

THE UNITED STATES COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

----- X
UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF WYANDOTTE,

No. 11-cv-12181
Honorable David M. Lawson

Defendant.

----- X

AMENDED CONSENT DECREE

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WHEREAS, on May 18, 2011, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint in this action pursuant to Section 113(b) of the Clean Air Act (“CAA,” “the Act”), 42 U.S.C. § 7413(b), alleging that Defendant City of Wyandotte (“Defendant” or “Wyandotte”) violated the Act at the City of Wyandotte Municipal Power Plant (the “Facility”) in Wyandotte, Michigan;

WHEREAS, the Complaint sought injunctive relief and the assessment of civil penalties for alleged violations of the emissions limits and reporting requirements for opacity, nitrogen oxide (“NO_x”), sulfur dioxide (“SO₂”), and carbon monoxide (“CO”) at the Facility that are set forth in: Wyandotte’s Title V Renewable Operating Permit, issued pursuant to Title V of the CAA, 42 U.S.C. § 7661 *et seq.*; Wyandotte’s Permits to Install, issued pursuant to the Prevention of Significant Deterioration (“PSD”) provisions of the Act, 42 U.S.C. § 7470-92; the Standards of Performance for New Sources, often referred to as New Source Performance Standards (“NSPS”), as set forth 42 U.S.C. § 7411; and standards set forth in the Michigan State Implementation Plan (“SIP”) adopted by the State of Michigan and approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410;

WHEREAS, simultaneously with the filing of the Complaint, the United States lodged a proposed Consent Decree. On September 13, 2011, the District Court entered the Consent Decree, which resolved the allegations in the Complaint. *See* E.D. Mich. 2:11-cv-12181-DML-RSW, ECF No. 12. The Consent Decree required Wyandotte to install new emission controls, implement operational practices to reduce emissions, pay a civil penalty of \$112,000, and perform a supplemental environmental project at an estimated cost of \$210,000;

WHEREAS, the United States alleges that Wyandotte failed to comply with several provisions of the Consent Decree and Wyandotte has agreed to pay stipulated penalties for these alleged violations of the Consent Decree;

WHEREAS, Wyandotte voluntarily began burning Natural Gas instead of coal at Unit 7 in March 2012 and thereafter requested a modification of the Consent Decree to reflect the operational change;

WHEREAS, Wyandotte triggered the Consent Decree’s requirements to install Selective Non-Catalytic Reduction to achieve at least an additional 50 percent reduction in NO_x emissions at Unit 8 as well as perform a study of the limestone feed system and implement the findings to achieve at least 25 percent additional reduction in SO₂ emissions;

WHEREAS, Wyandotte does not admit any liability to the United States;

WHEREAS, the Parties recognize, and the Court by entering this Amended Consent Decree finds, that this Amended Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Amended Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); 28 U.S.C. §§ 1331, 1345, and 1355; and Section I of the Consent Decree, ECF No. 12 at 5. Venue is proper in this district pursuant to Section 113(b) of the CAA, 42 U.S.C. §7413(b) and 28 U.S.C. §§ 1391(b), (c), and 1395(a), because the violations alleged in the Complaint occurred in Wayne County, Michigan, the location of the Facility, which is operated by Wyandotte in this District. For purposes of this Amended Consent Decree, or any action to enforce this Amended Consent Decree, Defendant consents to the Court's jurisdiction over this Amended Consent Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Amended Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113 of the Act.

II. APPLICABILITY

3. The obligations of this Amended Consent Decree apply to and are binding upon the United States and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Amended Consent Decree are implemented. At least thirty (30) Days prior to such transfer, Defendant shall provide a copy of this Amended Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Attorney for the Eastern District of Michigan, and the United States Department of Justice, in accordance with Section XVI (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Amended Consent Decree.

5. Defendant shall provide a copy of this Amended Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Amended Consent Decree, as well as to any contractor retained to perform work required under this Amended Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Amended Consent Decree.

6. In any action to enforce this Amended Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Amended Consent Decree.

III. OBJECTIVES

7. The purpose of this Amended Consent Decree is to update the original Consent Decree, amend the control requirements and emission limits that apply to the Facility, and assure future compliance with the Amended Consent Decree and Wyandotte's Title V Renewable

Operating Permit. This Amended Consent Decree replaces and supersedes the original Consent Decree entered by the Court on September 13, 2011.

