, tendering, or otherwise applying NO_x Allowances to offset any excess emissions.

77. Beginning in calendar year 2011, and continuing each calendar year thereafter, Hoosier shall Surrender all NO_x Allowances allocated to the Hoosier System for that calendar year that Hoosier does not need in order to meet its own federal and/or state Clean Air Act regulatory requirements for the Hoosier System Units. However, NO_x Allowances allocated to the Hoosier System may be used by Hoosier to meets its own federal and/or state Clean Air Act regulatory requirements for such Units. Nothing in this Consent Decree shall prevent Hoosier from purchasing or otherwise obtaining NO_x Allowances from another source for purposes of complying with federal and/or state Clean Air Act regulatory requirements to the extent otherwise allowed by law.

78. The requirements of this Consent Decree pertaining to Hoosier's use and Surrender of NO_x Allowances are permanent injunctions not subject to any termination provision of this Consent Decree.

D. <u>Super-Compliant NO_x Allowances</u>

79. Provided that Hoosier is in compliance with the applicable System-Wide Annual NO_x Tonnage Limitation specified for that year, nothing in this Consent Decree shall preclude Hoosier from selling, banking, or transferring NO_x Allowances allocated to Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2 that become available for sale or trade solely as a result of:

a. the installation and operation of any NO_x pollution control that is not otherwise required by, or necessary to maintain compliance with, any provision of this Consent Decree, and is not otherwise required by law;

b. the use of SNCR prior to the date established by this Consent Decree; or

c. achievement and maintenance below the applicable 30-Day Rolling Average NO_x Emission Rate.

Hoosier shall timely report the generation of such Super-Compliant NO_x Allowances in accordance with Section XII (Periodic Reporting) of this Consent Decree.

E. <u>Method for Surrender of NO_x Allowances</u>

80. Hoosier shall Surrender, or transfer to a non-profit third-party selected by Hoosier for Surrender, all NO_x Allowances required to be Surrendered pursuant to Paragraph 77 by March 1 of the immediately following calendar year.

81. If any NO_x Allowances required to be Surrendered under this Consent Decree are transferred directly to a non-profit third-party, Hoosier shall include a description of such transfer in the next report submitted to EPA pursuant to Section XII (Periodic Reporting) of this Consent Decree. Such report shall: (a) identify the non-profit third-party recipient(s) of the NO_x Allowances and list the serial numbers of the transferred NO_x Allowances; and (b) include a certification by the third-party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the NO_x Allowances and will not use any of the NO_x Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any NO_x Allowances, Hoosier shall include a statement that the third-party recipient(s) Surrendered the NO_x Allowances for permanent Surrender to EPA in accordance with the provisions of Paragraph 82 within one (1) year after Hoosier transferred the NO_x Allowances to them. Hoosier shall not have complied with the NO_x Allowance Surrender requirements of this Paragraph until all third-party recipient(s) have actually Surrendered

the transferred NO_x Allowances to EPA.

82. For all NO_x Allowances required to be Surrendered, Hoosier or the third-party recipient(s) (as the case may be) shall first submit a NO_x Allowance transfer request form to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such NO_x Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. As part of submitting these transfer requests, Hoosier or the third-party recipient(s) shall irrevocably authorize the transfer of these NO_x Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the NO_x Allowances being Surrendered.

V. SO_2 EMISSION REDUCTIONS AND CONTROLS

A. SO_2 Emission Limitations and Control Requirements

1. Limitations on SO_2 Emissions at Ratts

83. For the 12-month period commencing on January 1, 2011, and continuing through December 31, 2013, SO_2 emissions from Ratts Unit 1 and Unit 2, collectively, shall not exceed a Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation of 14,000 tons.

84. For the period commencing on July 1, 2011 and continuing through September 30, 2011, each Unit at Ratts shall achieve and maintain a 30-Day Rolling Average SO_2 Emission Rate of no greater than 2.50 lb/mmBTU.

85. For the period commencing on July 1, 2012 and continuing through September 30, 2012, and each July 1 through September 30 thereafter, provided that coal is Available, each Unit at Ratts shall achieve and maintain a 30-Day Rolling Average SO_2 Emission Rate of no greater than 2.00 lb/mmBTU. If coal is not Available, then during such time periods,

Hoosier shall achieve and maintain a 30-Day Rolling Average SO_2 Emission Rate of no greater than 2.50 lb/mmBTU.

86. For the 12-month period commencing on January 1, 2014, and continuing through either December 31, 2015 or December 31, 2016, pursuant to Paragraphs 88 and 89 below, SO_2 emissions from Ratts Unit 1 and Unit 2, collectively, shall not exceed a Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation of 10,000 tons.

87. For Ratts Units 1 and 2, on or before January 1, 2015, Hoosier shall elect to (a) Retire, (b) Repower, or (c) continue to operate Ratts Unit 1 and/or Unit 2 as coal-fired Units. Hoosier shall provide Notice of such election pursuant to Section XIX (Notices).

88. If Hoosier elects to Retire or Repower Ratts Unit 1 and/or Unit 2, Hoosier shall Retire or Repower such Unit(s) by no later than January 1, 2017. If Hoosier Retires or Repowers only one of the Ratts Units and continues operation of the other Unit as a coal-fired Unit, then for the 12-month period commencing on January 1, 2017, and continuing thereafter, SO_2 emissions from Ratts shall not exceed a Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation of 4,000 tons.

89. If Hoosier elects to continue to operate Ratts Unit 1 and Unit 2 as coal-fired Units, then for the 12-month period commencing on January 1, 2016, and continuing thereafter, SO_2 emissions from Ratts Unit 1 and Unit 2, collectively, shall not exceed a Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation of 6,750 tons.

2. <u>FGD Operation and Performance Requirements at Merom Unit 1 and Unit 2</u>

90. By no later than thirty (30) Days from the Date of Entry of this Consent Decree, and continuing thereafter, Hoosier shall Continuously Operate the existing FGD on Merom Unit 1, which was installed in 1983, and the existing FGD on Merom Unit 2, which was

installed in 1982, so as to achieve and maintain a 30-Day Rolling Average SO_2 Removal Efficiency of at least 90.0% with a goal of at least 94.0%. In addition, for the period from the Date of Entry of this Consent Decree until the FGDs are upgraded as required by Paragraphs 91 and 92, Hoosier shall operate the FGDs on Merom Unit 1 and Unit 2 consistent with Appendix B.

91. By no later than June 1, 2012 for one of the Merom Units, Hoosier shall upgrade the FGD such that the upgraded FGD is designed to meet a 30-Day Rolling Average SO_2 Removal Efficiency of at least 98.0%. Commencing on December 1, 2012, and continuing through December 30, 2014, Hoosier shall Continuously Operate the FGD at such Merom Unit to achieve and maintain a 30-Day Rolling Average SO_2 Emission Rate of no greater than 0.150 lb/mmBTU or a 30-Day Rolling Average SO_2 Removal Efficiency of at least 95.0%. Commencing on December 31, 2014, and continuing thereafter, Hoosier shall Continuously Operate the FGD at such Merom Unit to achieve and maintain a 30-Day Rolling Average SO_2 Emission Rate of no greater than 0.150 lb/mmBTU or a 30-Day Rolling Average SO_2 Removal Efficiency of at least 96.0%.

92. By no later than June 1, 2013 for the other Merom Unit (i.e., the Unit not upgraded pursuant to Paragraph 91, above), Hoosier shall upgrade the FGD such that the upgraded FGD is designed to meet a 30-Day Rolling Average SO_2 Removal Efficiency of at least 98.0%. Commencing on September 1, 2013, and continuing through December 30, 2015, Hoosier shall Continuously Operate the FGD at such Merom Unit to achieve and maintain a 30-Day Rolling Average SO_2 Emission Rate of no greater than 0.150 lb/mmBTU or a 30-Day Rolling Average SO_2 Removal Efficiency of at least 95.0%. Commencing on December 31, 2015, and continuing thereafter, Hoosier shall

Continuously Operate the FGD at such Merom Unit to achieve and maintain a 30-Day Rolling Average SO_2 Emission Rate of no greater than 0.150 lb/mmBTU or a 30-Day Rolling Average SO_2 Removal Efficiency of at least 96.0%.

93. At any time after December 31, 2015 but before June 30, 2016, Hoosier may submit to EPA a proposed revision to the 30-Day Rolling Average SO_2 Removal Efficiency of at least 96.0% for either of the Merom Units. The petition must demonstrate, based upon all relevant information, that a 30-Day Rolling Average SO_2 Removal Efficiency of at least 96.0% cannot be achieved and maintained for the Unit in question even after taking all reasonable measures to achieve the designed level of performance of the FGD including, but not limited to, retention of qualified outside technical support to assist it in operating and optimizing the FGD in order to achieve the 96.0% 30-Day Rolling Average SO_2 Removal Efficiency for the Merom Units. Hoosier shall include in such proposal an alternate 30-Day Rolling Average SO_2 Removal Efficiency, but in no event may Hoosier propose a 30-Day Rolling Average SO_2 Removal Efficiency of less than 95.0%. Hoosier shall also submit all studies, reports, and/or recommendations from the contractor required by this Paragraph, evaluating each measure undertaken in an effort to meet the 96.0% 30-Day Rolling Average SO_2 Removal Efficiency requirement. Hoosier shall also deliver with each submission all pertinent documents and data that support or were considered in preparing such submission, as well as all data pertaining to the performance of the FGD in question since the Date of Entry of the Consent Decree and the operational history of the Unit, including the sulfur content of the coal burned at the Unit, since the Date of Entry of the Consent Decree. If EPA disapproves the proposed revision to the 30-Day Rolling Average SO_2 Removal Efficiency, such disagreement is subject to

Section XVI (Dispute Resolution). Provided that Hoosier is in compliance with a 95.0% 30-Day Rolling Average SO_2 Removal Efficiency, Hoosier shall not be subject to stipulated penalties pursuant to Section XIV (Stipulated Penalties) for violating the 96.0% 30-Day Rolling Average SO_2 Removal Efficiency required by this Paragraph until EPA issues its formal written summary of its position regarding any dispute pursuant to Paragraph 190. If EPA's formal written response pursuant to Paragraph 190 disapproves Hoosier's proposed revision of the 30-Day Rolling Average SO_2 Removal Efficiency, then Hoosier shall be subject to stipulated penalties pursuant to Section XIV (Stipulated Penalties) for any violation of the 96.0% 30-Day Rolling Average SO_2 Removal Efficiency from the date of disapproval forward.

3. System-Wide Annual SO_2 Tonnage Limitation.

94. Beginning in calendar year 2011, and continuing through calendar year 2012, the Hoosier System, collectively, shall not exceed a System-Wide Annual SO_2 Tonnage Limitation of 28,500 tons.

95. In calendar year 2013, the Hoosier System, collectively, shall not exceed a System-Wide Annual SO_2 Tonnage Limitation of 27,000 tons.

96. In calendar year 2014, the Hoosier System, collectively, shall not exceed a System-Wide Annual SO_2 Tonnage Limitation of 26,000 tons.

97. In calendar year 2015, and continuing through 2016 if Hoosier elects to Retire or Repower one of the Ratts Units, the Hoosier System, collectively, shall not exceed a System-Wide Annual SO_2 Tonnage Limitation of 19,889 tons.

98. If Hoosier does not elect to Retire or Repower one of the Ratts Units (i.e., Hoosier elects to operate both Ratts Units as coal-fired units pursuant to Paragraph 87, in calendar year

2016 and continuing each year thereafter, the Hoosier System, collectively, shall not exceed a System-Wide Annual SO_2 Tonnage Limitation of 18,750 tons.

99. If Hoosier elects to Retire or Repower one of the Ratts Units, then beginning in calendar year 2017, and continuing each year thereafter, the Hoosier System and the Repowered Ratts Unit, collectively, shall not exceed a System-Wide Annual SO_2 Tonnage Limitation of 15,500 tons.

B. <u>Monitoring of SO_2 Emissions</u>

100. In determining a 30-Day Rolling Average SO_2 Emission Rate or a 30-Day Rolling Average SO_2 Removal Efficiency, Hoosier shall use CEMS in accordance with the procedures of 40 C.F.R. Part 75, except that: (1) SO_2 emissions data need not be bias adjusted; (2) for any CEMS with a span less than 100 ppm, the calibration drift and out-of-control criteria in Procedure 1, section 4.3 of 40 C.F.R. Part 60, Appendix F shall apply in lieu of the specifications in 40 C.F.R. Part 75, Appendix B; (3) for any CEMS with a span less than or equal to 30 ppm the exemption from the 40 C.F.R. Part 75 linearity check will not apply and either the 40 C.F.R. Part 75 linearity check or the cylinder gas audit described in Procedure 1, section 5.1.2 of 40 C.F.R. Part 60, Appendix F shall be performed on a quarterly basis; and (4) for any Unit controlled by FGD, an annual relative accuracy test audit shall meet, at a minimum, a relative accuracy of less than 20% or an accuracy of less than 0.015 lb/mmBTU (expressed as the difference between the monitor mean and the reference value mean).

101. For purposes of calculating the System-Wide Annual SO_2 Tonnage Limitation and the Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation at Ratts, Hoosier shall use CEMS in accordance with the procedures specified in 40 C.F.R. Part 75.

