

## CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”) has filed a Complaint for injunctive relief and civil penalties pursuant to Section 113(b) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7413(b), alleging that the Defendants, the Commonwealth of Pennsylvania’s Department of Corrections (“PA Department of Corrections”) and the Commonwealth of Pennsylvania’s Department of General Services (“PA Department of General Services”) (collectively referred to as the “Defendants”), violated the Clean Air Act (“the Act”), 42 U.S.C. §§ 7401 et seq., at four state correctional institutions;

WHEREAS, the PA Department of General Services owns and PA Department of Corrections operates the State Correctional Institution at Muncy (“Muncy Facility”) in Lycoming County, Muncy, Pennsylvania, the State Correctional Institution at Rockview (“Rockview Facility”) in Centre County, Bellefonte, Pennsylvania, the State Correctional Institution at Huntingdon (“Huntingdon Facility”) in Huntingdon County, Huntingdon, Pennsylvania, and the State Correctional Institution at Laurel Highlands (“Laurel Highlands Facility”) in Somerset County, Somerset, Pennsylvania;

WHEREAS, in the Complaint, the United States alleges, *inter alia*, that the

Defendants are in violation of Sections 110 and 113 of the Act, 42 U.S.C. §§ 7410 and 7413, through their failure to operate boilers in compliance with applicable particulate matter emission limits provided in the Commonwealth of Pennsylvania's State Implementation Plan ("Pennsylvania SIP") at the Muncy, Rockview, and Laurel Highlands Facilities and their failure to operate boilers in compliance with the applicable opacity limits provided in the Pennsylvania SIP at the Muncy, Rockview, Huntingdon, and Laurel Highlands Facilities and that the Defendants are in violation of Section 502 of the Act, 42 U.S.C. § 7661a, through the Defendants' failure to comply with the requirements in Rockview's Title V permit, Huntingdon's Title V permit and Laurel Highland's Title V permit;

WHEREAS, the Complaint alleges claims upon which relief can be granted against the Defendants under Sections 113 and 502 of the Act, 42 U.S.C. §§ 7413 and 7661a;

WHEREAS, the United States provided the Defendants and the Commonwealth of Pennsylvania's Department of Environmental Protection ("PADEP") with actual notice of the alleged violations in accordance with Section 113(a)(1) and (b) of the Act, 42 U.S.C. § 7413(a)(1) and (b);

WHEREAS, the Parties have agreed that settlement of this action is in the

best interest 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, the Parties recognize, and the 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, consistent with the goals of the Act, and in the public interest; 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 502 of the Act, 42 U.S.C. §§ 7413 and 7661a. 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, the Defendants waive all objections and defenses

that they may have to the Court's jurisdiction over this action, to the Court's jurisdiction over the Defendants, and to venue in this District. The Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. For purposes of the Complaint filed by the United States in this matter and resolved by the Consent Decree, and for purposes of entry and enforcement of this Consent Decree, the Defendants waive any defense or objection based on standing. Except as expressly provided for herein, this Consent Decree shall not create any rights in any party other than the Parties to this Consent Decree. Except as provided in Section XXV (Public Comment) of this Consent Decree, the Parties consent to entry of this Consent Decree without further notice.

## **II. APPLICABILITY**

2. The provisions of this Consent Decree shall, upon entry, apply to and be binding upon the Defendants and their agents, employees, contractors, successors and assigns.

3. The Defendants 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, the Defendants 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, the Defendants shall not assert as a defense the failure of their 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 and satisfies the Force Majeure provisions of this Consent Decree.

### **III. DEFINITIONS**

4. Unless otherwise expressly provided herein, the terms used in this Consent Decree that are defined in the Clean Air Act or its implementing regulations shall have the meaning assigned to them in the Clean Air Act and its regulations. Whenever the terms listed below are used in this Consent Decree, however, the following definitions shall apply:

“Baghouse” means a device or facility in which particulates are removed from a stream of exhaust gases as the stream passes through various fabric bags before the stream is discharged to the atmosphere.

“Clean Air Act” or “Act” means the federal Clean Air Act, 42 U.S.C.



§§7401-7671q, and its implementing regulations.

“Consent Decree” means this Consent Decree.

“Defendants” means the Commonwealth of Pennsylvania Department of General Services and the Commonwealth of Pennsylvania Department of Corrections.

“EPA” means the United States Environmental Protection Agency.