IV. DEFINITIONS

8. Terms used in this Amended Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Amended Consent Decree. Whenever the terms set forth below are used in this Amended Consent Decree, the following definitions shall apply:

“Accrued Stipulated Penalty” shall mean stipulated penalties that the Defendant has incurred due to violations of the Consent Decree through the Date of Lodging.

“Amended Consent Decree” shall mean this Amended Consent Decree and the appendix attached hereto.

“Baghouse” shall mean a pollution control device designed to reduce emissions of particulate matter from the Facility’s boiler exhaust through the use of filter bags.

“Complaint” shall mean the complaint filed by the United States in this action.

“Consent Decree” shall mean the Consent Decree and appendix attached thereto entered by Judge David M. Lawson on September 13, 2011 in the Eastern District of Michigan in civil action number 2:11-cv-12181-DML-RSW.

“Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Amended Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

“Defendant” shall mean the City of Wyandotte.

“Dry Sorbent Injection System” shall mean a technology for injecting a dry or semi-dry alkaline reagent into the boiler gas stream to achieve the reduction of SO₂ emissions.

“EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

“Effective Date” shall have the definition provided in Section XVII.

“Excess Emission Report” shall mean the reports that Defendant is required to submit under EUUNIT7BLR special condition VII.4 and EUUNIT8BLR special condition VII.4 of the Title V Renewable Operating Permit, and the reports required under 40 C.F.R. § 60.7(c).

“Facility” shall mean the Wyandotte Municipal Power Plant owned and operated by the Defendant and located at 2555 Van Alstyne Street in Wyandotte, Michigan, 48192.

“Limestone Feed System Upgrade Analysis” shall mean the analysis of Wyandotte’s limestone feed system at Unit 8 that was submitted to EPA on May 30, 2014 and attached hereto as Appendix A.

“Low NO_x Burner” shall mean a control technology involving a burner design which optimizes staged combustion within the flame zone of a burner to minimize NO_x formation, to produce a stable flame in a boiler, and to reduce NO_x emissions to the atmosphere.

“Malfunction” shall have the meaning in 40 C.F.R. § 60.2.

“National Ambient Air Quality Standards” means the national ambient air quality standards promulgated pursuant to Section 110 of the Act, 42 U.S.C. § 7410.

“Natural Gas” shall mean a fluid mixture of hydrocarbons (e.g. methane, ethane, or propane), composed of at least 70 percent methane by volume or that has a gross calorific value between 35 and 41 megajoules (MJ) per dry standard cubic meter (950 and 1,100 BTU per dry standard cubic foot), that maintains a gaseous state under ISO conditions. In addition, Natural Gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet (0.068 weight percent total sulfur, 680 parts per million by weight, and 338 parts per million by volume at 20 degrees Celsius). Finally, Natural Gas does not include the following gaseous fuels: landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any gaseous fuel produced in a process which might result in highly variable sulfur content or heating value.

“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 Mich. Admin. Code R. 336.2801(ee) as well as a “significant emissions increase” as that term is defined at 40 C.F.R. § 52.21(b)(40) and in the Michigan SIP at R 336.2801(rr).

“NO_x” shall mean oxides of nitrogen, measured in accordance with the provisions of the Title V Renewable Operating Permit and in accordance with this Amended Consent Decree.

“PM” shall mean particulate matter as defined by 40 C.F.R. § 60.2.

“Paragraph” shall mean a portion of this Amended Consent Decree identified by an arabic numeral.

“Parties” shall mean the United States and Defendant.

“Prevention of Significant Deterioration” means the new source review program within the meaning of Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492 and 40 C.F.R. Part 52, and corresponding provision of the federally enforceable Michigan SIP.

“Retire” means to permanently shut down a Unit and to comply with applicable state and federal requirements for permanently ceasing operation of the Unit, including amending Michigan’s air emission inventory to reflect shutdown, and withdrawing and/or requesting amendment of all applicable permits so as to reflect the permanent shutdown status of such Unit.

“Section” shall mean a portion of this Amended Consent Decree identified by a roman numeral.

“Separated Over-Fire Air” shall mean a control technology that introduces air into a boiler above the combustion zone for the purpose of reducing NO_x emissions.

“Shutdown” shall mean the cessation of operation of Unit 7 or Unit 8 for any purpose as defined in § 60.2.

“SNCR” shall mean Selective Non-Catalytic Reduction, which is a pollution control system that employs ammonia-based reagent injection for the purpose of reducing NO_x emissions.