C. Use and Surrender of SO_2 Allowances

102. Except as may be necessary to comply with Section XIV (Stipulated Penalties), Hoosier shall not use SO_2 Allowances to comply with any requirement of this Consent Decree, including by claiming compliance with any emission limitation required by this Consent Decree by using, tendering, or otherwise applying SO_2 Allowances to offset any excess emissions.

103. Beginning in calendar year 2011, and continuing each calendar year thereafter, Hoosier shall Surrender all SO_2 Allowances allocated to Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2 for that calendar year that Hoosier does not need in order to meet its own federal and/or state Clean Air Act regulatory requirements for the Units. However, SO_2 Allowances allocated to Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2 may be used by Hoosier to meets its own federal and/or state Clean Air Act regulatory requirements for such Units.

104. Nothing in this Consent Decree shall prevent Hoosier from purchasing or otherwise obtaining SO_2 Allowances from another source for purposes of complying with federal and/or state Clean Air Act regulatory requirements to the extent otherwise allowed by law.

105. The requirements of this Consent Decree pertaining to Hoosier's use and Surrender of SO_2 Allowances are permanent injunctions not subject to any termination provision of this Consent Decree.

E. Method for Surrender of SO_2 Allowances.

106. Hoosier shall Surrender, or transfer to a non-profit third party selected by Hoosier for Surrender, all SO_2 Allowances required to be Surrendered pursuant to Paragraph 103

within forty-five (45) Days from Hoosier's receipt of the annual deduction report for Merom or Ratts, whichever is later. Hoosier shall provide a copy of the annual deduction reports for Merom and Ratts to EPA in the next Periodic Report submitted pursuant to Section XII (Periodic Reporting) to demonstrate the date upon which Hoosier received such reports from EPA.

107. If any SO_2 Allowances required to be Surrendered under this Consent Decree are transferred directly to a non-profit third party, Hoosier shall include a description of such transfer in the next report submitted to EPA pursuant to Section XII (Periodic Reporting) of this Consent Decree. Such report shall: (i) identify the non-profit third party recipient(s) of the SO_2 Allowances and list the serial numbers of the transferred SO_2 Allowances; and (ii) include a certification by the non-profit third party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the allowances and will not use any of the SO_2 Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any SO_2 Allowances, Hoosier shall include a statement that the non-profit third party recipient(s) Surrendered the SO_2 Allowances for permanent Surrender to EPA in accordance with the provisions of Paragraph 108 within one (1) year after Hoosier transferred the SO_2 Allowances to them. Hoosier shall not have complied with the SO_2 Allowance Surrender requirements of this Paragraph until all third party recipient(s) have actually Surrendered the transferred SO_2 Allowances to EPA.

108. For all SO_2 Allowances required to be Surrendered, Hoosier or the third party recipient(s) (as the case may be) shall first submit an SO_2 Allowance transfer request form to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such

SO_2 Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. As part of submitting these transfer requests, Hoosier or the third party recipient(s) shall irrevocably authorize the transfer of these SO_2 Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the SO_2 Allowances being Surrendered.

VI. H_2SO_4 EMISSION REDUCTIONS AND CONTROLS

A. Reagent Injection Installation, Operation, and Performance Requirements

109. Commencing on June 1, 2011, and continuing thereafter, Hoosier shall Continuously Operate RI at Merom Unit 1 and Unit 2.

110. Commencing on June 1, 2012 for one Merom Unit and June 1, 2013 for the other Merom Unit, and continuing thereafter, Hoosier shall Continuously Operate RI at such Merom Unit so that the Unit achieves and maintains an H_2SO_4 Emission Rate of no greater than 0.007 lb/mmBTU.

111. The period from June 1, 2012 through May 30, 2013, shall comprise a demonstration period. During the demonstration period, Hoosier's failure to achieve and maintain the H_2SO_4 Emission Rate in Paragraph 110 shall not be deemed a violation of this Consent Decree, nor shall Hoosier be responsible for stipulated penalties pursuant to Section XIV (Stipulated Penalties). However, it shall be deemed a violation, and Hoosier shall be responsible for stipulated penalties, if either Merom Unit 1 or Unit 2 fails to Continuously Operate the RI system as required by Paragraph 109.

112. At any time before December 31, 2012, Hoosier may submit a petition to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals), for a

proposed revision to the H_2SO_4 Emission Rate for Merom Unit 1 and/or Unit 2. In such petition to revise the H_2SO_4 Emission Rate, Hoosier must demonstrate that it cannot maintain compliance with the applicable Emission Rate for the Unit(s) in question, considering all relevant information including, but not limited to: evaluation of different injection zones, different reagents, different reagent injection rates, and different SCR catalyst beds. Hoosier shall propose in such petition the lowest H_2SO_4 Emission Rate that the Unit(s) can achieve and maintain (which in no event shall be higher than 0.009 lb/mmBTU), and all pertinent information, documents, and data that support, or were considered in preparing, such alternative Emission Rate. If Hoosier avails itself of the petition process described in this Paragraph, Hoosier shall retain a qualified contractor to assist it in operating and optimizing the RI system in order to achieve the lowest H_2SO_4 Emission Rate for Merom Unit 1 and Unit 2, and identifying the lowest achievable H_2SO_4 Emission Rate based upon the relevant information described above in this Paragraph.

113. Following receipt of Hoosier's petition, EPA may either (a) determine that Hoosier failed to successfully demonstrate that Merom Unit 1 and/or Unit 2 could not achieve and maintain an H_2SO_4 Emission Rate of no greater than 0.007 lb/mmBTU, (b) approve the proposed alternative H_2SO_4 Emission Rate, or (c) establish a different H_2SO_4 Emission Rate than the one specified in either Paragraph 110, above, or proposed by Hoosier in its petition, based upon EPA's review of the information submitted in the petition as well as other available and relevant information. No later than thirty (30) Days following Hoosier's receipt of EPA's response to its petition, Hoosier shall achieve and maintain the H_2SO_4 Emission Rate either specified in Paragraph 110, above (if EPA determines that

Hoosier failed to demonstrate that it could not maintain compliance with the Emission Rate), or an alternative H_2SO_4 Emission Rate as approved by EPA in its response to Hoosier's petition, provided, however, that if EPA determines that Hoosier failed to demonstrate that it could not maintain compliance with the Emission Rate specified in Paragraph 110, Hoosier will not have to comply with such Emission Rate, but instead will have to comply with its proposed alternative H_2SO_4 Emission Rate which in no event will be higher than 0.009 lb/mmBTU, during the pendency of any dispute of EPA's determination by Hoosier. EPA reserves the right to require Hoosier to perform additional source testing before responding to Hoosier's petition.

114. If Hoosier does not submit a petition for a proposed revision to the H_2SO_4 Emission Rate on or before December 31, 2012, as specified in Paragraph 112, then the demonstration period shall end and it shall be deemed a violation, and Hoosier shall be responsible for stipulated penalties pursuant to Section XIV (Stipulated Penalties), if either Merom Unit 1 or Unit 2 exceed an H_2SO_4 Emission Rate of 0.007 lb/mmBTU commencing on January 1, 2014.

B. <u>Monitoring of H_2SO_4 Emissions</u>

115. Commencing in the calendar year this Consent Decree is entered, and continuing annually thereafter, Hoosier shall conduct a stack test for H_2SO_4 for Merom Units 1 and 2.

116. To determine compliance with the H_2SO_4 Emission Rate established in Paragraph 110 or an alternative H_2SO_4 Emission Rate as described in Paragraphs 112-113, Hoosier shall use the reference methods and procedures specified in 40 C.F.R. Part 60, Appendix A-4, Method 8 or an alternative reference method or procedure for H_2SO_4 (such as CTM-13)

requested by Hoosier and approved by EPA (in consultation with IDEM). The results of each test shall be reported in lb/mmBTU and consist of three separate runs each performed under representative operating conditions at high, mid and low load points, not including periods of startup, shutdown, or malfunction. At least 180 Days prior to conducting such H_2SO_4 testing, Hoosier shall submit a test protocol to EPA pursuant to Section XIII (Review and Approval of Submittals) identifying the unit operating loads proposed for the high, mid, and low load ranges and anticipated reagent injection rates and the basis for such rates. Hoosier shall calculate the H_2SO_4 Emission Rate from the stack test results in accordance with 40 C.F.R. § 60.8(f). The results of each H_2SO_4 stack test shall be submitted to EPA and IDEM within sixty (60) Days of completion of each test.

117. At all times that either Merom Unit 1 or Unit 2 is in operation, Hoosier shall maintain the reagent injection rate utilized during the last successfully demonstrated compliant stack test at the corresponding high, mid, or low load point. Hoosier shall maintain a daily log of the reagent injection rates maintained at each Merom Unit, including the following information: date, average daily unit load (MWg) operating hours for each Day, reagent injection flow rate (gallons per minute and tons per hour), and reagent injection density (if injecting liquid reagent).

118. When Hoosier submits the application for amendment to its Title V Permit pursuant to Paragraph 198, that application shall include a Compliance Assurance Monitoring ("CAM") plan, under 40 C.F.R. Part 64, for the H_2SO_4 Emission Rate in Paragraph 110. The reagent injection rate described in Paragraph 117 may be used in that CAM plan.

VII. PM EMISSION REDUCTIONS AND CONTROLS

A. Optimization of Existing ESPs

119. By no later than thirty (30) Days from the Date of Entry of this Consent Decree, and continuing thereafter, Hoosier shall Continuously Operate the ESPs on Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2. Except as required during correlation testing under 40 C.F.R. Part 60, Appendix B, Performance Specification 11, and Quality Assurance Requirements under Appendix F, Procedure 2, as required by this Consent Decree, Hoosier shall, at a minimum, to the extent reasonably practicable: (a) fully energize each section of the ESP for each unit, and repair any failed ESP section at the next planned or unplanned Unit outage of sufficient length; (b) operate automatic control systems on each ESP to maximize PM collection efficiency; (c) maintain power levels delivered to the ESPs, consistent with manufacturers' specifications, the operational design of the Unit, and good engineering practices; (d) inspect for and repair during the next planned or unplanned Unit outage of sufficient length any openings in ESP casings, ductwork and expansion joints to minimize air leakage; and (e) optimize the plate-cleaning and discharge-electrode-cleaning systems for the ESPs at each Unit by varying the cycle time, cycle frequency, rapper-vibrator intensity, and number of strikes per cleaning event.

B. PM Emission Rate and Monitoring Requirements

120. Beginning June 1, 2012 for one Merom Unit and June 1, 2013 for the other Merom Unit, and continuing thereafter, Hoosier shall Continuously Operate the ESPs at the Merom Unit(s) so that each Unit achieves and maintains a PM Emission Rate of no greater than 0.030 lb/mmBTU; provided that, if Hoosier installs a Baghouse at Merom Unit 1 and/or Unit 2, then by no later than June 1, 2012 or June 1, 2013, as applicable, Hoosier shall

Continuously Operate such Baghouse so that such Unit achieves and maintains a PM Emission Rate of no greater than 0.015 lb/mmBTU.

121. By no later than December 31, 2014, and continuing thereafter, Hoosier shall Continuously Operate the ESPs at one Ratts Unit so that the Unit achieves and maintains a PM Emission Rate of no greater than 0.030 lb/mmBTU; provided that, if Hoosier installs a Baghouse at such Ratts Unit, then by no later than December 31, 2014, Hoosier shall Continuously Operate such Baghouse so that such Unit achieves and maintains a PM Emission Rate of no greater than 0.015 lb/mmBTU. If Hoosier does not elect to Retire or Repower one Ratts Unit pursuant to Paragraph 87, then by no later than December 31, 2015, and continuing thereafter, Hoosier shall Continuously Operate the ESPs at such other Ratts Unit so that the Unit achieves and maintains a PM Emission Rate of no greater than 0.030 lb/mmBTU; provided that, if Hoosier installs a Baghouse at such Ratts Unit, then by no later than December 31, 2015, Hoosier shall Continuously Operate such Baghouse so that such Unit achieves and maintains a PM Emission Rate of no greater than 0.015 lb/mmBTU.

122. Commencing in the calendar year this Consent Decree is entered, and continuing annually thereafter, Hoosier shall conduct a stack test for PM pursuant to Paragraph 123 for each Unit at Merom and Ratts.

123. To determine compliance with the PM Emission Rate established in Paragraphs 120 and 121, Hoosier shall use the applicable reference methods and procedures (filterable portion only) specified in its Clean Air Act permits and in the Indiana SIP. Each test shall consist of three separate runs performed under representative operating conditions not including periods of startup, shutdown, or malfunction. The sampling time for each run shall be at

least 120 minutes and the volume of each run shall be 1.70 dry standard cubic meters (60 dry standard cubic feet). Hoosier shall calculate the PM Emission Rate from the stack test results in accordance with 40 C.F.R. § 60.8(f). The results of each PM stack test shall be submitted to EPA and IDEM within sixty (60) Days of completion of each test.

124. When Hoosier submits the application for amendment to its Title V Permit pursuant to Paragraph 198, that application shall include a Compliance Assurance Monitoring ("CAM") plan, under 40 C.F.R. Part 64, for the PM Emission Rate in Paragraphs 120 and 121. The PM CEMS required under Paragraph 125 may be used in that CAM plan.