“Huntington Facility” means the State Correctional Institution at Huntingdon in Huntingdon County, Huntingdon, Pennsylvania. The Huntington Facility includes four Units – Units 1, 2, 3 and 4 – all of which burn bituminous coal. Units 1 and 2 were installed in 1933 and share an exhaust stack. Unit 3 was installed in 1950 and vents directly to the same stack as Units 1 and 2. Unit 4 was installed in 1966 and exhausts to its own stack.

“Huntingdon Title V Permit” means the Title V permit #TV-31-05001, issued on July 12, 2005 and effective on August 1, 2005 for the Huntington Facility pursuant to Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

“Laurel Highlands Facility” means the State Correctional Institution at Laurel Highlands in Somerset County, Somerset, Pennsylvania. The Laurel Highlands Facility includes three Units – Units 1, 2, and 3 – all of which burn

bituminous coal, and all of which were built in 1950.

“Laurel Highlands Title V Permit” means the Title V permit #TV-56-00257, issued and effective on January 26, 2000 for the Laurel Highlands Facility pursuant to Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

“lb/MMBtu” means one pound of total particulate matter per million British thermal units of heat input.

“Malfunction” means malfunction as that term is defined under 40 C.F.R. § 60.2.

“Muncy Facility” means the State Correctional Institution at Muncy in Lycoming County, Muncy, Pennsylvania. The Muncy Facility includes four Units – Units 1, 2, 3, and 4. Units 1, 2 and 3 were built in 1964 and burn anthracite coal; Unit 4 was built in 2003 and burns natural gas.

“PADEP” shall mean the Pennsylvania Department of Environmental Protection.

“Parties” means the United States of America and the Commonwealth of Pennsylvania including the PA Department of General Services and the PA Department of Corrections. “Party” means one of the named “Parties.”

“PM” means total particulate matter, measured in accordance with the

provisions of this Consent Decree.

“PM Emission Rate” means the average number of pounds of PM emitted per million British thermal units of heat input (“lbs/MMBtu”) from a boiler stack, as measured in an annual stack test from the boiler stack, in accordance with the reference method set forth in 40 C.F.R. Part 60, Appendix A, Method 5 (filterable portion only) or Method 17 (filterable portion only).

“Rockview Facility” means the State Correctional Institution at Rockview in Centre County, Bellefonte, Pennsylvania. The Rockview Facility includes four Units – Units 1, 2, 3, and 4. Units 1, 2, and 3 all burn bituminous coal. Unit 1 was built in 1954, Unit 2 in 1967, and Unit 3 in 1955. Unit 4 burns natural gas and was built in 2002.

“Rockview Title V permit” means the Title V Operating Permit # 14-00005, issued June 25, 2004, to PA Department of Corrections for the Rockview Facility pursuant to Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

“Standby Mode” as used in this Consent Decree for the Muncy Facility means that the unit or boiler is maintained in a hot condition with steam in the drum at or near normal operating pressure such that the unit or boiler can be brought on line and up to full load within one hour or less, versus a cold boiler

which takes eight to ten hours to be properly brought up to full load. The “Standby Mode” unit has a slowly burning coal bed on the grates with neither the stoker nor forced draft fan running. The induced draft fan is running to maintain a slightly negative furnace pressure to prevent combustion gases from leaking out onto the operating floor and presenting a hazard to personnel. The slowly burning coal bed provides sufficient heat to keep the unit or boiler hot and maintain steam in the steam drum but is insufficient to produce steam for delivery to the Muncy Facility. Periodic feedwater input is required to account for continuous blowdown losses. Maintaining the “Standby Mode” condition requires the following group of activities be performed on a periodic basis:

1. The coal bed is manually pushed away from the front wall to ensure no clinker build up.

2. Ash is dumped to the hoppers.

3. The stoker is started at minimum speed to replenish the coal bed.

Due to system design this also causes the forced draft fan to run at minimum speed, thereby introducing a small amount of combustion air. This results in a slightly increased coal firing rate and the subsequent production of a small amount of steam. The steam production ceases as soon as the stoker and fan are turned off at the end of coal bed replenishment.

“Unit” means, for the purposes of this Consent Decree, collectively, the

stationary equipment that feeds coal to the boiler, the boiler that produces steam, the equipment necessary to operate the boiler, and all ancillary equipment, including pollution control equipment and systems necessary for the production of steam.