“SO₂” shall mean the pollutant sulfur dioxide, measured in accordance with the provisions of the Title V Renewable Operating Permit and in accordance with this Amended Consent Decree.

“Startup” shall mean the setting in operation of Unit 7 or Unit 8 for any purpose as defined in § 60.2.

“Title V Renewable Operating Permit” shall mean the Title V Permit RO Permit Number MI-ROP-B2132-2010, issued to the Facility by the Michigan Department of Environmental Quality with the effective date of April 15, 2010 and shall include all subsequent renewals and revisions to such permit.

“Unit 7 NO_x Exceedance” shall, for the purposes of Section VI.A.ii of this Amended Consent Decree only, mean any contiguous 3-hour period including all periods of Startup, Shutdown, and Malfunction, in which any contiguous 3-hour average emissions of NO_x exceed the applicable standard of 0.20 lb/MMBtu for NO_x or the limit set forth in Defendant’s Title V Renewable Operating Permit, whichever is more stringent, as measured by any of the following: a NO_x continuous emission monitoring system (“CEMS”) or NO_x emission data obtained in accordance with U.S. EPA Reference Method 7, 7E or another approved U.S. EPA Reference Method.

“United States” shall mean the United States of America, acting on behalf of EPA.

V. ACCRUED STIPULATED PENALTY

9. Within sixty (60) Days after the Effective Date, Defendant shall pay the sum of \$425,000 as an Accrued Stipulated Penalty, together with interest accruing from the Effective Date, at the rate specified in 28 U.S.C. § 1961 as of the Effective Date.

10. Defendant shall pay the Accrued Stipulated Penalty due at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Eastern District of Michigan after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify all payments required to be made in accordance with this Amended Consent Decree. The FLU will provide the payment instructions to:

Roderick J. Lesko
General Manager & Secretary
City of Wyandotte Dept. of Municipal Service
3200 Biddle Avenue, Suite 200
Wyandotte, MI 48192

Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XVI (Notices).

At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XVI; and (iii) to EPA in accordance with Section XVI. Such notice shall state that the payment is for the stipulated penalty owed pursuant to the Amended Consent Decree in *United States v. Wyandotte* and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-2-1-09346.

11. Defendant shall not deduct any penalties paid under this Amended Consent Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal income tax.

VI. COMPLIANCE REQUIREMENTS

A. Unit 7 Requirements

i. Phase I Requirements

12. As of the date of lodging, Wyandotte shall operate Unit 7 by firing only Natural Gas, as defined in this Amended Consent Decree, as fuel. Wyandotte shall remove itself as a coal unit in Michigan’s air inventory.

13. Wyandotte shall continuously operate its existing Low NO_x Burners system consistent with the manufacturer’s specifications, the operational design and maintenance limitations of Unit 7, and good engineering and air pollution control practices for minimizing emissions.

14. Wyandotte shall continuously operate its existing Separated Over-Fire Air consistent with the manufacturer’s specifications, the operational design and maintenance

limitations of Unit 7, and good engineering and air pollution control practices for minimizing emissions.

15. As of the date of lodging, Wyandotte shall achieve and continuously maintain compliance with an emissions limit no greater than 0.20 lb/MMBtu for NO_x as a 3-hour rolling average.

ii. Phase II Requirements

16. Defendant shall install and continuously operate an SNCR on Unit 7 consistent with the manufacturer's specifications, the operational design and maintenance limitations of Unit 7, and good engineering and air pollution control practices for minimizing emissions, if:

- a. Prior to termination of this Amended Consent Decree in accordance with Section XX (Termination), the duration of the Defendant's Unit 7 NO_x Exceedances is 1% or more of total operating time during any calendar year; or
- b. Prior to termination of this Amended Consent Decree in accordance with Section XX (Termination), the duration of the Defendant's Unit 7 NO_x Exceedances is 2% or more of total operating time during any calendar quarter.