C. <u>PM CEMS</u>

125. Hoosier shall install, correlate, maintain, and operate PM CEMS on Merom Unit 1 and Unit 2 as specified below. The PM CEMS shall comprise a continuous particle mass monitor measuring particulate matter concentration, directly or indirectly, on an hourly average basis and a diluent monitor used to convert the concentration to units expressed in lb/mmBTU. The PM CEMS installed at each Unit must be appropriate for the anticipated stack conditions and capable of measuring PM concentrations on an hourly average basis. Hoosier shall maintain, in an electronic database, the hourly average emission values of all PM CEMS in lb/mmBTU. Except for periods of monitor malfunction, maintenance, or repair, Hoosier shall continuously operate the PM CEMS at all times when the Unit it serves is operating.

126. By no later than December 31, 2010, Hoosier shall submit to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree a plan for the installation and correlation of the PM CEMS for Merom Unit 1 and Unit 2.

127. By no later than August 31, 2011, Hoosier shall submit to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree a proposed Quality Assurance/Quality Control ("QA/QC") protocol that shall be followed for such PM CEMS.

128. In developing both the plan for installation and correlation of the PM CEMS and the QA/QC protocol, Hoosier shall use the criteria set forth in 40 C.F.R. Part 60, Appendix B, Performance Specification 11, and Appendix F, Procedure 2. Following EPA's approval (in consultation with IDEM) of the plan described in Paragraph 126 and the QA/QC protocol described in Paragraph 127, Hoosier shall thereafter operate the PM CEMS in accordance with the approved plan and QA/QC protocol.

129. By no later than December 31, 2011, Hoosier shall install, correlate, maintain, and operate the PM CEMS at Merom Unit 1 and Unit 2, conduct performance specification tests on the PM CEMS, and demonstrate compliance with the PM CEMS installation and correlation plans submitted to and approved by EPA in accordance with Paragraphs 126 and 127. Hoosier shall report, pursuant to Section XII (Periodic Reporting), the data recorded by the PM CEMS, expressed in lb/mmBTU on a rolling average 3-hour basis in electronic format to EPA and identify in the report any PM concentrations measured by the PM CEMS that are greater than 125% of the highest PM concentration level used in the most recent correlation testing performed pursuant to Performance Specification 11 in 40 C.F.R. Part 60, Appendix B.

D. General PM Provisions

130. Although stack testing shall be used to determine compliance with the PM Emission Rate established by this Consent Decree, data from PM CEMS shall be used, at a minimum, to monitor progress in reducing PM emissions.

131. Nothing in this Consent Decree is intended to, or shall, alter or waive any applicable law (including but not limited to any defenses, entitlements, challenges, or clarifications related to the Credible Evidence Rule, 62 Fed. Reg. 8314 (Feb. 24, 1997)) concerning the use of data for any purpose under the Act.

VIII. PROHIBITION ON NETTING CREDITS OR OFFSETS

132. Emission reductions at Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2 that result from actions to be taken by Hoosier after the Date of Entry of this Consent Decree to comply with the requirements of this Consent Decree shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a Netting credit or offset under the Clean Air Act's Nonattainment NSR and PSD programs.

133. The limitations on the generation and use of Netting credits and offsets set forth in the previous Paragraph do not apply to emission reductions achieved at Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2 that are greater than those required under this Consent Decree. For purposes of this Paragraph, emission reductions at Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2 are greater than those required under this Consent Decree if they result from such Unit's compliance with federally-enforceable emission limits that are more stringent than those limits imposed on Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2 under this Consent Decree and under applicable provisions of the Clean Air Act or the Indiana SIP.

134. Nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by the State or EPA as creditable contemporaneous emission decreases for the purpose of attainment demonstrations submitted pursuant to § 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on National Ambient Air Quality Standards, PSD increment, or air quality related values, including visibility, in a Class I area.

IX. ENVIRONMENTAL MITIGATION PROJECTS

135. Hoosier shall implement the Environmental Mitigation Projects ("Projects") described in Appendix A to this Consent Decree in compliance with the approved plans and schedules for such Projects and other terms of this Consent Decree. In implementing the Projects, Hoosier shall spend no less than $5,000,000 in Project Dollars. Hoosier shall not include its own personnel costs in overseeing the implementation of the Projects as Project Dollars.

136. Hoosier shall maintain, and present to EPA upon request, all documents to substantiate the Project Dollars expended to implement the Projects described in Appendix A, and shall provide these documents to EPA within thirty (30) Days of a request for the documents.

137. All plans and reports prepared by Hoosier pursuant to the requirements of this Section IX of the Consent Decree and required to be submitted to EPA shall be publicly available from Hoosier without charge.

138. Hoosier shall certify, as part of each plan submitted to EPA for any Project, that Hoosier is not otherwise required by law to perform the Project described in the plan, that Hoosier is unaware of any other person who is required by law to perform the Project, and that

Hoosier will not use any Project, or portion thereof, to satisfy any obligations that it may have under other applicable requirements of law, including any applicable renewable or energy efficiency portfolio standards.

139. Hoosier shall use good faith efforts to secure as much benefit as possible for the Project Dollars expended, consistent with the applicable requirements and limits of this Consent Decree.

140. If Hoosier elects (where such an election is allowed) to undertake a Project by contributing funds to another person or entity that will carry out the Project in lieu of Hoosier, but not including Hoosier's agents or contractors, that person or instrumentality must, in writing: (a) identify its legal authority for accepting such funding; and (b) identify its legal authority to conduct the Project for which Hoosier contributes the funds. Regardless of whether Hoosier elects (where such election is allowed) to undertake a Project by itself or to do so by contributing funds to another person or instrumentality that will carry out the Project, Hoosier acknowledges that it will receive credit for the expenditure of such funds as Project Dollars only if Hoosier demonstrates that the funds have been actually spent by either Hoosier or by the person or instrumentality receiving them, and that such expenditures met all requirements of this Consent Decree.

141. Hoosier shall comply with the reporting requirements described in Appendix A.

142. Within sixty (60) Days following the completion of each Project required under this Consent Decree (including any applicable periods of demonstration or testing), Hoosier shall submit to the United States a report that documents the date that the Project was completed, Hoosier's results of implementing the Project, including the emission

reductions or other environmental benefits achieved, and the Project Dollars expended by Hoosier in implementing the Project.

X. CIVIL PENALTY

143. Within thirty (30) Days after the Date of Entry of this Consent Decree, Hoosier shall pay to the United States and the State of Indiana a civil penalty in the amount of $950,000.

a. The United States' portion of the civil penalty shall be paid as follows: Within thirty (30) Days after the Date of Entry of this Consent Decree, Hoosier shall pay a civil penalty to the United States in the amount of $850,000 paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing USAO File Number 2010V00713 and DOJ Case Number 90-5-2-1-09864 and the civil action case name and case number of this action. The costs of such EFT shall be Hoosier's responsibility. Payment shall be made in accordance with instructions provided to Hoosier by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Indiana. Any funds received after 2:00 p.m. EDT shall be credited on the next business day. At the time of payment, Hoosier shall provide notice of payment, referencing the USAO File Number, the DOJ Case Number, and the civil action case name and case number, to the Department of Justice and to EPA in accordance with Section XIX (Notices) of this Consent Decree.

b. The State of Indiana's portion of the civil penalty shall be paid as follows: Within thirty (30) Days after the Date of Entry of this Consent Decree, Hoosier shall pay a civil penalty to the State of Indiana in the amount of $100,000. Payment shall

be made by check made out to the "Environmental Management Special Fund" and shall be mailed to:

Indiana Department of Environmental Management
Cashier – Mail Code 50-10C
100 North Senate Avenue
Indianapolis, IN 46204-2251

At the time of payment, Hoosier shall also provide notice of payment, referencing the civil action case name and case number, to the State of Indiana in accordance with Section XIX (Notices) of this Consent Decree.

144. Failure to timely pay the civil penalty shall subject Hoosier to interest accruing from the date payment is due until the date payment is made at the rate prescribed by 28 U.S.C. § 1961, and shall render Hoosier liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment.

145. Payments made pursuant to 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.

XI. RESOLUTION OF CIVIL CLAIMS AGAINST HOOSIER

A. Resolution of Plaintiffs' Civil Claims

146. Claims of the United States Based on Modifications Occurring Before the Date of Lodging of this Consent Decree. Entry of this Consent Decree shall resolve all civil claims of the United States against Hoosier that arose from any modifications commenced at Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2, prior to the Date of Lodging of this Consent Decree, including but not limited to those modifications alleged in the NOV/FOV issued by EPA to Hoosier on August 26, 2009 and the Complaint filed

in this civil action, under any or all of: (a) Parts C or D of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, 7501-7515, and the implementing Indiana SIP that EPA has approved and/or promulgated under Section 110 of the Act; (b) Standards of Performance for New Stationary Sources program, 42 U.S.C. § 7411 and 40 C.F.R. § 60.14; and (c) Title V of the Clean Air Act, 42 U.S.C. § 7661-7661f, but only to the extent that such claims are based on Hoosier's failure to obtain an operating permit that reflects applicable requirements imposed under Parts C or D of Subchapter I of the Clean Air Act. The claims resolved for purposes of this Paragraph under Parts C or D of Subchapter I of the Act shall not include claims based on carbon dioxide ("CO_2") even if CO_2 becomes regulated under Parts C or D of Subchapter I of the Act after the Date of Entry of this Consent Decree.

147. Claims of the State of Indiana Based on Modifications Occurring Before the Lodging of this Consent Decree. Entry of this Consent Decree shall resolve all civil claims of the State of Indiana under (a) Indiana regulations at 326 IAC 2-2 *et seq*. (PSD Requirements) and 326 IAC 2-3 *et seq*. (Emission Offset) including all versions of the Indiana major New Source Review program that existed at the time of the modifications alleged in the Complaint; and (b) Indiana statutes as they specifically apply to the programs implemented pursuant to Subchapter V of the Act and Indiana regulations at 326 IAC 2-7 *et seq.* (Part 70 Permit Program), that arose from any modification that commenced at Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2 prior to the Date of Lodging of this Consent Decree, including but not limited to those claims and modifications alleged in the Complaints filed in this civil action and those claims and modifications as asserted in the NOV/FOV issued by EPA to Hoosier on August 26, 2009.

148. Claims Based on Modifications after the Date of Lodging of this Consent Decree. Entry of this Consent Decree also shall resolve all civil claims of the United States and the State of Indiana for pollutants (except H_2SO_4 at Ratts Units 1 and 2) regulated under Parts C and D of Subchapter I of the Clean Air Act and under regulations promulgated thereunder as of the Date of Lodging of this Consent Decree, where such claims are based on any modification commenced before December 31, 2015, or before December 31, 2016 solely for a Unit at Ratts provided that Hoosier timely elects to Repower such Unit, and:

a. where such modification is commenced at any Hoosier System Unit after the Date of Lodging of this Consent Decree, or

b. where such modification is one this Consent Decree expressly directs Hoosier to undertake.

The term "modification" as used in this Paragraph shall have the meaning that term is given under the Clean Air Act and under the regulations in effect as of the Date of Lodging of this Consent Decree. The claims resolved for purposes of this Paragraph under Parts C or D of Subchapter I of the Act shall not include claims based upon CO_2 even if CO_2 becomes regulated under Parts C or D of Subchapter I of the Act after the Date of Entry of this Consent Decree.

149. Reopener. The resolution of the United States' civil claims against Hoosier, as provided by this Subsection A, is subject to the provisions of Subsection B of this Section.

B. Pursuit of Plaintiffs' Civil Claims Otherwise Resolved by Subsection A

150. Bases for Pursuing Resolved Claims for Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2. If Hoosier violates (a) the System-Wide Annual NO_x Tonnage Limitations required pursuant to Paragraphs 71-73, or (b) the System-Wide Annual SO_2Tonnage

Limitations required pursuant to Paragraphs 94-99; or if Hoosier operates a Unit more than ninety (90) Days past a date established in this Consent Decree without completing the required installation, upgrade, Retirement, Repower, or commencing Continuous Operation of any emission control device or achieving any Emission Rate or limitation required pursuant to Paragraphs 65-67, 68-70, 84-85, 90-92, 109-111, 113-114, and 119-121, then Plaintiffs may pursue any claim at Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2 that is otherwise resolved under Subsection A (Resolution of Plaintiffs' Civil Claims), subject to (a) and (b) below.

a. For any claims based on modifications undertaken at Ratts Unit 1 or Unit 2 (unless Hoosier has elected to Repower such Unit(s) pursuant to Paragraph 87), for the pollutant in question, claims may be pursued only where the modification(s) on which such claim is based was commenced within the five (5) years preceding the violation or failure specified in this Paragraph.

b. For any claims based on modifications undertaken at Merom Unit 1 and Unit 2 (and at a Ratts Unit that Hoosier has elected to Repower) for the pollutant in question, claims may be pursued only where the modification(s) on which such claim is based was commenced: (1) after the Date of Lodging of this Consent Decree and (2) within the five (5) years preceding the violation or failure specified in this Paragraph.