#### **IV. ROCKVIEW EMISSION REDUCTIONS AND CONTROLS**

5. No later than December 31, 2010, the Defendants shall install and commence continuous operation of a baghouse for PM control for Units 1, 2, and 3 at the Rockview Facility. Defendants shall install a baghouse for Units 1, 2, and 3 at the Rockview Facility which has been approved in writing in advance by EPA. EPA's decision to approve the baghouse required pursuant to this Paragraph shall be within EPA's sole and unreviewable discretion.

6. After December 31, 2010, the Defendants shall not operate Unit 1, 2, or 3 at the Rockview Facility when the baghouse required by Paragraph 5 is not in continuous operation. The Defendants' obligation to "continuously operate" the new baghouse means that the Defendants must operate the baghouse at all times that any or all of the Units associated with this control are in operation and combusting fuel, consistent with the technological limitations, manufacturers'

specifications to the extent practicable, and good engineering and maintenance practices for PM control technology.

- a. Notwithstanding the foregoing, the Defendants need not operate the baghouse during periods of Malfunction of the baghouse provided that the Defendants satisfy the requirements for Malfunction as set forth in Paragraph 61 and 40 C.F.R § 60.2. If there is a Malfunction pursuant to Paragraph 61 and 40 C.F.R § 60.2 at any of the Units at the Rockview Facility, Defendants must still continuously operate the baghouse to control PM from any or all Units which are in operation and combusting fuel.

7. The Defendants shall at all times comply with the requirements set forth in the Rockview Title V Permit for Units 1, 2, and 3 until those Units cease operation and are replaced in accordance with this Section. These requirements include Condition 006 in Section C of the Rockview Title V Permit, which requires the Defendants to burn only bituminous coal at Units 1, 2, and 3 that meets the following specifications for fuel physical characteristics:

- a. heating value of at least 13,400 British Thermal Units (“BTU”) (dry basis);
- b. ash content of no more than 12% (dry basis); and
- c. sulfur content of no more than  $HV/4875$  (in % sulfur) where  $HV$ =heating value.

The Defendants shall collect samples from each truckload of bituminous coal received. From these samples, the Defendants shall test and analyze the bituminous coal on a weekly basis. The Defendants shall submit to PADEP and EPA all coal sampling documents demonstrating compliance or non-compliance with Condition 006 within five (5) calendar days of creating or receiving documents demonstrating the fuel physical characteristics of the bituminous coal that the Rockview Facility receives and burns.

8. The Defendants may, after obtaining written approval from EPA and notifying PADEP, remove and permanently retire Units 1, 2, or 3 from the Rockview Facility and replace such Units with new Units. Such new Units shall be subject to all applicable federal and state environmental regulations and permitting requirements, including the installation of emission control technologies required at that time under federal and state regulations. EPA’s

decision to approve the replacement of Units 1, 2, and/or 3 shall be within EPA's sole and unreviewable discretion.

9. The Defendants shall obtain all applicable permits and/or plan approvals from PADEP before commencing any activity related to installing the baghouse required by Paragraph 5 or installing any new Unit at the Rockview Facility. The Defendants shall at all times comply with the Pennsylvania SIP and any revised permits, including the Rockview Title V Permit, for the new Units.

10. The Defendants shall at all times achieve and maintain a PM Emission Rate of no greater than 0.4 lb/MMBtu at the Rockview Facility Units in accordance with the Pennsylvania SIP. The Defendants shall at all times also achieve and maintain at these Units the visible emission standard established in 25 Pa. Code § 123.41 of the Pennsylvania SIP. Any new Units at the Rockview Facility shall also comply with all applicable requirements in the Pennsylvania SIP and the Act.

11. The Defendants shall at all times operate all of the Units at the Rockview Facility in accordance with good combustion practices, good air pollution control practices, and good operating practices to minimize opacity and PM emissions.



## **V. MUNCY EMISSION REDUCTIONS AND CONTROLS**

12. No later than March 31, 2009, the Defendants shall cease operation of Units 1, 2, and 3 at the Muncy Facility, which burn coal, and shall commence sole operation of Unit 4 at the Muncy Facility, which shall burn gas and oil. The Defendants may operate Unit 1 or Unit 2 at the Muncy Facility in a Standby Mode after March 31, 2009 as long as only one coal-fired Unit (Unit 1 or Unit 2) is operating in Standby Mode at any given time. The Defendants shall not otherwise operate these coal-fired Units (Unit 1 or Unit 2) without prior written approval from EPA which shall be within EPA's sole discretion. Defendants may not operate Unit 3 at the Muncy Facility in any capacity unless Defendants comply with all requirements in the Pennsylvania SIP and in the Act including, but not limited to, requirements for permits and for the installation of required emission control technologies and unless Defendants obtain prior written approval from EPA which shall be within EPA's sole discretion. Notwithstanding the foregoing:

- a. the Defendants may operate Unit 1 or Unit 2 at the Muncy Facility after March 31, 2009 on an emergency basis if Unit 4 becomes non-operational due to a Malfunction as defined in this Consent Decree as long as Defendants comply with

Paragraph 61 in this Consent Decree and 40 C.F.R § 60.2; provided, however, that the Defendants shall be liable for the stipulated penalties stated herein in Paragraph 44 if the Defendants do not obtain express written consent and approval from EPA to operate Unit 1 or Unit 2 on an emergency basis during a Malfunction of Unit 4 after providing notice in accordance with Paragraph 61;

- b. the Defendants may operate Muncy Facility Unit 1 or Unit 2 on more than a Standby Mode if they install and commence continuous operation of a baghouse or electrostatic precipitator on the Unit after submitting a proposal to EPA for such installation and obtaining written approval from EPA to do so and after receiving all permits required by the Act and the Pennsylvania SIP;
- c. the Defendants may operate Muncy Facility Unit 1 or Unit 2 on more than a Standby Mode if they convert the Unit to burn only natural gas, and not any coal or oil, after submitting a proposal to EPA for such conversion and obtaining written approval

from EPA to do so and after receiving all permits required by the Act and the Pennsylvania SIP.

- d. the Defendants may, after obtaining written approval from EPA, remove and permanently retire Units 1, 2, and/or 3 from the Muncy Facility and replace such Unit with new Units.

Such new Units shall be subject to all applicable federal and state environmental regulations and permitting, including the installation of emission control technologies required at that time under federal and state regulations.

13. EPA's decision to approve the restarting of Unit 1 or Unit 2 beyond Standby Mode, or to authorize any of the alternatives set forth in the preceding Paragraph, shall be within EPA's sole and unreviewable discretion.

14. The Defendants shall obtain all applicable permits and/or plan approvals from PADEP before commencing any activity retrofitting, modifying, restarting, or rebuilding Units 1, 2, or 3, or before installing any new Unit, at the Muncy Facility. The Defendants shall at all times comply with the Act, the Pennsylvania SIP and any permits for the new, retrofitted, or modified Unit(s) at the Muncy Facility and for Units 1, 2, 3 and 4 at the Muncy Facility.

15. The Defendants shall comply with the Pennsylvania SIP PM Emission Rate of 0.4 lb/MM Btu of heat input for Unit 1 and Unit 2 at the Muncy Facility and for any new Units at the Muncy Facility and shall comply with any more stringent PM emissions standard found applicable to Units 1, 2, and/or 3 or to any new Units at the Muncy Facility. The Defendants shall also comply with the Pennsylvania SIP and the Pennsylvania SIP visible emission standard (25 Pa. Code § 123.41) for Unit 1 and Unit 2 and for any new Units at the Muncy Facility.

16. The Defendants shall at all times operate all of the Units at the Muncy Facility in accordance with good combustion practices, good air pollution control practices, and good operating practices to minimize opacity and PM emissions.

17. If Defendants operate Unit 1 or Unit 2 beyond Standby Mode at the Muncy Facility due to a Malfunction in accordance with Paragraphs 12(a) and 61, the Defendants shall provide notice to EPA in accordance with Section XVIII of this Consent Decree no later than twenty-four (24) hours after Defendants operate Unit 1 or Unit 2 beyond Standby Mode. The notice to EPA may be by electronic mail in accordance with Paragraph 79.

**VI. LAUREL HIGHLANDS EMISSION REDUCTIONS AND**  
**CONTROLS**

18. No later than June 30, 2011, the Defendants shall cease all operation of the existing coal-fired Units 1, 2, and 3 at the Laurel Highlands Facility, remove these Units, and surrender any permits related to these Units.

19. By June 30, 2011, the Defendants shall also install and commence continuous operation of three new Units at the Laurel Highlands Facility that combust natural gas or landfill gas.