Defendant shall install and commence continuous operation of the SNCR within sixteen (16) months of the end of the calendar year or quarter that meets the conditions of subparagraph (a) or (b) of this Paragraph. The SNCR must be designed to achieve continuous compliance with the Title V Renewable Operating Permit and to achieve, on a continuous basis, at least an additional 50% removal of NO_x from its Title V Renewable Operating Permit emission limit for NO_x for Unit 7. For example, if the current permitted limit for NO_x in the Title V Renewable Operating Permit is 0.20 lb./MMBtu as a 3-hour average, then the SNCR must be designed to achieve, on a continuous basis, 0.10 lb./MMBtu as a 3-hour average. At least sixty (60) Days prior to installation, Defendant, in accordance with Section XVI of this Amended Consent Decree (Notices), shall provide EPA with a copy of the design specifications, including the guaranteed maximum design removal efficiency and outlet emission rate for the SNCR. Defendant shall conduct at least one performance test using an EPA approved reference method (such as EPA Reference Method 7 or 7E) within ninety (90) Days of installation of the SNCR to demonstrate at least an additional 50% removal of NO_x from its Title V Renewable Operating Permit emission limit. The results of each performance test conducted in accordance with this Paragraph must be submitted to EPA within thirty (30) Days after completing the performance testing in accordance with Section XVI of this Amended Consent Decree (Notices). Nothing in this Paragraph is intended to waive the United States' right to demand stipulated penalties for any violation of any requirement of Defendant's Title V Renewable Operating Permit or any other requirement of this Amended Consent Decree. Upon triggering the requirement of this Paragraph, Defendant shall apply for a modification to its Title V permit to incorporate the requirement to install and continuously operate the SNCR as well as the new emission limit that incorporates the additional 50% removal of NO_x as a federally enforceable condition.

B. Unit 8 Requirements

17. By June 30, 2016, Wyandotte shall permanently Retire Unit 8.
18. Until Wyandotte Retires Unit 8, Wyandotte shall:
 - a. comply with all emission limits in its Title V Renewable Operating Permit;
 - b. continuously operate the Baghouse serving Unit 8 at all times, including periods of Startup, Shutdown, and Malfunction, and consistent with good engineering and air pollution control practices for minimizing emissions;
 - c. continuously operate the limestone feed system, consistent with the manufacturer's specifications, the operational design and maintenance limitations of Unit 8, and good engineering and air pollution control practices for minimizing emissions; and
 - d. continuously use the covered silo within the building to keep limestone dry prior to use in the limestone feed system.

19. Wyandotte conducted a Limestone Feed System Upgrade Analysis beginning in May 2014 as required by the Consent Decree. Wyandotte upgraded its limestone feed system in accordance with its Limestone Feed System Upgrade Analysis. Wyandotte shall continuously operate its upgraded limestone feed system with the upgraded limestone feed logic control scheme as outlined in the WMS Unit 8 Limestone Feed System Upgrade Test attached hereto as Appendix A at all times, including during periods of Startup, Shutdown, and Malfunction.

C. Environmental Management Requirements

20. Defendant shall comply with all applicable requirements of statutes, regulations, permits, or other legal requirements alleged to have been violated with respect to the Facility.

21. Defendant shall identify an individual or individuals who have primary responsibility for ensuring Wyandotte complies with all the terms of this Amended Consent Decree, including responsibility for preparing and submitting Quarterly Reports and Excess Emission Reports, meeting testing requirements, identifying non-compliance, and identifying, purchasing, and installing (or contracting to install) any necessary controls required. Within forty-five (45) Days of the Effective Date, Defendant shall notify the United States and EPA of the names of such individual(s) and submit a sworn certification to the United States and EPA from the individual(s) that states:

I certify under penalty of law that I have read and understand the terms of the Amended Consent Decree. Part of my job responsibilities includes ensuring that Wyandotte complies with the terms of the Amended Consent Decree.

Wyandotte may replace the designated individual(s) by sending a notice with the above certification to the United States and EPA. If a designated individual ceases working for Wyandotte, Wyandotte shall designate a new individual(s) as a replacement within 60 Days of the prior designated individual's departure.

22. Defendant has retained an environmental consulting firm to assist Defendant in its compliance with the CAA, the Consent Decree, and this Amended Consent Decree. Defendant shall continue to retain at least one consulting firm until Termination of the Amended Consent Decree.

D. Approval of Deliverables.

23. After review of any plan, report, or other item that is required to be submitted, reviewed, and approved by EPA, pursuant to this Amended Consent Decree, EPA shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

24. If the submission is approved pursuant to Paragraph 23(a), Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 23(b) or (c), Defendant shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section XII (Dispute Resolution).