151. Additional Bases for Pursuing Resolved Claims for Modifications at Merom Unit 1 and Unit 2 (and at a Ratts Unit that Hoosier has elected to Repower). Solely with respect to Merom Unit 1 and Unit 2 (and at a Ratts Unit that Hoosier has elected to Repower),

Plaintiffs may also pursue claims arising from a modification (or collection of modifications) at such Units that has otherwise been resolved under Subsection A (Resolution of Plaintiffs' Civil Claims) if the modification (or collection of modifications) at such Unit(s) on which such claim is based (a) was commenced after the Date of Lodging of this Consent Decree and (b) individually (or collectively) increased the maximum hourly Emission Rate of that Unit for NO_x or SO_2 (as measured by 40 C.F.R. § 60.14 (b) and (h)) by more than ten percent (10%).

152. Additional Bases for Pursuing Resolved Claims for Modifications at Ratts.

a. Solely with respect to Ratts Unit 1 and/or Unit 2 (unless Hoosier has elected to Repower such Unit(s)), the United States may also pursue claims arising from a modification (or collection of modifications) that has otherwise been resolved under Subsection A (Resolution of Plaintiffs' Civil Claims), if the modification (or collection of modifications) at Ratts Unit 1 or Unit 2 on which the claim is based was commenced within the five (5) years preceding any of the following events:

1. a modification (or collection of modifications) at Ratts Unit 1 or Unit 2 commenced after the Date of Lodging of this Consent Decree increases the maximum hourly Emission Rate for such Ratts Unit 1 or Unit 2 for the relevant pollutant (NO_x or SO_2) (as measured by 40 C.F.R. § 60.14(b) and (h));
2. the aggregate of all Capital Expenditures made at Ratts Unit 1 or Unit 2 exceeds $125/KW on the Unit's Boiler Island (based on the generating capacities identified in Paragraph 46) during the period from the Date of Entry of this Consent Decree through December

31, 2015. (Capital Expenditures shall be measured in calendar year 2010 constant dollars, as adjusted by the McGraw-Hill Engineering News-Record Construction Cost Index); or

3. a modification (or collection of modifications) at Ratts Unit 1 or Unit 2 commenced after the Date of Lodging of this Consent Decree results in an emissions increase of NO_x and/or SO_2 at Ratts Unit 1 or Unit 2, and such increase: (i) presents, by itself, or in combination with other emissions or sources, "an imminent and substantial endangerment" within the meaning of Section 303 of the Act, 42 U.S.C. §7603; (ii) causes or contributes to violation of a NAAQS in any Air Quality Control Area that is in attainment with that NAAQS; (iii) causes or contributes to violation of a PSD increment; or (iv) causes or contributes to any adverse impact on any formally-recognized air quality and related values in any Class I area. The introduction of any new or changed NAAQS shall not, standing alone, provide the showing needed under Subparagraphs (3)(ii) or (3)(iii) of this Paragraph to pursue any claim for a modification at Ratts Unit 1 or Unit 2 resolved under Subsection A of this Section.

b. Solely with respect to Ratts Unit 1 and/or Unit 2 (unless Hoosier elects to Retire and/or Repower both Ratts Units), Plaintiffs may also pursue claims arising from a modification (or collection of modifications) that has otherwise been resolved under Subsection A (Resolution of Plaintiffs' Civil Claims) of this Consent Decree if such modification (or collection of

modifications) results in an emissions increase of SO_2 at such Unit, and such increase causes the emissions at Ratts to exceed the tonnage limitations of Paragraphs 83 or 89.

XII. PERIODIC REPORTING

153. After entry of this Consent Decree, Hoosier shall submit to Plaintiffs a periodic report, within sixty (60) Days after the end of each half of the calendar year (January through June and July through December). The report shall include the following information:

a. all information necessary to determine compliance with the requirements of the following Paragraphs of this Consent Decree: Paragraphs 65 through 82 concerning NO_x emissions and monitoring, including all information necessary to determine whether it is technically infeasible to Continuously Operate the SCR as provided in Paragraph 70, and the surrender of NO_x Allowances; Paragraphs 83 through 108 concerning SO_2 emissions and monitoring, and the surrender of SO_2 Allowances; Paragraphs 109 through 118 concerning H_2SO_4 emissions and monitoring; and Paragraphs 119 through 131 concerning PM emissions and monitoring;

b. daily removal efficiencies for SO_2 emissions from Merom Unit 1 and Unit 2 and 30-Day Rolling Average SO_2 Removal Efficiencies for Merom Unit 1 and Unit 2, to demonstrate compliance with Paragraph 90;

c. 3-hour rolling average PM CEMS data as required by Paragraph 129, identifying all periods in excess of 0.030 lb/mmBTU or 0.015 lb/mmBTU, as appropriate, and all periods of monitor malfunction, maintenance, and/or repair as provided in Paragraph 125;

d. all information relating to Super-Compliant NO_x Allowances that Hoosier claims to have generated in accordance with Paragraphs 79 through compliance beyond the requirements of this Consent Decree; and

e. all information indicating that the installation or upgrade and commencement of operation of a new or upgraded pollution control device may be delayed, including the nature and cause of the delay, and any steps taken by Hoosier to mitigate such delay.

154. In any periodic report submitted pursuant to this Section, Hoosier may incorporate by reference information previously submitted under its Title V permitting requirements, provided that Hoosier attaches the Title V Permit report (or the pertinent portions of such report) and provides a specific reference to the provisions of the Title V Permit report that are responsive to the information required in the periodic report.

155. In addition to the reports required by Paragraph 153, if Hoosier violates or deviates from any provision of this Consent Decree, Hoosier shall submit to Plaintiffs a report on the violation or deviation within ten (10) business days after Hoosier knew or should have known of the event. In the report, Hoosier shall explain the cause or causes of the violation or deviation and any measures taken or to be taken by Hoosier to cure the reported violation or deviation or to prevent such violation or deviations in the future. If at any time, the provisions of this Consent Decree are included in Title V Permits, consistent with the requirements for such inclusion in this Consent Decree, then the deviation reports required under applicable Title V regulations shall be deemed to satisfy all the requirements of this Paragraph.

156. Each Hoosier report shall be signed by the Responsible Official as defined in Title V of the Clean Air Act for Merom and/or Ratts, as appropriate, and shall contain the following certification:

> *This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.*

157. If any NO_x or SO_2 Allowances are surrendered to any non-profit third party pursuant to Paragraphs 81 and/or 107, the non-profit third party's certification shall be signed by a managing officer of the non-profit third party and shall contain the following language:

> *I certify under penalty of law that _____ [name of non-profit third party] will not sell, trade, or otherwise exchange any of the allowances and will not use any of the allowances to meet any obligation imposed by any environmental law. I understand that there are significant penalties for making misrepresentations to or misleading the United States.*

XIII. REVIEW AND APPROVAL OF SUBMITTALS

158. Hoosier shall submit each plan, report, or other submission required by this Consent Decree to Plaintiffs whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. EPA may approve the submittal or decline to approve it and provide written comments explaining the bases for declining such approval as soon as reasonably practicable. Within sixty (60) Days of receiving written comments from EPA, Hoosier shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal to EPA; or (b) submit the matter for

dispute resolution, including the period of informal negotiations, under Section XVI (Dispute Resolution) of this Consent Decree.

159. Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, Hoosier shall implement the approved submittal in accordance with the schedule specified therein or another EPA-approved schedule.

XIV. STIPULATED PENALTIES

160. For any failure by Hoosier to comply with the terms of this Consent Decree, and subject to the provisions of Sections XV (Force Majeure) and XVI (Dispute Resolution), Hoosier shall pay, within thirty (30) Days after receipt of written demand to Hoosier by the United States, the following stipulated penalties to the United States:

Consent Decree Violation	**Stipulated Penalty**
a. Failure to pay the civil penalty as specified in Section X (Civil Penalty) of this Consent Decree	$10,000 per Day

b. Failure to comply with any applicable 30-Day Rolling Average NO_x Emission Rate, 30-Day Rolling Average SO_2 Emission Rate, 30-Day Rolling Average SO_2 Removal Efficiency, H_2SO_4 Emission Rate, or PM Emission Rate	$2,500 per Day per violation where the violation is less than 5% in excess of the lb/mmBTU limits, or less than 0.25% below the removal efficiency requirement $5,000 per Day per violation where the violation is equal to or greater than 5% but less than 10% in excess of the lb/mmBTU limits, or equal to or greater than 0.25% but less than 0.50% below the removal efficiency requirement $10,000 per Day per violation where the violation is equal to or greater than 10% in excess of the lb/mmBTU limits, or greater than 0.50% below the removal efficiency requirement
c. Failure to comply with the applicable System-Wide Annual NO_x Tonnage Limitation established by this Consent Decree	$5,000 per ton for first 100 tons, $10,000 per ton for each additional ton above 100 tons, plus the surrender of NO_x Allowances in an amount equal to two times the number of tons of NO_x emitted that exceeded the System-Wide Annual NO_x Tonnage Limitation
d. Failure to comply with the applicable System-Wide Annual SO_2 Tonnage Limitation established by this Consent Decree	$5,000 per ton for first 100 tons, $10,000 per ton for each additional ton above 100 tons, plus the Surrender of SO_2 Allowances in an amount equal to two times the number of tons of SO_2 emitted that exceeded the System-Wide Annual SO_2 Tonnage Limitation

e. Failure to comply with the applicable Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation required by Paragraphs 83, 88, and 89.	$5,000 per ton per month for the first 100 tons over the limit, and $10,000 per ton per month for each additional ton over the limit, plus the Surrender of SO_2 Allowances in an amount equal to two times the number of tons of SO_2 emitted that exceeded the Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation

f. Failure to comply with the applicable Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation required by Paragraph 86.	The Surrender of SO_2 Allowances in an amount equal to two times the number of tons of SO_2 emitted that exceeded the Plant-Wide 12-Month Rolling Tonnage SO_2 Limitation up to 1,000 tons in excess of the limit. The Surrender of SO_2 Allowances in an amount equal to three times the number of tons of SO_2 emitted that exceeded the Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation greater than 1,000 tons and less than 3,000 tons in excess of the limit. The Surrender of SO_2 Allowances in an amount equal to four times the number of tons of SO_2 emitted that exceeded the Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation greater than 3,000 tons and less than 4,000 tons in excess of the limit. $10,000 per ton per month for each ton that is greater than 4,000 tons in excess of the limit, plus the Surrender of SO_2 Allowances in an amount equal to two times the number of tons of SO_2 emitted that exceeded the Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation

g. Failure to install, commence Continuous Operation, or Continuously Operate a NO_x, SO_2, H_2SO_4, or PM control device, included in Paragraphs 65-70, 90-93, 109-110, 120-121 on either Merom Unit 1 or Unit 2 or Ratts Unit 1 or Unit 2, as required under this Consent Decree	$10,000 per Day per violation during the first 30 Days; $37,500 per Day per violation thereafter
h. Failure to make a timely election pursuant to Paragraph 87	$1,000 per Day for the first 15 Days; $15,000 per Day for each Day thereafter
i. Failure to Retire or Repower a Unit, if elected, as required by Paragraph 88	$10,000 per Day per violation for the first 30 Days; $37,500 per Day per violation for each Day thereafter
j. Failure to conduct a stack test for PM and H_2SO_4 as required by Paragraphs 115 and 122 of this Consent Decree	$5,000 per Day per violation
k. Failure to install or operate NO_x, SO_2, and/or PM CEMS as required in this Consent Decree	$1,000 per Day per violation
l. Failure to apply for any permit required by Section XVII (Permits)	$1,000 per Day per violation
m. Failure to timely submit, modify, or implement, as approved, the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree	$750 per Day per violation during the first 10 Days; $1,000 per Day per violation thereafter
n. Failure to surrender SO_2 Allowances as required under this Consent Decree	$37,500 per Day, plus $1,000 per SO_2 Allowance not surrendered
o. Failure to surrender NO_x Allowances as required under this Consent Decree	$37,500 per Day, plus $1,000 per NO_x Allowance not surrendered
p. Failure to demonstrate the third-party surrender of a NO_x or SO_2 Allowance in accordance with Paragraphs 81 and 107	$2,500 per Day per violation
q. Failure to optimize the existing ESPs as required by Paragraph 119	$1,000 per Day per violation
r. Failure to undertake and complete any of the Environmental Mitigation Projects in compliance with Section IX (Environmental Mitigation Projects) of this Consent Decree	$1,000 per Day per violation during the first 30 Days; $5,000 per Day per violation thereafter
s. Any other violation of this Consent Decree	$1,000 per Day per violation

161. Violations of any limit based on a 30-Day rolling average constitutes thirty (30) Days of violation but where such a violation (for the same pollutant and from the same Unit) recurs within periods less than thirty (30) Days, Hoosier shall not be obligated to pay a daily stipulated penalty for any Day of the recurrence for which a stipulated penalty has already been paid.

162. All stipulated penalties shall begin to accrue on the Day after the performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases, whichever is applicable. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

163. For purposes of the stipulated penalty Allowance Surrender required pursuant to Subparagraphs 160(e)-(f), Hoosier shall make the Surrender of any Allowances required for failure to meet an applicable Plant-Wide 12-Month Rolling SO_2 Tonnage Limitation on a calendar year basis within forty-five (45) Days from Hoosier's receipt of the next annual deduction report for Ratts.