20. The Defendants shall obtain from PADEP all applicable permits and/or plan approvals required by federal or state law before commencing construction on the new Units at the Laurel Highlands Facility. The Defendants shall complete and submit applications for all permits prior to commencing construction on the new Units. After installation of the new, gas-fired boilers at the Laurel Highlands Facility, the Defendants shall comply with the Pennsylvania SIP PM Emission Rate of 0.4 lb/MM Btu of heat input (and any more stringent PM emissions standard found applicable to the new gas-fired boilers) and the visible emission standard in the Pennsylvania SIP (25 Pa. Code § 123.41) for the new gas-fired boilers. Until such time as the Defendants cease operation of the coal-fired Units at the Laurel Highlands Facility, the Defendants shall operate the

coal-fired Units at the Laurel Highlands Facility in accordance with good combustion practices, good air pollution control practices, and good operating practices under the Pennsylvania SIP to minimize opacity and emissions of PM in excess of the limits in 25 Pa. Code §§ 123.11 and 123.41.

21. The Defendants shall at all times achieve and maintain a PM Emission Rate of no greater than 0.4 lb/MMBtu at the Laurel Highlands Facility new or existing Units, in accordance with the Pennsylvania SIP and shall comply with any more stringent PM emissions standard found applicable to the new Units at the Laurel Highlands Facility. The Defendants shall at all times also achieve and maintain the visible emission standard established in 25 Pa. Code § 123.41 of the Pennsylvania SIP at Laurel Highlands Facility new or existing Units.

22. The Defendants shall at all times operate all of the Units at the Laurel Highlands Facility in accordance with good combustion practices, good air pollution control practices, and good operating practices to minimize opacity and PM emissions.

## **VII. HUNTINGDON EMISSION REDUCTIONS AND CONTROLS**

23. No later than June 30, 2012, the Defendants shall cease burning coal at Huntingdon Facility Units 1, 2, 3 and 4. The Defendants shall not restart these

coal-fired Units without prior written approval from EPA which shall be within EPA's sole discretion.

24. Notwithstanding the foregoing, the Defendants may request prior written approval from EPA to either:

- a. continue burning coal at Units 1, 2, 3, and 4 after the installation of an electrostatic precipitator or a baghouse, which must be operational before June 30, 2012, to control PM from Units 1, 2, 3, and 4;
- b. convert Units 1, 2, 3, and 4 from coal-fired Units to natural gas-fired Units as long as Units 1, 2, 3, and 4 operate while burning solely natural gas and do not burn coal or fuel oil; or
- c. remove and permanently retire Units 1, 2, 3 and 4 from the Huntingdon Facility. Any new Units installed at the Huntingdon Facility shall be subject to all applicable federal and state environmental regulations and pollution controls at the time the Defendants commence construction on the new Units.

EPA's decision on approval or denial of any of the three alternatives described in this Paragraph is within EPA's sole and unreviewable discretion.

25. The Defendants shall obtain all applicable permits and/or plan approvals from PADEP before commencing any activity to retrofit the Units with new emission controls or to install new Unit(s) at the Huntingdon Facility. The Defendants shall also comply at all times with the Pennsylvania SIP and any revised permits, including the Huntingdon Title V Permit, for the retrofitted or new Units.

26. The Defendants shall at all times achieve and maintain a PM Emission Rate of no greater than 0.4 lb/MMBtu at Huntingdon Facility Units or at any new Units, in accordance with the Pennsylvania SIP and shall comply with any more stringent PM emissions standard found applicable to Units 1, 2, 3 or 4 or to any new Units at the Huntingdon Facility. The Defendants shall at all times also achieve and maintain at these Units or at any new Units the visible emission standard established in 25 Pa. Code § 123.41 of the Pennsylvania SIP.

27. The Defendants shall at all times operate all of the Units at the Huntingdon Facility in accordance with good combustion practices, good air pollution control practices, and good operating practices to minimize opacity and PM emissions.



## **VIII. PERFORMANCE TESTING**

28. Within 20 days after the Defendants complete the replacement, repowering, or retrofitting of any Unit under this Consent Decree, the Defendants shall submit to EPA and PADEP for review and approval a proposed protocol, consistent with 40 C.F.R. Part 60, for conducting stack tests to measure PM emissions and visible emission opacity at the Units in the Rockview, Muncy, Laurel Highland, and Huntingdon Facilities. The protocol for observing and calculating PM emissions shall conform to 40 C.F.R. Part 60, Appendix A, Method 5 and applicable Pennsylvania law (25 Pa. Code §§ 139.11 and 139.12). The protocol for observing and measuring opacity shall also be based on EPA Reference Test Method 9, and shall be taken during the mass emission PM performance test at each Unit. If EPA notifies the Defendants that revisions to the testing protocol are necessary, the Defendants shall resubmit a revised protocol no later than fifteen (15) days after receipt of EPA's written notification.