25. If the submission is disapproved in whole or in part pursuant to Paragraph 23(c) or (d), Defendant shall, within forty-five (45) days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

26. Any stipulated penalties applicable to the original submission, as provided in Section X, shall accrue during the forty-five (45) day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Amended Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

27. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, subject to Defendant's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

VII. PERMITS

28. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section XI (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining,

any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

29. Within ninety (90) Days of the Effective Date of this Amended Consent Decree, Wyandotte shall amend any applicable Title V Renewable Operating Permit application, or apply for amendments to its Title V Renewable Operating Permits, to include the following Amended Consent Decree requirements:

- a. For Unit 7, establish a limit not to exceed 0.20 lb/MMBtu for NO_x on a 3-hour rolling average basis;
- b. Continuous operation of CEMS for NO_x on Unit 7;
- c. Submit Excess Emissions Reports that identify all periods where emissions exceeded applicable emissions limitations in this Amended Consent Decree or any of Defendant's permits, including during periods of startup, shutdown, and malfunction. These reports must be submitted by April 30th, July 31st, October 31st, and January 31st of each year; and
- d. Limit Unit 7 to burning only Natural Gas as fuel and remove all Unit 7 references to coal and other fuels except Natural Gas (including in emission unit descriptions and emission limits).

30. As of the Effective Date of this Amended Consent Decree, Defendant shall provide the United States and EPA with a copy of each application to amend its Title V Renewable Operating Permit and any underlying installation and operating permits, as well as a copy of any permit proposed as a result of such applications, to allow for timely participation in any public comment opportunity. Copies will be submitted to the United States and EPA pursuant to Section XVI.

31. No later than December 31, 2016, Wyandotte shall apply to permanently include the requirements and limitations enumerated in this Paragraph into a federally enforceable permit, such that the requirements and limitations enumerated in this Amended Consent Decree become and remain "applicable requirements" as that term is defined in 40 C.F.R. § 70.2. The permit shall provide that Defendant is limited to burning only Natural Gas as fuel at Unit 7 and shall remove all Unit 7 permit references to coal and other fuels except Natural Gas (including in emission unit descriptions, emission limits, and emissions inventory).

32. In the event that Defendant triggers its obligations to install SNCR on Unit 7 pursuant to Paragraph 16, Defendant shall:

- a. comply with the requirements of Paragraph 16 regarding its permit obligations; and
- b. within ninety (90) days of the date it triggers the obligation to install SNCR, apply to permanently include into a federally enforceable permit, such that the requirements and limitations enumerated in this Amended Consent Decree become and remain "applicable requirements" as that term is defined in 40 C.F.R. § 70.2, the requirement to

install and continuously operate SNCR at Unit 7 as well as the new emission limit that incorporates the additional 50% removal of NO_x.

VIII. PROHIBITION ON NETTING CREDITS OR OFFSETS

33. Emission reductions that result from using Natural Gas as Defendant's exclusive fuel at Unit 7 and installing SNCR pursuant to Paragraph 16 of this Amended Consent Decree, shall not be considered a creditable contemporaneous emission decrease for the purpose of obtaining netting credits or offsets under any permitting action or analysis including the Michigan SIP, Title V of the Clean Air Act, and Part C and/or Part D of the Clean Air Act, and shall not be used to determine whether or not a project could result in either a "significant emissions increase" or a "significant net emissions increase" under Part C and/or D of the CAA.

34. Nothing in this Amended Consent Decree is intended to preclude the emission reductions generated under this Amended Consent Decree from being considered by the applicable state regulatory agency or EPA for the purpose of attainment demonstrations submitted pursuant to Section 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on National Ambient Air Quality Standards, Prevention of Significant Difference increment, or air quality related values, including visibility, in a Class I area.

IX. REPORTING REQUIREMENTS

35. Defendant shall submit the following reports:

- a. By April 30th, July 31st, October 31st, and January 31st of each year after the lodging of this Amended Consent Decree, until termination of this Amended Consent Decree pursuant to Section XX (Termination), Defendant shall submit a Quarterly Report to the United States and EPA for the preceding three (3) months that shall include Defendant's Excess Emissions Report for that calendar quarter; the status of all work completed or ongoing pursuant to the requirements of Section VI (Compliance Requirements) of this Amended Consent Decree, with any problems encountered or anticipated, together with implemented or proposed solutions; the status of all permit applications related to this Amended Consent Decree; any planned or unplanned outages which occurred during the quarter, any planned outages scheduled for the following quarter, and any calculation of operating time required by Paragraph 16.
- b. The Quarterly Report shall also include a description of any non-compliance with the requirements of this Amended Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Defendant violates, or has reason to believe that it may violate, any requirement of this Amended Consent Decree, Defendant shall notify the United States of such violation and its likely duration, in writing, within ten (10) working Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken,

or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the Report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day Defendant becomes aware of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section XI (Force Majeure) or other reports or notices required by Defendant's permits or state regulations.