164. Hoosier shall pay all stipulated penalties to the United States within thirty (30) Days of receipt of written demand to Hoosier from the United States, and shall continue to make such payments every thirty (30) Days thereafter until the violation(s) no longer continues, unless Hoosier elects within twenty (20) Days of receipt of written demand to Hoosier from the United States to dispute the accrual of stipulated penalties in accordance with the provisions in Section XVI (Dispute Resolution) of this Consent Decree.

165. Stipulated penalties shall continue to accrue as provided in accordance with Paragraph 162 during any dispute, with interest on accrued stipulated penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement, or by a decision of the United States pursuant to Section XVI (Dispute Resolution) of this Consent Decree that is not appealed to the Court, accrued stipulated penalties agreed or determined to be owing, together with accrued interest, shall be paid within thirty (30) Days of the effective date of the agreement or of the receipt of the United States' decision;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Hoosier shall, within thirty (30) Days of receipt of the Court's decision or order, pay all accrued stipulated penalties determined by the Court to be owing, together with interest accrued on such penalties determined by the Court to be owing, except as provided in Subparagraph c, below;

c. If the Court's decision is appealed by either Party, Hoosier shall, within fifteen (15) Days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined to be owing, together with interest accrued on such stipulated penalties determined to be owing by the appellate court.

Notwithstanding any other provision of this Consent Decree, the accrued stipulated penalties agreed by the United States and Hoosier, or determined by the United States through Dispute Resolution, to be owing may be less than the stipulated penalty amounts set forth in Paragraph 160.

166. All monetary stipulated penalties shall be paid in the manner set forth in Section X (Civil Penalty) of this Consent Decree and all Allowance Surrender stipulated penalties shall comply with the Allowance Surrender procedures of Paragraphs 80-82 and 106-108.

167. Should Hoosier fail to pay stipulated penalties in compliance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961.

168. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States by reason of Hoosier's failure to comply with any requirement of this Consent Decree or applicable law, except that for any violation of the Act for which this Consent Decree provides for payment of a stipulated penalty, Hoosier shall be allowed a credit for stipulated penalties paid against any statutory penalties also imposed for such violation.

169. If any of the Units at Merom or Ratts exceed an applicable 30-Day Rolling Average Emission Rate for NO_x or SO_2, or 30-Day Rolling Average SO_2 Removal Efficiency set forth in this Consent Decree due to malfunction, Hoosier, bearing the burden of proof, has an affirmative defense to stipulated penalties under this Consent Decree, if Hoosier has complied with the reporting requirements of Paragraphs 174 and 175 and has demonstrated all of the following:

a. the excess emissions were caused by a sudden, unavoidable breakdown of technology, beyond Hoosier's control;

b. the excess emissions (1) did not stem from any activity or event that could have been foreseen and avoided, or planned for, and (2) could not have been avoided by better operation and maintenance practices;

c. to the maximum extent practicable, the air pollution control equipment and processes were maintained and operated in a manner consistent with good practice for minimizing emissions;

d. repairs were made in an expeditious fashion when Hoosier knew or should have known that an applicable 30-Day Rolling Average Emission Rate or 30-Day Rolling Average Removal Efficiency was being or would be exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;

e. the amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

f. all possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

g. all emission monitoring systems were kept in operation if at all possible;

h. Hoosier's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence;

i. the excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

j. Hoosier properly and promptly notified EPA as required by this Consent Decree.

170. To assert an affirmative defense for malfunction under Paragraph 169, Hoosier shall submit all data demonstrating the actual emissions for the Day the Malfunction occurs and the 29-Day period following the Day the Malfunction occurs. Hoosier may, if it elects, submit emissions data for the same 30-Day period but that excludes the excess emissions.

171. If any of the Units at Merom or Ratts exceed an applicable 30-Day Rolling Average Emission Rate for NO_x or SO_2, or 30-Day Rolling Average SO_2 Removal Efficiency set forth in this Consent Decree due to startup or shutdown, Hoosier, bearing the burden of proof, has an affirmative defense to stipulated penalties under this Consent Decree, if Hoosier has complied with the reporting requirements of Paragraphs 174 and 175 and has demonstrated all of the following:

a. the periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design;

b. the excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

c. if the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

d. at all time, the facility was operated in a manner consistent with good practice for minimizing emissions;

e. the frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable;

f. all possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

g. All emissions monitoring systems were kept in operation if at all possible;

h. Hoosier's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence; and

i. Hoosier properly and promptly notified EPA as required by this Consent Decree.

172. To assert an affirmative defense for startup or shutdown under Paragraph 171, Hoosier shall submit all data demonstrating the actual emissions for the Day the excess emissions from startup or shutdown occurs and the 29-Day period following the Day the excess emissions from startup or shutdown occurs. Hoosier may, if it elects, submit emissions data for the same 30-Day period but that excludes the excess emissions.

173. If excess emissions occur due to a malfunction during routine startup and shutdown, then those instances shall be treated as other malfunctions subject to Paragraph 169.

174. For an affirmative defense under Paragraphs 169 and 171, Hoosier, bearing the burden of proof, shall demonstrate, through submission of the data and information under the reporting provisions of this Section, that all reasonable and practicable measures within Hoosier's control were implemented to prevent the occurrence of the excess emissions.

175. Hoosier shall provide notice to Plaintiffs in writing of Hoosier's intent to assert an affirmative defense for malfunction, startup, or shutdown under Paragraphs 169 and 171, as soon as practicable, but in no event later than twenty-one (21) Days following the date of the malfunction, startup or shutdown. This notice shall be submitted to EPA and the State pursuant to the provisions of Section XIX (Notices). The notice shall contain:

a. The identity of each stack or other emission point where the excess emissions occurred;

b. The magnitude of the excess emissions expressed in lb/mmBTU or % Removal Efficiency and the operating data and calculations used in determining the magnitude of the excess emissions;

c. The time and duration or expected duration of the excess emissions;

d. The identity of the equipment from which the excess emissions emanated;

e. The nature and cause of the excess emissions;

f. The steps taken, if the excess emissions were the result of a malfunction, to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunction;

g. The steps that were or are being taken to limit the excess emissions; and

h. If applicable, a list of the steps taken to comply with permit conditions governing Unit operation during periods of startup, shutdown, and/or malfunction.

176. A malfunction, startup, or shutdown shall not constitute a Force Majeure Event unless the malfunction, startup, or shutdown also meets the definition of a Force Majeure Event, as provided in Section XV (Force Majeure).

177. The affirmative defense provided herein is only an affirmative defense to stipulated penalties for violations of this Consent Decree, and not a defense to any civil or administrative action for injunctive relief.

XV. FORCE MAJEURE

178. For purposes of this Consent Decree, a "Force Majeure Event" shall mean an event that has been or will be caused by circumstances beyond the control of Hoosier, its contractors, or any entity controlled by Hoosier that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite Hoosier's best efforts to fulfill the obligation. "Best efforts to fulfill the obligation" include using the best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring and (b)

after it has occurred, such that the delay and any adverse environmental effect of the delay or violation is minimized to the greatest extent possible.

179. Notice of Force Majeure Events. If any event occurs or has occurred that may delay compliance with or otherwise cause a violation of any obligation under this Consent Decree, as to which Hoosier intends to assert a claim of Force Majeure, Hoosier shall notify Plaintiffs in writing as soon as practicable, but in no event later than twenty-one (21) Days following the date Hoosier first knew, or by the exercise of due diligence should have known, that the event caused or may cause such delay or violation. In this notice, Hoosier shall reference this Paragraph of this Consent Decree and describe the anticipated length of time that the delay or violation may persist, the cause or causes of the delay or violation, all measures taken or to be taken by Hoosier to prevent or minimize the delay and any adverse environmental effect of the delay or violation, the schedule by which Hoosier proposes to implement those measures, and Hoosier's rationale for attributing a delay or violation to a Force Majeure Event. Hoosier shall adopt all reasonable measures to avoid or minimize such delays or violations. Hoosier shall be deemed to know of any circumstance which Hoosier, its contractors, or any entity controlled by Hoosier knew or should have known.

180. Failure to Give Notice. If Hoosier fails to comply with the notice requirements of this Section, the United States (after consultation with Indiana) may void Hoosier's claim for Force Majeure as to the specific event for which Hoosier has failed to comply with such notice requirement.

181. United States' Response. The United States shall notify Hoosier in writing regarding Hoosier's claim of Force Majeure within twenty (20) business days of receipt of the

notice provided under Paragraph 179. If the United States (after consultation with Indiana) agrees that a delay in performance has been or will be caused by a Force Majeure Event, the United States and Hoosier shall stipulate to an extension of deadline(s) for performance of the affected compliance requirement(s) by a period equal to the delay actually caused by the event. In such circumstances, an appropriate modification shall be made pursuant to Section XXIII (Modification) of this Consent Decree.

182. Disagreement. If the United States (after consultation with Indiana) does not accept Hoosier's claim of Force Majeure, or if the United States and Hoosier cannot agree on the length of the delay actually caused by the Force Majeure Event, the matter shall be resolved in accordance with Section XVI (Dispute Resolution) of this Consent Decree.

183. Burden of Proof. In any dispute regarding Force Majeure, Hoosier shall bear the burden of proving that any delay in performance or any other violation of any requirement of this Consent Decree was caused by or will be caused by a Force Majeure Event. Hoosier shall also bear the burden of proving that Hoosier gave the notice required by this Section and the burden of proving the anticipated duration and extent of any delay(s) attributable to a Force Majeure Event. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.

184. Events Excluded. Unanticipated or increased costs or expenses associated with the performance of Hoosier's obligations under this Consent Decree shall not constitute a Force Majeure Event.

185. Potential Force Majeure Events. The Parties agree that, depending upon the circumstances related to an event and Hoosier's response to such circumstances, the kinds of events listed below are among those that could qualify as Force Majeure Events within the meaning of this Section: construction, labor, or equipment delays; malfunction of a Unit or emission control device; unanticipated coal supply or pollution control reagent delivery interruptions; acts of God; acts of war or terrorism; and orders by a government official, government agency, other regulatory authority, or a regional transmission organization, acting under and authorized by applicable law, that directs Hoosier to supply electricity in response to a system-wide (state-wide or regional) emergency. Depending upon the circumstances and Hoosier's response to such circumstances, failure of a permitting authority to issue a necessary permit in a timely fashion may constitute a Force Majeure Event where the failure of the permitting authority to act is beyond the control of Hoosier and Hoosier has taken all steps available to it to obtain the necessary permit, including, but not limited to: submitting a complete permit application; responding to requests for additional information by the permitting authority in a timely fashion; and accepting lawful permit terms and conditions after expeditiously exhausting any legal rights to appeal terms and conditions imposed by the permitting authority.

186. As part of the resolution of any matter submitted to this Court under Section XVI (Dispute Resolution) regarding a claim of Force Majeure, the United States and Hoosier by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay agreed to by the United States or

approved by the Court. Hoosier shall be liable for stipulated penalties pursuant to Section XIV (Stipulated Penalties) for its failure thereafter to complete the work in accordance with the extended or modified schedule (provided that Hoosier shall not be precluded from making a further claim of Force Majeure with regard to meeting any such extended or modified schedule).

XVI. DISPUTE RESOLUTION

187. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, provided that the Party invoking such procedure has first made a good faith attempt to resolve the matter with the other Party.

188. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Party advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice, and the Parties in dispute shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) Days following receipt of such notice.

189. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations shall not extend beyond thirty (30) Days from the date of the first meeting between the Parties' representatives unless they agree in writing to shorten or extend this period.

190. If the Parties are unable to reach agreement during the informal negotiation period, the Plaintiffs shall provide Hoosier with a written summary of its position regarding the dispute. The written position provided by the Plaintiffs shall be considered binding

unless, within forty-five (45) Days thereafter, Hoosier seeks judicial resolution of the dispute by filing a petition with this Court. If Hoosier seeks judicial resolution, the Plaintiffs' written summary shall be deemed its initial filing with this Court regarding the dispute. The Plaintiffs may submit a response to the petition within forty-five (45) Days of filing.

191. The time periods set out in this Section may be shortened or lengthened upon motion to the Court of one of the Parties to the dispute, explaining the Party's basis for seeking such a scheduling modification.

192. This Court shall not draw any inferences nor establish any presumptions adverse to either Party as a result of invocation of this Section or the Parties' inability to reach agreement.

193. As part of the resolution of any dispute under this Section, in appropriate circumstances the Parties may agree, or this Court may order, an extension or modification of the schedule for the completion of the activities required under this Consent Decree to account for the delay that occurred as a result of dispute resolution. Hoosier shall be liable for stipulated penalties pursuant to Section XIV (Stipulated Penalties) for its failure thereafter to complete the work in accordance with the extended or modified schedule, provided that Hoosier shall not be precluded from asserting that a Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule.

194. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their filings with the Court under Paragraph 190, the Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

XVII. PERMITS

195. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires Hoosier to secure a permit to authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under State law, Hoosier shall make such application in a timely manner. Plaintiffs will use their best efforts to expeditiously fulfill their role in reviewing all permit applications submitted by Hoosier in order to meet the requirements of this Consent Decree.

196. When permits are required, Hoosier shall complete and submit applications for such permits to IDEM to allow sufficient time for all legally required processing and review of the permit request, including requests for additional information by IDEM. Any failure by Hoosier to submit a timely permit application for Merom Unit 1 and Unit 2 and/or Ratts Unit 1 and Unit 2 shall bar any use by Hoosier of Section XV (Force Majeure) of this Consent Decree, where a Force Majeure claim is based on permitting delays.