29. Within 90 days after the Defendants complete any of the emission control and reduction measures required by Sections IV through VII of this Consent Decree, including the replacement of Units, the repowering of Units, and the installation of emission controls on Units, the Defendants shall conduct a performance stack test to demonstrate that the Units are in compliance with the

PM and opacity limitations established by this Consent Decree, the Pennsylvania SIP, and all permits applicable to those Units. This obligation to conduct PM performance stack tests shall not apply, however, to any Unit that burns only natural or landfill gas.

30. If the performance demonstration for PM and opacity shows that a Unit does not meet the required Pennsylvania SIP emission limitations for PM and opacity, the Defendants shall submit a proposal describing alternative emission controls or measures to EPA and PADEP, within sixty (60) days of completion of each performance test. Upon approval by EPA and PADEP, the Defendants shall install and commence operation of the approved controls and methods within one year of the Defendants' receipt of notice of approval, or within the time frame set forth in EPA's and PADEP's approval. EPA's decision regarding the approval or denial of alternative controls and methods is within its sole and unreviewable discretion.

31. Subsequently, the Defendants shall conduct annual PM performance testing for PM mass emissions and visible opacity, in accordance with the approved protocols, EPA regulations, and the Pennsylvania SIP, at each of the Units in the Rockview, Muncy, Laurel Highland, and Huntingdon Facilities. Defendants shall conduct the first annual PM performance test for PM mass

emissions and visible opacity at each of the Units in the Rockview, Muncy, Laurel Highland, and Huntingdon Facilities no later than twelve (12) months after the initial performance stack tests for PM and opacity as required by Paragraph 28 are conducted and shall continue conducting such performance stack tests for PM and opacity at each of the Units annually thereafter.

32. The Defendants shall provide written notice to EPA and PADEP no later than twenty (20) days prior to the initiation of any stack test, and shall submit the results of each stack test to EPA and PADEP within thirty (30) days of completion of each test. The stack test reports shall include information on the volumetric flow rate (dry standard cubic feet per minute), particulate emission concentration (grains per dry standard cubic foot), and particulate emission rate (in lb/MMBtu of heat input) for each test.

#### **IX. CIVIL PENALTY**

33. Within thirty (30) calendar days after entry of this Consent Decree, the Defendants shall pay to the United States a civil penalty in the amount of \$300,000. The civil penalty shall be paid by Electronic Funds Transfer (“EFT”) to the United States Department of Justice, in accordance with current EFT procedures, referencing USAO File Number \_\_\_\_\_, DOJ Case Number 90-5-2-1-09099, and the civil action case name and case number of this action. Any costs

associated with such EFT shall be borne by the Defendants. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the U.S. Attorney's Office for the Middle District of Pennsylvania. Any funds received after 2:00 p.m. EDT shall be credited on the next business day. At the time of payment, the Defendants 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 XVIII (Notices) of this Consent Decree.

34. Failure to timely pay the civil penalty shall subject the Defendants 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 also render the Defendants 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.

35. 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.

#### **X. RESOLUTION OF CLAIMS**

36. This Consent Decree settles all civil claims alleged in the United States' Complaint against the Defendants for violations of the Act at Laurel

Highlands, Muncy, Huntingdon and Rockview Facilities prior to and through the date of the lodging of this Consent Decree.

37. Third Parties. This Consent Decree does not limit or affect the rights of the Defendants or the United States as against any third party, nor does it limit the rights of such third parties against the Defendants. This Consent Decree shall not constitute an admission by any Party as to any third party.

## **XI. PERIODIC REPORTING**

38. Beginning thirty (30) days after the end of the first full calendar quarter following the entry of this Consent Decree, continuing on a semi-annual basis thereafter (*i.e.*, every six months covering the prior six months) until March 31, 2015, and in addition to any other express reporting requirement in this Consent Decree, the Defendants shall submit to EPA a progress report, containing the following:

- a. all information necessary to determine compliance with this Consent Decree; and
- b. all information indicating that the installation and commencement of operation for a pollution control device may be delayed, including the nature and cause of the delay, and any steps taken by the Defendants to mitigate such delay.

39. In any periodic progress report submitted pursuant to this Section, the Defendants may incorporate by reference information previously submitted under their Title V permitting requirements, provided that the Defendants attach the Title V permit report (or pertinent portions of such report) and give a specific reference to the provisions of the Title V permit report that are responsive to the information required in the periodic progress report.