- c. Each Quarterly Report shall also include the following information:
- (1) All periods when emissions exceed applicable emissions limitations or Opacity limitations established in this Amended Consent Decree, applicable regulations, or any of Defendant's permits.
 - (2) The magnitude of excess emissions computed in accordance with 40 C.F.R. § 60.13(h), any conversion factor(s) used, the date and time of commencement and cessation of each time period of excess emissions, and the process operating time during the reporting period;
 - (3) Specific identification of each period of excess emissions that occurred during Startups, Shutdowns, and Malfunctions of the affected facility, as "affected facility" is defined in 40 C.F.R. § 60.2, the nature and cause of any Startup, Shutdown, and Malfunction (if known), the corrective action taken and/or preventative measures adopted;
 - (4) The date and time of each period during which the continuous monitoring system was inoperative except for zero or span checks, and identifying the nature of the system repairs or adjustments; and
 - (5) A statement, if applicable, indicating that no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired, or adjusted.

36. Whenever any violation of this Amended Consent Decree or of any applicable permits or any other event affecting Defendant's performance under this Amended Consent Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic mail as soon as possible, but no later than twenty-four (24) hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

37. All reports shall be submitted to the persons designated in Section XVI (Notices).

38. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared 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 inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

39. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

40. The reporting requirements of this Amended Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

41. Any information provided pursuant to this Amended Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Amended Consent Decree and as otherwise permitted by law.

X. STIPULATED PENALTIES

42. Defendant shall be liable for stipulated penalties to the United States for violations of this Amended Consent Decree as specified in Table 1, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Amended Consent Decree, including any work plan or schedule approved under this Amended Consent Decree, according to all applicable requirements of this Amended Consent Decree and within the specified time schedules established by or approved under this Amended Consent Decree.

Table 1

Amended Consent Decree Requirement	Amended Consent Decree Paragraph or Section Violated	Stipulated Penalty
Failure to pay the Accrued Stipulated Penalty	Section V, ¶ 9	\$3,000 per day for each such day of failure
Violation of any provision of the Title V Renewable Operating Permit	Section VI, ¶ 20	\$1,500 per day for each such violation
Burning coal at Unit 7 at any time after the Effective Date of the Amended Consent Decree	Section VI, ¶ 12	\$1,500 per day for each such violation

Amended Consent Decree Requirement	Amended Consent Decree Paragraph or Section Violated	Stipulated Penalty
Failing to apply to incorporate provisions of the Amended Consent Decree into the Title V Renewable Operating Permit or underlying permits	Section VII, ¶¶ 29, 32	\$500 per day for each such violation
Failing to apply to incorporate specified provisions of the Amended Consent Decree into a federally enforceable permit	Section VII, ¶¶ 31, 32	\$500 per day for each such violation
Violation of any other Phase I Compliance Requirement at Unit 7	Section VI.A.i, ¶¶ 12-15	\$1,500 per day for each such violation
Violation of any Phase II Compliance Requirement at Unit 7	Section VI.A.ii, ¶ 16	\$3,000 per day for each such violation
Violation of any Compliance Requirement at Unit 8	Section VI.B., ¶¶ 17-19	\$500 per day for each such violation
Violation of Environmental Management Requirements	Section VI.C., ¶¶ 20-22	\$1,500 per day for each such violation
Violation of any reporting and/or record-keeping requirement required under this Amended Consent Decree	Section IX, ¶¶ 35-38	\$1,000 per day for each such violation
Any other violation of the Amended Consent Decree	All other Amended Consent Decree Paragraphs	\$1,000 per day for each such violation

43. Stipulated penalties under this Section shall begin to accrue on the Day after 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. Stipulated penalties shall accrue simultaneously for separate violations of this Amended Consent Decree.

44. Defendant shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

45. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Amended Consent Decree.