197. Notwithstanding the reference to Hoosier's Title V Permits for Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2 in this Consent Decree, the enforcement of such permit shall be in accordance with their own terms and the Act. Hoosier's Title V Permits for Merom and Ratts shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of a Title V Permit, subject to the terms of Section XXVII (Conditional Termination of Enforcement Under Decree) of this Consent Decree.

198. Within one hundred eighty (180) Days after the Date of Entry of this Consent Decree, Hoosier shall amend any applicable Title V Permit application(s), or apply for amendments of its Title V Permits, to include a schedule for all Unit-specific, plant-specific, and system-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, (a) Emission Rates and Removal Efficiencies, (b) the applicable System-Wide Annual NO_x Tonnage Limitations and System-Wide Annual SO_2 Tonnage Limitations, (c) the Plant-Wide 12-Month Rolling SO_2 Tonnage Limitations at Ratts, and (d) the requirements pertaining to the Surrender of SO_2 and NO_x Allowances.

199. By no later than December 31, 2015, Hoosier shall either apply to permanently include the requirements and limitations enumerated in this Consent Decree into a federally enforceable non-Title V permit or request a site-specific amendment to the Indiana SIP to include the requirements and limitations enumerated in this Consent Decree. The permit or Indiana SIP amendment shall require compliance with the following: (a) any applicable Emission Rate or Removal Efficiency, (b) the applicable System-Wide Annual NO_x Tonnage Limitations and System-Wide Annual SO_2 Tonnage Limitations, (c) the applicable Plant-Wide 12-Month Rolling SO_2 Tonnage Limitations at Ratts, and (d) the NO_x and SO_2 Allowance Surrender requirements set forth in this Consent Decree.

200. Hoosier shall provide the United States with a copy of each application for a federally enforceable permit or Indiana SIP amendment, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any public comment opportunity.

201. Prior to termination of this Consent Decree, Hoosier shall obtain enforceable provisions in its Title V permits for Merom and Ratts that incorporate all Unit-specific, plant-specific, and system-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, (a) Emission Rates and Removal Efficiencies, (b) the applicable System-Wide Annual NO_x Tonnage Limitations and System-Wide Annual SO_2 Tonnage Limitations, (c) the Plant-Wide 12-Month Rolling SO_2 Tonnage Limitations at Ratts, and (d) the requirements pertaining to the Surrender of SO_2 and NO_x Allowances.

202. If Hoosier sells or transfers to an entity unrelated to Hoosier ("Third Party Purchaser") part or all of its Operational or Ownership Interest covered under this Consent Decree, Hoosier shall comply with the requirements of Section XX (Sales or Transfers of Operational or Ownership Interests) of this Consent Decree with regard to that Operational or Ownership Interest prior to any such sale or transfer unless, following any such sale or transfer, Hoosier remains the holder of the permit for such facility.

XVIII. INFORMATION COLLECTION AND RETENTION

203. Any authorized representative of the United States, including its attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the premises of Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2 at any reasonable time for the purpose of:

a. monitoring the progress of activities required under this Consent Decree;

b. verifying any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtaining samples and, upon request, splits of any samples taken by Hoosier or its representatives, contractors, or consultants; and

d. assessing Hoosier's compliance with this Consent Decree.

204. Hoosier shall retain, and instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records and documents in electronic form) now in its or its contractors' or agents' possession or control, and that directly relate to Hoosier's performance of its obligations under this Consent Decree for the following periods: (a) until December 31, 2020 for records concerning physical or operational changes undertaken in accordance with Section IV (NO_x Emission Reductions and Controls), Section V (SO_2 Emission Reductions and Controls), Section VI (H_2SO_4 Emission Reductions and Controls), and Section VII (PM Emission Reductions and Controls); and (b) until December 31, 2017 for all other records. This record retention requirement shall apply regardless of any corporate document retention policy to the contrary.

205. All information and documents submitted by Hoosier pursuant to this Consent Decree shall be subject to any requests under applicable law providing public disclosure of documents unless (a) the information and documents are subject to legal privileges or protection or (b) Hoosier claims and substantiates in accordance with 40 C.F.R. Part 2 that the information and documents contain confidential business information.

206. Nothing in this Consent Decree shall limit the authority of EPA to conduct tests and inspections at Hoosier's facilities under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable federal laws, regulations, or permits.

XIX. NOTICES

207. Unless otherwise provided herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States of America:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
DJ# 90-5-2-1-09864

(if by commercial delivery service)
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
ENRD Mailroom, Room 2121
601 D Street, NW
Washington, DC 20004
DJ# 90-5-2-1-09864

and

(if by commercial delivery service)
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios South Building, Room 1119
1200 Pennsylvania Avenue, NW
Washington, DC 20004

(if by mail service)
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

and

Director, Air Division
U.S. EPA Region 5
77 W. Jackson Blvd. (AE-17J)
Chicago, IL 60604

As to the State of Indiana:

Phil Perry
Chief, Compliance and Enforcement Branch
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
MC 61-53, IGCN 1003
Indianapolis, IN 46204-2251

and

Justin D. Barrett
Deputy Attorney General
Indiana Office of the Attorney General
302 West Washington Street
IGCS Fifth Floor
Indianapolis, IN 46204

As to HOOSIER:

Robert Richhart
Vice President, Management Services
Hoosier Energy REC, Inc.
7398 N State Road 37
Bloomington, IN 47404

Christopher M. Goffinet, Esq.
General Counsel
Hoosier Energy REC, Inc.
7398 N State Road 37
Bloomington, IN 47404

and

John M. Holloway, III, Esq.
Elizabeth C. Williamson, Esq.
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817

208. All notifications, communications, or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or overnight delivery service with signature required for delivery, or (b) certified or registered mail, return receipt requested. All notifications, communications, and transmissions (a) sent by overnight, certified, or registered mail shall be deemed submitted on the date they are postmarked, or (b) sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service.

209. Either Party may change either the notice recipient or the address for providing notices to it by serving the other Party with a notice setting forth such new notice recipient or address.

XX. SALES OR TRANSFERS OF OPERATIONAL OR OWNERSHIP INTERESTS

210. If Hoosier proposes to sell or transfer an Operational or Ownership Interest to another entity (a "Third Party Purchaser"), Hoosier shall advise the Third Party Purchaser in writing of the existence of this Consent Decree prior to such sale or transfer, and shall send a copy of such written notification to the Plaintiffs pursuant to Section XIX (Notices) of this Consent Decree at least sixty (60) Days before such proposed sale or transfer.

211. No sale or transfer of an Operational or Ownership Interest shall take place before the Third Party Purchaser and the Plaintiffs have executed, and the Court has approved, a modification pursuant to Section XXIII (Modification) of this Consent Decree making the Third Party Purchaser a party to this Consent Decree and jointly and severally liable with Hoosier for all the requirements of this Consent Decree that may be applicable to the transferred or purchased Operational or Ownership Interests.

212. This Consent Decree shall not be construed to impede the transfer of any Operational or Ownership Interests between Hoosier and any Third Party Purchaser so long as the requirements of this Consent Decree are met. This Consent Decree shall not be construed to prohibit a contractual allocation – as between Hoosier and any Third Party Purchaser of Operational or Ownership Interests – of the burdens of compliance with this Consent Decree, provided that both Hoosier and such Third Party Purchaser shall remain jointly and severally liable to the United States for the obligations of this Consent Decree applicable to the transferred or purchased Operational or Ownership Interests.

213. If the Plaintiffs agree, the Plaintiffs, Hoosier, and the Third Party Purchaser that has become a party to this Consent Decree pursuant to Paragraph 211 may execute a modification that relieves Hoosier of its liability under this Consent Decree for, and makes the Third Party Purchaser liable for, all obligations and liabilities applicable to the purchased or transferred Operational or Ownership Interests. Notwithstanding the foregoing, however, Hoosier may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Operational or Ownership Interests, including the obligations set forth in Sections IX (Environmental Mitigation Projects) and X (Civil Penalty). Hoosier may propose and the Plaintiffs may agree to restrict the scope of the joint and several liability of any purchaser or transferee for any obligations of this Consent Decree that are not specific to the transferred or purchased Operational or Ownership Interests, to the extent such obligations may be adequately separated in an enforceable manner.

XXI. EFFECTIVE DATE

214. The effective date of this Consent Decree shall be the Date of Entry.

XXII. RETENTION OF JURISDICTION

215. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for the interpretation, construction, execution, or modification of the Consent Decree, or for adjudication of disputes. During the term of this Consent Decree, either Party to this Consent Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XXIII. MODIFICATION

216. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by Plaintiffs and Hoosier. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

XXIV. GENERAL PROVISIONS

217. When this Consent Decree specifies that Hoosier shall achieve and maintain a 30-Day Rolling Average Emission Rate or a 30-Day Rolling Average Removal Efficiency, the Parties expressly recognize that compliance with such 30-Day Rolling Average Emission Rate or a 30-Day Rolling Average Removal Efficiency shall commence immediately upon the date specified, and that compliance as of such specified date (e.g., December 30) shall be determined based on data from the 29 prior Unit Operating Days (e.g., December 1-29).

218. This Consent Decree is not a permit. Compliance with the terms of this Consent Decree does not guarantee compliance with all applicable federal, state, or local laws or regulations. The emission rates and removal efficiencies set forth herein do not relieve

Hoosier from any obligation to comply with other state and federal requirements under the Clean Air Act, including Hoosier's obligation to satisfy any State modeling requirements set forth in the Indiana SIP.

219. This Consent Decree does not apply to any claim(s) of alleged criminal liability.

220. In any subsequent administrative or judicial action initiated by the United States for injunctive relief or civil penalties relating to Merom Unit 1 or Unit 2 or Ratts Unit 1 or Unit 2 as covered by this Consent Decree, Hoosier shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, or claim splitting, or any other defense based upon the contention that the claims raised by the United States in the subsequent proceeding were brought, or should have been brought, in the instant case; provided, however, that nothing in this Paragraph is intended to affect the validity of Paragraphs 146-148 subject to Paragraphs 149-152.

221. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Hoosier of its obligation to comply with all applicable federal, state, and local laws and regulations, including, but not limited to, Hoosier's obligation to apply for a Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit(s) or permit renewal for the discharge of wastewater from the operation of the FGDs at Merom, and in connection with any such application or application for permit renewal, to provide the NPDES permitting authority with all information necessary to appropriately characterize effluent from its operations and develop, if applicable, appropriate effluent limitations, including but not limited to all information necessary for the NPDES permitting authority to appropriately evaluate discharges of total dissolved solids (TDS) for its operations. Subject to the provisions in Section XI (Resolution of Civil Claims

Against Hoosier), nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits.

222. Each limit and/or other requirement established by or under this Consent Decree is a separate, independent requirement.

223. Performance standards, emissions limits, and other quantitative standards set by or under this Consent Decree must be met to the number of significant digits in which the standard or limit is expressed. For example, an Emission Rate of 0.100 is not met if the actual Emission Rate is 0.101. Hoosier shall round the fourth significant digit to the nearest third significant digit, or the third significant digit to the nearest second significant digit, depending upon whether the limit is expressed to three or two significant digits. For example, if an actual Emission Rate is 0.1004, that shall be reported as 0.100, and shall be in compliance with an Emission Rate of 0.100, and if an actual Emission Rate is 0.1005, that shall be reported as 0.101, and shall not be in compliance with an Emission Rate of 0.100. Hoosier shall report data to the number of significant digits in which the standard or limit is expressed.

224. This Consent Decree does not limit, enlarge, or affect the rights of any Party to this Consent Decree as against any third parties.

225. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree, and supercedes all prior agreements and understandings among the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise constitutes any part of this Consent Decree or the

settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

226. Each Party to this action shall bear its own costs and attorneys' fees.

XXV. SIGNATORIES AND SERVICE

227. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind to this document the Party he or she represents.

228. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

229. Each Party hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXVI. PUBLIC COMMENT

230. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Hoosier shall not oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified Hoosier, in writing, that the United States no longer supports entry of this Consent Decree.

XXVII. CONDITIONAL TERMINATION OF ENFORCEMENT UNDER CONSENT DECREE

231. Termination as to completed tasks. As soon as Hoosier completes a construction project or any other requirement of this Consent Decree that is not ongoing or recurring, Hoosier may, by motion to this Court, seek termination of the provision or provisions of this Consent Decree that imposed the requirement.

232. Conditional termination of enforcement through this Consent Decree. Subject to the provisions of Paragraph 233, after Hoosier:

a. has successfully completed construction, and has maintained operation, of all pollution controls as required by this Consent Decree for a period of two years; and

b. has obtained all the final permits required by Section XVII (Permits) of this Consent Decree covering Merom Unit 1 and Unit 2 and Ratts Unit 1 and Unit 2 that include as federally enforceable permit terms, all Unit-specific, plant-specific, and system-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree;

then Hoosier may so certify these facts to the Plaintiffs and this Court. If the Plaintiffs do not object in writing with specific reasons within forty-five (45) Days of receipt of Hoosier's certification, then, for any violations of this Consent Decree that occur after the filing of notice, the Plaintiffs shall pursue enforcement of the requirements through the applicable permits and/or other enforcement authorities and not through this Consent Decree.