40. In addition to the progress reports required pursuant to this Section, the Defendants shall provide a written report to EPA of any violation of the requirements of this Consent Decree, including exceedances of PM Emission Rates and visible opacity requirements, within ten (10) business days of when the Defendants knew or should have known of any such violation. In this report, the Defendants shall explain the cause or causes of the violation and all measures taken or to be taken by the Defendants to prevent such violations in the future. Exceedances of the PM emission rates shall be reported within thirty (30) days of the completion of the stack test that demonstrates such non-compliance. In this report, the Defendants shall explain the cause or causes of the violation and all measures taken or to be taken by the Defendants to prevent such violations in the future. Defendants shall provide the written reports of exceedances of PM emissions and/or opacity as required by this Paragraph after entry of this Consent

Decree for the Muncy Facility and after the emission control and reduction measures required by Sections IV, VI and VII are completed at the Rockview, Laurel Highlands and Huntingdon Facilities.

41. Each report required by this Consent Decree shall be signed by the Environmental Manager for PA Department of Corrections or, in his or her absence the Secretary for PA Department of Corrections, 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.

## **XII. REVIEW AND APPROVAL OF SUBMITTALS**

42. The Defendants shall submit each plan, report, or other submission to EPA 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. Within sixty (60) days of receiving

written comments from EPA, the Defendant shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal for final approval to EPA; or (b) submit the matter for dispute resolution, under Section XV (Dispute Resolution) of this Consent Decree.

43. Upon receipt of EPA's final approval of a submittal or upon completion of dispute resolution invoked pursuant to Section XV of this Consent Decree for the submittal, the Defendants shall implement the approved submittal in accordance with the schedule specified therein.

### **XIII. STIPULATED PENALTIES**

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

<b>Consent Decree Violation</b>	<b>Stipulated Penalty (Per day per violation, unless otherwise specified)</b>
a. Failure to pay the civil penalty as specified in Section IX (Civil Penalty) of this Consent Decree	\$10,000



<p>b. Failure to comply with any PM Emission Rate where the violation is less than 5% in excess of the limits set forth in this Consent Decree or referenced herein</p> <ul style="list-style-type: none"> <li>- at the Rockview Facility after December 31, 2010,</li> <li>- at Laurel Highlands Facility after June 30, 2011,</li> <li>- at Huntingdon Facility after June 30, 2012, and</li> <li>- at the Muncy Facility after the effective date of the Consent Decree</li> </ul>	\$2,500
<p>c. Failure to comply with any PM Emission Rate, where the violation is equal to or greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree or referenced herein</p> <ul style="list-style-type: none"> <li>- at the Rockview Facility after December 31, 2010,</li> <li>- at Laurel Highlands Facility after June 30, 2011,</li> <li>- at Huntingdon Facility after June 30, 2012, and</li> <li>- at the Muncy Facility after the effective date of the Consent Decree</li> </ul>	\$5,000

<p>d. Failure to comply with any PM Emission Rate, where the violation is equal to or greater than 10% in excess of the limits set forth in this Consent Decree or referenced herein</p> <ul style="list-style-type: none"> <li>- at the Rockview Facility after December 31, 2010,</li> <li>- at Laurel Highlands Facility after June 30, 2011,</li> <li>- at Huntingdon Facility after June 30, 2012,</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>- at the Muncy Facility after the effective date of the Consent Decree</li> </ul>	<p>\$10,000</p>
<p>e. Failure to comply with any visible emission standard set forth in this Consent Decree or referenced herein</p> <ul style="list-style-type: none"> <li>- at the Rockview Facility after December 31, 2010,</li> <li>- at Laurel Highlands Facility after June 30, 2011,</li> <li>- at Huntingdon Facility after June 30, 2012,</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>- at the Muncy Facility after the effective date of the Consent Decree</li> </ul>	<p>\$5,000</p>
<p>f. Failure to install, to commence operation, or to continue operation of any Unit, baghouse, electrostatic precipitator or other pollution controls required by this Consent Decree</p>	<p>\$10,000 per day during the first 30 days; \$20,000 per day thereafter</p>
<p>g. Operation of Unit 1 or Unit 2 at Muncy Facility in excess of Standby Mode unless operation of Unit 1 or Unit 2 at Muncy Facility is authorized and approved in writing by EPA for each day of operation in excess of Standby Mode</p>	<p>\$5,000 per day during the first 5 days; \$10,000 per day thereafter</p>