46. Stipulated penalties shall continue to accrue as provided in Paragraph 43, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.
- b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.
- c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

47. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

48. If Defendant fails to pay stipulated penalties according to the terms of this Amended Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

49. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Amended Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States (including, but not limited to, statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt) for Defendant's violation of this Amended Consent Decree or applicable law. Where a violation of this Amended Consent Decree is also a violation of relevant statutory or regulatory requirements, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

XI. FORCE MAJEURE

50. "Force majeure," for purposes of this Amended Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by

Defendant, or of Defendant's contractors that delays or prevents the performance of any obligation under this Amended Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Amended Consent Decree.

51. If any event occurs or has occurred that may delay the performance of any obligation under this Amended Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic mail transmission to the United States and EPA, within four (4) Days of when Defendant first knew that the event might cause a delay. Within seven (7) Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

52. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Amended Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

53. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

54. If Defendant elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 50 and 51. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by

Defendant of the affected obligation of this Amended Consent Decree identified to EPA and the Court.

XII. DISPUTE RESOLUTION

55. Unless otherwise expressly provided for in this Amended Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Amended Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Amended Consent Decree.

56. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Amended Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States and EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

57. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

58. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

59. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVI (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within forty-five (45) Days of receipt of the United States' Statement of Position. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Amended Consent Decree.

60. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

61. Standard of Review

- a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Amended Consent Decree, in any dispute brought under Paragraph 56 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Amended Consent Decree; the adequacy of the performance of work undertaken pursuant to this Amended Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.
- b. Other Disputes. Except as otherwise provided in this Amended Consent Decree, in any other dispute brought under Paragraph 56, Defendant shall bear the burden of demonstrating that its position complies with this Amended Consent Decree and better further the Objectives of the Amended Consent Decree.

62. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Amended Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 46. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. INFORMATION COLLECTION AND RETENTION

63. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any Facility covered by this Amended Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Amended Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Amended Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Amended Consent Decree.

64. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

65. Until five (5) years after the termination of this Amended Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Amended Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

66. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Amended Consent Decree shall be withheld on grounds of privilege.

67. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

68. This Amended Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

69. This Amended Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action and any violation of the terms of the Consent Decree through the date of lodging of this Amended Consent Decree.

70. The United States reserves all legal and equitable remedies available to enforce the provisions of this Amended Consent Decree, except as expressly stated in Paragraph 69. This Amended Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 69.

The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Amended Consent Decree or otherwise.

71. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations of the Amended Consent Decree, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 69.

72. This Amended Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Amended Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Amended Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Amended Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401, et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

73. This Amended Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Amended Consent Decree, nor does it limit the rights of third parties, not party to this Amended Consent Decree, against Defendant, except as otherwise provided by law.

74. This Amended Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Amended Consent Decree.

XV. COSTS

75. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the Accrued Stipulated Penalty or any additional stipulated penalties due but not paid by Defendant.

XVI. NOTICES

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

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-09346

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-2-1-09346

As to EPA: Compliance Tracker
U.S. Environmental Protection Agency
Region 5, (AE-17J)
77 W. Jackson Blvd.
Chicago, IL 60604

Sabrina Argentieri
U.S. Environmental Protection Agency
Region 5 (R-14)
77 W. Jackson Blvd.
Chicago, IL 60604

Defendant may, upon notification to and agreement from EPA, submit each report, plan, or other deliverable to EPA electronically at R5airenforcement@epa.gov. Any electronic submissions must include a carbon copy to vuilleumier.kevin@epa.gov and argentieri.sabrina@epa.gov.

As to Defendant: Roderick J. Lesko
General Manager & Secretary
City of Wyandotte Dept. of Municipal Service
3200 Biddle Avenue, Suite 200
Wyandotte, MI 48192

Karl A. Karg, Esq.
Latham and Watkins, LLP
233 S. Wacker Dr., Suite 5800
Chicago, IL 60606

77. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

78. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Amended Consent Decree or by mutual agreement of the Parties in writing.

XVII. EFFECTIVE DATE

79. The Effective Date of this Amended Consent Decree shall be the date upon which this Amended Consent Decree is entered by the Court or a motion to enter the Amended Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Amended Consent Decree before entry, or the Court declines to enter the Amended Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVIII. RETENTION OF JURISDICTION

80. The Court shall retain jurisdiction over this case until termination of this Amended Consent Decree, for the purpose of resolving disputes arising under this Amended Consent Decree or entering orders modifying this Amended Consent Decree, pursuant to Sections XII (Dispute Resolution) and XIX (Modification), or effectuating or enforcing compliance with the terms of this Amended Consent Decree.