233. Resort to enforcement under this Consent Decree. Notwithstanding Paragraph 232, if enforcement of a provision in this Consent Decree cannot be pursued by the United States under the applicable permit(s) issued pursuant to the Clean Air Act or its implementing regulations ("CAA Permit"), or if a Consent Decree requirement was intended to be part of a CAA Permit and did not become or remain part of such permit, then such requirement may be enforced under the terms of this Consent Decree at any time.

XXVIII. FINAL JUDGMENT

234. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the Plaintiffs and Hoosier.

Signature Page for *United States of America v. Hoosier Energy Rural Electric Cooperative* Consent Decree

FOR THE UNITED STATES DEPARTMENT OF JUSTICE

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources
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Signature Page for *United States of America v. Hoosier Energy Rural Electric Cooperative* Consent Decree

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respectfully submitted,

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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respectfully submitted,

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FOR THE STATE OF INDIANA

FOR THE STATE OF INDIANA,
ON BEHALF OF THE INDIANA
DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT:

THOMAS W. EASTERLY
Commissioner
Indiana Department of
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FOR HOOSIER ENERGY RURAL ELECTRIC COOPERATIVE

By: _____
J. Steven Smith
Chief Executive Officer

APPENDIX A
ENVIRONMENTAL MITIGATION PROJECTS

In compliance with and in addition to the requirements in Section IX of this Consent Decree (Environmental Mitigation Projects), Hoosier shall comply with the requirements of this Appendix to ensure that the benefits of the $5,000,000 in federally directed Environmental Mitigation Projects ("Projects") are achieved.

I. Forest Service Mitigation

A. Within forty-five (45) days from the Date of Entry, Hoosier shall pay to the United States Forest Service the sum of $200,000 to be used in accordance with 16 U.S.C. § 579c, for the improvement, protection, or rehabilitation of lands under the administration of the Forest Service. The Forest Service Project(s) will focus on the Hoosier National Forest. If the Hoosier National Forest is not possible as a Project focus, the Project(s) shall focus on one or more of the following areas alleged by Plaintiffs to have been injured by emissions from the Ratts and Merom Plants: Shawnee National Forest, Wayne National Forest, Daniel Boone National Forest, Cherokee National Forest, Nantahala National Forest, Pisgah National Forest, Chattahoochee National Forest, and Jefferson National Forest.

B. Payment of the amount specified in the preceding paragraph shall be made to the Forest Service pursuant to payment instructions provided to Hoosier before or after the Date of Lodging. Notwithstanding Section I.A of this Appendix, payment of funds by Hoosier is not due until ten (10) days after receipt of payment instructions, or forty-five (45) days after the Date of Entry, whichever is later.

C. Upon payment of the amount specified in Section I.A of this Appendix, Hoosier shall have no further responsibilities regarding the implementation of any Projects selected by the Forest Service in connection with this provision of the Consent Decree.

II. Overall Schedule and Budget for Additional Environmental Mitigation Projects

A. Within one hundred and twenty (120) days of the Date of Entry, as further described below, Hoosier shall choose Environmental Mitigation Projects from the projects outlined in Sections III through VI of this Appendix and shall submit proposed plans to EPA for review and approval pursuant to Section XIII of the Consent Decree (Review and Approval of Submittals) for spending the remaining $4.8 million in Project Dollars specified in this Appendix in accordance with the deadlines established in this Appendix. EPA reserves the right to disapprove any

of the projects should the Agency determine based on an analysis of the plans submitted by Hoosier and all the potential environmental impacts that the project is not environmentally beneficial.

B. Hoosier may, at its election, consolidate the plans required by this Appendix into a single plan.

C. The Parties agree that Hoosier is entitled to spread its payments for Environmental Mitigation Projects over the five-year period commencing upon the Date of Entry. Hoosier is not, however, precluded from accelerating payments to better effectuate a proposed mitigation plan, provided that Hoosier shall not be entitled to any reduction in the nominal amount of the required payments by virtue of the early expenditures.

D. All proposed Project plans shall include the following:

1. A plan for implementing the Project;
2. A summary-level budget for the Project;
3. A time-line for implementation of the Project; and
4. A description of the anticipated environmental benefits of the Project including an estimate of emission reductions (e.g., SO_2, NO_x, PM, mercury, CO_2) expected to be realized.

E. Upon approval of the plan(s) required by this Appendix by the United States, Hoosier shall complete the approved Projects according to the approved plan(s). Nothing in this Consent Decree shall be interpreted to prohibit Hoosier from completing the Projects ahead of schedule.

F. Commencing with the first progress report due pursuant to Section XII (Periodic Reporting) of the Consent Decree, and continuing annually thereafter until completion of the Project(s), Hoosier will include in the progress report information describing the progress of the Project and the Project Dollars expended on the Project.

G. In accordance with the requirements of Paragraph 158, within sixty (60) days following the completion of each Project, Hoosier shall submit to the United States for approval (with a courtesy copy to the State of Indiana), a report that documents:

1. The date the Project was completed;

2. The results of implementation of the Project, including the estimated emission reductions or other environmental benefits achieved; and
3. The Project Dollars incurred by Hoosier in implementing the Project.

III. Coal Bed Methane Project

A. Consistent with the requirements of Section II of this Appendix, Hoosier may propose a plan to capture and combust methane from coal beds to generate at least ten (10) megawatts of electricity. Hoosier will ensure that the carbon dioxide emissions resulting from the combustion of the methane will be supplied to a greenhouse for use as fertilizer. Hoosier shall spend no more than $1 million in Project Dollars in performing this Coal Bed Methane Project.

B. In addition to the requirements of Section II, the plan shall also satisfy the following criteria:

1. Describe in detail the process Hoosier will use to extract sequestered methane from the coal beds;

2. Describe in detail the process Hoosier will use to combust the methane to produce electricity;

3. Describe in detail the process Hoosier will use to supply the CO_2 emissions resulting from the combustion of the methane to greenhouses;

4. Describe how Hoosier will monitor the amount of CO_2 removed from the combustion gas and supplied to the greenhouse(s) (e.g., type(s) of monitoring equipment, analytical methodologies, frequency of monitoring and measurement, calibration techniques);

5. Identify the coal beds from which Hoosier will extract the methane;

6. Identify the greenhouse(s) which will utilize the CO_2 emissions resulting from the combustion of the methane;

7. Identify the federal, state, and local environmental requirements

that the Coal Bed Methane Project will need to comply with and provide a detailed description of how Hoosier will meet such requirements;

8. Provide complete copies of applications for any permits required for the Coal Bed Methane Project;

9. Identify in cubic feet or meters the amount of methane that will be extracted and combusted annually for the Coal Bed Methane Project;

10. Describe the monitoring methods Hoosier will use to determine how much methane is being produced from the coal seams and used in the engines (e.g., (e.g., type(s) of monitoring equipment, analytical methodologies, frequency of monitoring and measurement, calibration techniques);

11. Provide an estimate of how much methane may leak as a result from the installation and operation of the wells and methane extraction system;

12. As part of the environmental benefit analysis required under Section II.D.4 of this Appendix, identify the annual generation of electricity (MWs) from the combustion of coal that will be annually offset by the Coal Bed Methane Project, and the resulting annual net emission reduction, if any, of SO_2, NOx, PM, mercury, and CO_2 from such offset.

13. Hoosier shall perform an in-depth environmental analysis to identify and describe any potential adverse environmental impacts from the Coal Bed Methane Project. Such analysis shall be of sufficient scope and breadth so as to enable EPA to thoroughly evaluate the potential adverse environmental impacts of this project prior to approving or disapproving the project. As part of such analysis, Hoosier shall identify and describe the following:

    a. Impacts on water quality, including an evaluation of any changes in salinity, pH, concentrations of dissolved metals and radium, and the type and amounts of dissolved organic constituents in the water produced from the methane

extraction process and the water remaining in the geological structure after the methane is extracted;

b. If the water produced from the methane extraction process will meet the applicable requirements under federal and state regulations, including the Clean Water Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act;

c. Impacts on water quantity, including but not limited to, the water levels in aquifers, wetlands, and drinking water wells;

e. Impact on wetlands;

f. Impact on public health and welfare, including potential for fires, levels of gas leakage into surrounding residential and commercial buildings, property values, odors, and noise;

g. Compaction or subsidence of geological formations;

h. Impact on vegetation, including any crop yields and plant growth rates;

i. Impact on air quality;

j. Impact on ecosystems/habitat; and

k. Impact on historic sites.

14. If, based upon the information provided by Hoosier as well as other available information, EPA, in its sole discretion, believes that the proposed Coal Bed Methane Project may adversely impact human health or the environment, EPA shall not approve the proposed project and Hoosier shall submit another project described in this Appendix for EPA's review and approval. EPA's disapproval of the Coal Bed Methane Project shall not be subject to Paragraph 158 or Section XVI (Dispute Resolution) of the Consent Decree.

IV. Wood Stove Changeout Project

A. Consistent with the requirements of Section II of this Appendix, Hoosier may propose a plan to sponsor a Wood-burning Appliance Changeout and Retrofit Project ("Wood Appliance Changeout and Retrofit Project") that a state, local, or tribal air pollution control agency ("air pollution control agency) or third-party non-profit will agree to implement in an area that would benefit from reductions of fine particle pollution and/or hazardous air pollutants by replacing, or retrofitting or upgrading inefficient, higher polluting wood-burning appliances (e.g., non-EPA certified wood stoves, fireplaces, old technology outdoor wood-

fire hydronic heaters) or inefficient resistance electric heating (e.g., baseboard or electric furnaces) with Energy Star qualified Heat Pumps, EPA Phase 2 hydronic heaters, or EPA-certified wood-stoves and/or cleaner burning, more energy-efficient hearth appliances (e.g., wood pellet, gas, or propane stove).

B. B.

B. The Wood Appliance Changeout and Retrofit Project that Hoosier sponsors shall provide educational information (including, energy efficiency, health and safety benefits, and outreach regarding cleaner-burning alternatives and proper operation of the new technology appliances) and incentives through rebates, discounts, and in some instances, actual replacement of the old technology wood-burning appliances or inefficient resistance electric heating for income-qualified residential homeowners, to encourage residential homeowners to replace their old, higher polluting and less energy efficient appliance with more energy efficient appliances such as geothermal heat pumps, Energy Star qualified heat pumps, and cleaner burning, more energy efficient heating appliances like wood pellet stoves, EPA-certified wood stoves, gas stoves, or propane stoves.

C.

C. Hoosier shall sponsor the implementation of the Wood Appliance Changeout and Retrofit Project in Hoosier's service area(s) in central and southern Indiana, bordered by the cities of Evansville, Terre Haute, Indianapolis, Richmond, Cincinnati and Louisville that promise significant environmental benefit from the Wood Appliance Changeout and Retrofit Project. In determining the specific areas to implement this Project within the aforementioned geographic area, Hoosier shall give priority to areas with high amounts of air pollution, especially particle pollution and/or hazardous air pollutants, areas located within a geography and topography that makes it susceptible to high levels of particle pollution, or areas that have a significant number of old and/or, higher polluting wood-burning or inefficient resistance electric heating appliances.

D. The air pollution control agency(ies) and/or non-profit(s) that Hoosier selects shall consult with EPA's wood smoke team and implement the Wood Appliance Changeout and Retrofit Project consistent with the materials available on EPA's Burn Wise website at http://www.epa.gov/burnwise.

F. In addition to the requirements of Section II , the plan shall also satisfy the following criteria:

1. Identify the air pollution control agency(ies) and/or non-profit(s) selected to implement the Wood Appliance Changeout and Retrofit Project.

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ENVIRONMENTAL MITIGATION PROJECTS

2. Describe the schedule and budgetary increments in which Hoosier shall provide the necessary funding to the air pollution control agency(ies) and/or non-profits(s) to implement the Wood Appliance Changeout and Retrofit Project.

3. Ensure that the air pollution control agency(ies) and/or non-profit(s) will implement the Wood Appliance Changeout and Retrofit Project in accordance with the requirements of this Appendix, and that the Project Dollars will be used to support the actual replacement, upgrade or retrofit of appliances currently used as the primary or secondary source of residential heat with a cleaner, more energy efficient appliance (i.e., geothermal heat pump, wood pellet stove, EPA-certified wood stove, gas stove, EPA Phase 2 qualified hydronic heater, or propane stove). To enable the project to carry on in the future funds may be used to support changeout/upgrades through revolving loan programs or other low-interest loan programs. Hoosier shall limit the use of Project Dollars for administrative costs associated with implementation of the program to no greater than 10% of the Project Dollars Hoosier provides to a specific air pollution control agency and/or non-profit. Up to 7% can be used for personnel cost and the remaining 3 % for other (e.g., outreach materials, training, studies/surveys, travel) project support costs.

4. Describe all of the elements of the Wood Appliance Changeout and Retrofit Project that the air pollution control agency(ies) and/or non-profit(s) will implement. Hoosier shall describe and estimate the number of energy efficient appliances it intends to make available, the cost per unit, and the criteria the air pollution control agency(ies) and/or non-profit(s) will use to determine which residential homeowners should be eligible for actual stove replacement.

5. If applicable, identify any organizations with which the air pollution control agency(ies) and/or non-profit(s) will partner to implement the Project, including such organizations as: the Hearth, Patio, and Barbecue Association of America, the Chimney Safety Institute of America, a local chapter of the American Lung Association, individual stove retailers, propane dealers, facilities that will dispose of old stoves so that they cannot be resold or reused, housing assistance agencies, local fire departments, local health organizations, and local green energy organizations.

6. Describe how the air pollution control agency(ies) and/or non-profit(s) will ensure that the old and/or, higher polluting wood-burning appliances or inefficient resistance electric heating will be properly recycled or disposed.

V. Clean Diesel Retrofit Project

A. Consistent with the requirements of Section II of this Appendix, Hoosier may propose a plan to EPA for review and approval to retrofit in-service diesel engines with emission control equipment further described in this Section, designed to reduce emissions of particulates and/or ozone precursors (the "Clean Diesel Retrofit Project") and fund the operation and maintenance of the retrofit equipment for the time-period described below. This Project shall include, where necessary, techniques and infrastructure needed to support such retrofits. Hoosier shall ensure that the recipients operate and maintain the retrofit equipment for five years from the date of installation, by providing funding for operation and maintenance as described in Section V.B.7, below.

B. In addition to the requirements of Section II, the plan shall also satisfy the following criteria:

1. Involve vehicles based in and equipment located in Hoosier's service territory in central and southern Indiana, bordered by the cities of Evansville, Terre Haute, Indianapolis, Richmond, Cincinnati and Louisville.

2. Provide for the retrofit of public diesel engines with EPA or California Air Resources Board ("CARB") verified emissions control technologies to achieve the greatest measurable mass reductions of particulates and/or ozone precursors for the fleet of school buses in the public school district(s) that participate(s) in the Clean Diesel Retrofit Project. Depending upon the particular EPA or CARB verified emissions control technology selected, the retrofit diesel engines must achieve emission reductions of particulates and/or ozone precursors by 30%-90%, as measured from the pre-retrofit emissions for the particular diesel engine.

3. Describe the process Hoosier will use to determine the most appropriate emissions control technology for each particular diesel engine that will achieve the greatest mass reduction of particulates and/or ozone precursors. In making this determination, Hoosier must take into account

the particular operating criteria required for the EPA or CARB verified emissions control technology to achieve the verified emissions reductions.

4. Provide for the retrofit of diesel engines with either: (a) diesel particulate filters (DPF); (b) diesel oxidation catalysts (DOC); or (c) closed crankcase ventilation systems with either DPF or DOC.

5. Describe the process Hoosier will use to notify fleet operators and owners within the geographic area specified in Section V.B.1 that their fleet of vehicles may be eligible to participate in the Clean Diesel Retrofit Project and to solicit their interest in participating in the Project.

6. Describe the process and criteria Hoosier will use to select the particular fleet operator and owner to participate in this Project, consistent with the requirements of this Section.

7. For each of the recipient fleet owners and operators, describe the amount of Project Dollars that will cover the costs associated with: (a) purchasing the verified emissions control technology, (b) installation of the verified emissions control technology (including datalogging), (c) training costs associated with repair and maintenance of the verified emissions control technology (including technology cleaning and proper disposal of waste generated from cleaning), and (d) the incremental costs for repair and maintenance of the retrofit equipment (i.e., DPF, DOC, closed crankcase ventilation system) for five years from the date of installation, including the costs associated with the proper disposal of the waste generated from cleaning the verified emissions control technology. This Project shall not include costs for normal repair or operation of the retrofit diesel fleet.

8. Include a mechanism to ensure that recipients of the retrofit equipment will bind themselves to follow the operating criteria required for the verified emissions control technology to achieve the verified emissions reductions and properly maintain the retrofit equipment installed in connection with the Project for the period beginning on the date the installation is complete through December 31, 2015.

9. Describe the process Hoosier will use for determining which diesel engines in a particular fleet will be retrofitted with the verified emissions control technology, consistent with the criteria specified in Section V.B.2.

10. Ensure that recipient fleet owners and/or operators, or their funders, do not otherwise have a legal obligation to reduce emissions through the retrofit of diesel engines.

11. For any third party with whom Hoosier might contract to carry out this Project, establish minimum standards that include prior experience in arranging retrofits, and a record of prior ability to interest and organize fleets, school districts, and community groups to join a clean diesel program.

12. Ensure that the recipient fleet(s) comply with local, state, and federal requirements for the disposal of the waste generated from the verified emissions control technology and follow CARB's guidance for the proper disposal of such waste.

13. Include a schedule and budget for completing each portion of the Project, including funding for operation and maintenance of the retrofit equipment through December 31, 2015.

C. In addition to the information required to be included in the report pursuant to Section II.D, above, Hoosier shall also describe the fleet owner/operator; where it implemented this Project; the particular types of verified emissions control technology (and the number of each type) that it installed pursuant to this Project; the type, year, and horsepower of each vehicle; an estimate of the number of citizens affected (if applicable) by this Project, and the basis for this estimate; and an estimate of the emission reductions for Project or engine, as appropriate (using the manufacturer's estimated reductions for the particular verified emissions control technology), including particulates, hydrocarbons, carbon monoxide, and nitrogen oxides.

VI. Solar Technologies Project

A. Consistent with the requirements of Section II of this Appendix, within one hundred twenty (120) days from entry of this Consent Decree, Hoosier shall submit to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree a plan to install conventional flat panel or thin film solar photovoltaics ("PV Project") and/or solar thermal water/space heating systems ("Thermal Project") (collectively referred to herein as "the Project" when referring to both the PV Project and the Thermal Project) on public school buildings, state or local government-owned buildings, and buildings

owned by nonprofit groups in Indiana, specifically in Hoosier's service territory in central and southern Indiana, bordered by the cities of Evansville, Terre Haute, Indianapolis, Richmond, Cincinnati and Louisville. Such plan shall also include the requirement for (1) a manufacturer parts warranty for the solar panels and invertors installed pursuant to this Project for the life of such equipment and (2) a service contract ("Project Service Contract") for maintenance of the Project for twenty-five (25) years from the date of installation, including but not limited to, annual system checkups and solar module cleaning, and normal Project component replacements, including installation of new system components as needed to extend the life of the Project through the termination of the contract term. Hoosier may propose to purchase the Project Service Contract for the benefit of the entity that owns the building where the Project is installed (Service Contract Beneficiary) and to have the option of funding the cost of the Project Service Contract by depositing funds in an escrow account for use by such Service Contract Beneficiary solely for purposes of maintaining the system for the life of the Project. Hoosier and/or its non-profit member cooperatives will implement this project within their service territories.

B. A PV Project shall, at a minimum, consist of: (1) the installation of solar panels at a single location with unobstructed solar access, producing at least 10 kilowatts direct current, but not to exceed the total annual electricity baseload of the building the project serves; (2) a grid-tied inverter, appropriately sized for the capacity of the solar panels installed at the location; (3) the appropriate solar panel mounting equipment for the particular school, government-owned building, or building owned by nonprofit groups selected, i.e., roof mount or ground mount; (4) wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator to the utility grid; and (5) appropriate monitoring equipment supported by kiosk-delivered educational software to enable the school students and/or staff to monitor the total and hourly energy output of the system (kilowatt hours), environmental benefits delivered (pounds CO_2 avoided), hourly ambient temperature and cell temperature (C^o), irradiance (W/M2), as well as time sensitive voltage, power and current metrics. The PV Project shall be installed on the customer side of the meter and ownership of the system shall be conveyed to the building owner at the site. All related environmental benefits shall be retained by the system owner, including associated renewable energy certificates. Hoosier shall include in its bid proposals the requirement that each PV System include a manufacturer parts warranty and a Project Service Contract, as described in subsection A, above. The service and maintenance contract/warranty will be delivered by Hoosier's member cooperatives or through a third-party provider (system integrator or service

provider). To the extent possible, Hoosier shall use North American Board of Certified Energy Practitioners (NACEP) certified energy professionals to perform the installation of the PV Projects to ensure the highest quality installation and performance of the system.

C. A Thermal Project shall, at a minimum, consist of: (1) the proper installation of solar thermal technologies at a single location with unobstructed solar access, using active direct or indirect systems with OG-300 certification from the Solar Rating and Certification Corporation, (2) use of industry best practices in sizing the solar thermal collectors' surface area to match the intended storage tank and end use application; (3) appropriate monitoring equipment supported by kiosk-delivered educational software to enable the school students and/or staff to monitor the total and hourly thermal energy output of the system, operating parameters, and environmental benefits delivered, and (4) installed systems should provide adequate freeze protection appropriate for the system's climate region. The Thermal Project shall be installed on the customer side of the meter and ownership of the system shall be conveyed to the building owner at the site. All related environmental benefits shall be retained by the system owner, including associated renewable energy certificates or carbon offsets. Hoosier shall include in its bid proposals the requirement that each Thermal System include a manufacturer parts warranty and a Project Service Contract, as described in subsection A, above. The service and maintenance contract/warranty will be delivered by Hoosier's member cooperatives or through a third-party provider (system integrator or service provider). To the extent possible, Hoosier shall use NABCEP-certified energy professionals to perform the installation of the Thermal Projects to ensure the highest quality installation and performance of the system.

D. In addition to the requirements of Section II, the plan shall also satisfy the following criteria:

1. Include a schedule and budget for completing each portion of the PV or Thermal Project.

2. Provide a detailed accounting supporting the costs and activities associated with the Project Service Contract, and, if using an escrow account to fund the Project Service Contract, the schedule and monetary installments for deposits to such account to support the operation and maintenance activities over the life of the system and a demonstration that such escrow account includes appropriate restrictions on the Service Contract Beneficiary's use of such funds, solely for purposes of

maintaining the Project.

2. Describe the process Hoosier will use to notify the potential recipients described in subsection A, above, that they are eligible to participate in the PV or Thermal Project and to solicit their interest in participating.

3. Describe the process and criteria Hoosier will use to select potential receipients described in subsection A, above, where Hoosier will install the PV or Thermal Projects, including baseload electricity usage, thermal load, solar access availability, low income neighborhood schools and other relevant criteria.

4. Identify any person or entity other than Hoosier that will be involved in the PV or Thermal Project. Hoosier shall describe the third-party's role in the PV or Thermal Project, the basis for asserting that such entity is able and suited to perform the intended role, and the competitive bidding process used to solicit third-party interest. Any proposed third-party must be legally authorized to perform the proposed role and to receive Project Dollars.

E. In addition to the information required to be included in the report pursuant to Section II.D, above, Hoosier shall also identify the school and/or government/nonprofit owned buildings where the PV or Thermal Projects were installed, describing the size of the system, components installed, total cost and expected energy output and environmental benefits, and any lessons learned.

Appendix B

I. This Appendix specifies procedures to:

- Enhance SO_2 removal to a goal of 94%
- Improve performance of existing scrubber

II. Procedure.

- Hoosier Energy will add sodium formate or, alternately, an equivalent additive, to Unit 1 and Unit 2 by pumps that supply the additive to the fresh limestone slurry.

- Sodium Formate Flow rate at Steady State Conditions: A minimum operating concentration of 1500 ppm sodium formate with a target range of 2000 – 3000 ppm at steady state. The flow rate is adjusted to best achieve optimal performance of the scrubber based on the Buffering Capacity Analysis. Normal steady state is considered to be 4 modules in service and at 90% and greater load with scrubber chemistry at target levels.

- Sodium Formate Flow Rate at Non-Steady State Conditions: During unit start-up, shutdown, malfunction, reduced load of less than 90% rated load, and scrubber maintenance periods to address mist eliminator element cleaning, cooling spray pipe cleaning, pump and module repairs and other maintenance items, sodium formate will be added to the extent it will minimize emissions. Operators will make flow adjustments to expeditiously reach the Steady State minimums and the sodium formate goal range by stabilizing and optimizing scrubber chemistry.

- Establishing Alternate Additive Flow Rate:

  - Should Hoosier Energy opt to inject an equivalent additive instead of sodium formate, such as Dibasic Acid (DBA), it will establish the appropriate flow rate and target concentration which may differ from the sodium formate flow rate and target concentration minimum and goal.
  - Hoosier Energy shall provide written notification to the Environmental Protection Agency (EPA) of its intent to use an alternate additive, and shall submit a plan to EPA, for review and approval pursuant to Section XIII of the Consent Decree (Review and Approval of Submittals), to establish the appropriate target concentration to achieve the goal of 94% SO_2 removal efficiency for such alternate additive. Such plan shall identify the new minimum target concentration and shall include technical support to

demonstrate the correlation between the new concentration and SO_2 removal Upon EPA approval, Hoosier may discontinue use of sodium formate and begin injecting the alternate additive pursuant to the approved plan. EPA shall make best efforts to act on Hoosier's request for approval of an alternate additive within 30 days after Hoosier submits its plan to EPA

III. Monitoring and Recordkeeping.

- The sodium formate or alternate additive flow rate for each Unit is measured and recorded in daily FGD operations logs.
- Unit grab samples of scrubber bleed slurry are taken by the Chemical Lab Technician. The grab samples are analyzed by the Merom chemical lab to determine the sodium formate or alternate additive concentration measured in parts per million (ppm). The lab results are reviewed by the FGD operations department and adjustments to flow rates are made as required.