XIX. MODIFICATION

81. The terms of this Amended Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Amended Consent Decree, it shall be effective only upon approval by the Court.

82. Any disputes concerning modification of this Amended Consent Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 61, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XX. TERMINATION

83. After Defendant has:
- a. Retired Unit 8;
 - b. maintained satisfactory compliance with this Amended Consent Decree and Defendant's Title V Renewable Operating Permit and any underlying construction or operating permits for a period of twenty-four (24) months after the Effective Date;
 - c. paid the Accrued Stipulated Penalty and any additional stipulated penalties as required by this Amended Consent Decree; and

- d. either included the requirements and limitations enumerated in this Amended Consent Decree into a federally enforceable permit, as described in Paragraphs 31 and, if applicable, 32, such that the requirements and limitations enumerated in this Amended Consent Decree become and remain “applicable requirements” as that term is defined in 40 C.F.R. § 70.2;

Defendant may serve upon the United States and EPA a Request for Termination, stating that Defendant has satisfied these requirements, together with all necessary supporting documentation.

84. Following receipt by the United States of Defendant’s Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Amended Consent Decree. If the United States agrees that the Amended Consent Decree may be terminated, the Parties shall submit, for the Court’s approval, a joint stipulation terminating the Amended Consent Decree.

85. If the United States does not agree that the Amended Consent Decree may be terminated, Defendant may invoke Dispute Resolution under Section XII. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until ninety (90) Days after service of its Request for Termination.

XXI. PUBLIC PARTICIPATION

86. This Amended Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Amended Consent Decree disclose facts or considerations indicating that the Amended Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Amended Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Amended Consent Decree by the Court or to challenge any provision of the Amended Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Amended Consent Decree.

XXII. SIGNATORIES/SERVICE

87. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Amended Consent Decree and to execute and legally bind the Party he or she represents to this document.

88. This Amended Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Amended Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIII. INTEGRATION

89. This Amended Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Amended Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Amended Consent Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Amended Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Amended Consent Decree.

XXIV. FINAL JUDGMENT

90. Upon approval and entry of this Amended Consent Decree by the Court, this Amended Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

XXV. APPENDICES

91. The following Appendices are attached to and part of this Amended Consent Decree:


“Appendix A” is the Lime Injection System Upgrade Analysis.

Dated and entered this __ day of _____, 2016

DAVID M. LAWSON
UNITED STATES DISTRICT JUDGE

Signature Page for the Amended Consent Decree in *United States v. City of Wyandotte*, No. 11-cv-12181 (E.D. Mich.)

FOR PLAINTIFF UNITED STATES OF AMERICA:



JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date: 6/14/2016



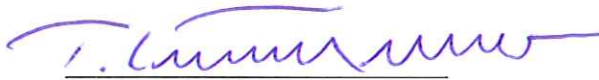
KRISTIN M. FURRIE
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 616-6515 (Tel.)
(202) 616-6584 (Fax)
kristin.furrie@usdoj.gov

BARBARA L. MCQUADE
United States Attorney
Eastern District of Michigan

ELLEN CHRISTENSEN
Assistant U.S. Attorney
211 W. Fort Street, Suite 2001
Detroit, Michigan 48226
(313) 226-9112
P29574

Signature Page for the Amended Consent Decree in *United States v. City of Wyandotte*, No. 11-cv-12181 (E.D. Mich.)

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:



T. LEVERETT NELSON
Regional Counsel
United State Environmental
Protection Agency
Region 5

Date: 6/10/2016

Signature Page for the Amended Consent Decree in *United States v. City of Wyandotte*, No. 11-cv-12181 (E.D. Mich.)

FOR THE CITY OF WYANDOTTE:



JOSEPH PETERSON
Mayor
City of Wyandotte, Michigan
3200 Biddle Avenue, Suite 300
Wyandotte, MI 48192

Date: 6-2-2016



LAWRENCE STEC
City Clerk
City of Wyandotte, Michigan
3200 Biddle Avenue, Suite 100
Wyandotte, MI 48192

Date: 6/2/2016



LESLIE LUPO
President
Wyandotte Municipal Services Commission
3200 Biddle Avenue
Wyandotte, MI 48192

Date: 6-2-16



RODERICK J. LESKO
General Manager and Secretary
Wyandotte Municipal Services
3200 Biddle Avenue, Suite 200
Wyandotte, MI 48192

Date: 6-2-2016