h. Failure to cease operation of any Unit as required by this Consent Decree, failure to cease burning coal at any Unit as required by this Consent Decree, or any operation of Unit 3 at the Muncy Facility without EPA approval and without required permits or plan approvals for Unit 3	\$10,000 per day during the first 30 days; \$20,000 per day thereafter
i. Failure to repower any Unit with natural gas, if elected by the Defendants or required by this Consent Decree	\$10,000 per day during the first 30 days; \$20,000 per day thereafter
j. Failure to conduct performance tests of PM emissions as required by the Consent Decree	\$1,000
k. Failure to conduct visible emission tests as required by the Consent Decree	\$1,000
l. 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 during the first 10 days, \$1,000 per day thereafter
m. Failure to comply with any condition or term in a permit issued for the Huntingdon, Laurel Highlands, Muncy or Rockview Facilities, other than the requirements for which stipulated penalty provisions are addressed above	\$2,000
n. Failure to surrender any permits as required by this Consent Decree	\$2,000
o. Any other violation of this Consent Decree	\$1,000

45. 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. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

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

47. Failure to timely pay the stipulated penalty shall subject the Defendants 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 the Defendants 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.

48. Stipulated penalties shall continue to accrue as provided in Paragraphs 44 and 45 during any dispute, with interest on accrued stipulated penalties payable, 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 XV (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, the Defendants shall, within sixty (60) days of receipt of the Court's decision or order, pay all accrued stipulated penalties determined by the Court to be owing, together with accrued interest, except as provided in Subparagraph (c);
- c. If the Court's decision is appealed by any Party, the Defendants shall, within fifteen (15) days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined to be owing, together with accrued interest.

The Defendants need not pay any stipulated penalties based on violations which it disputes and ultimately prevails under the Dispute Resolution provisions of this Consent Decree.

49. All stipulated penalties shall be paid in the manner set forth in Section IX (Civil Penalty) of this Consent Decree.

50. EPA, in its sole and unreviewable discretion, may reduce the amount of stipulated penalties prescribed by this Section of the Consent Decree.

51. Should the Defendants 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.

52. 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 the Defendants' 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, the Defendants shall be allowed a credit for stipulated penalties paid against any statutory penalties also imposed for such violation.

#### **XIV. FORCE MAJEURE**

53. Force Majeure Events. 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 the Defendants, their contractors, or any entity controlled by the Defendants that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite the Defendants’ best efforts to fulfill the obligation. “Best efforts to fulfill the obligation” include using 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 or violation is minimized to the greatest extent possible.

54. 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 the Defendants intend to assert a claim of Force Majeure, the Defendants shall notify the United States in writing as soon as practicable, but in no event later than fourteen (14) business days following the date the Defendants 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, the Defendants 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 the Defendants to prevent or minimize the delay or violation, the schedule by which the Defendants propose to implement those measures, and the Defendants' rationale for attributing a delay or violation to a Force Majeure Event. The Defendants shall adopt all reasonable measures to avoid or minimize such delays or violations. The Defendants shall be deemed to know of any circumstance which the Defendants, their contractors, or any entity controlled by the Defendants, knew or should have known.

55. Failure to Give Notice. If the Defendants fail to comply with the notice requirements in the preceding Paragraph, the United States may void the Defendants' claim for Force Majeure as to the specific event for which the Defendants have failed to comply with such notice requirement.

56. United States' Response. The United States shall notify the Defendants in writing regarding the Defendants' claim of Force Majeure provided under Paragraph 54. If the United States agrees that a delay in performance has been or will be caused by a Force Majeure Event, the Parties 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 XXII (Modification) of this Consent Decree.

57. Disagreement. If the United States does not accept the Defendants' claim of Force Majeure, or if the Parties cannot agree on the length of the delay actually caused by the Force Majeure Event, the matter shall be resolved in accordance with Section XV (Dispute Resolution) of this Consent Decree.

58. Burden of Proof. In any dispute regarding Force Majeure, the Defendants 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. The Defendants shall also bear the burden of proving that the Defendants gave the notice required by Paragraph 54 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.

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

60. Extensions or Modifications by Agreement. As part of the resolution of any matter submitted to this Court under Section XV (Dispute Resolution) of this Consent Decree regarding a claim of Force Majeure, the Parties 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 and the Defendants or approved by the Court. The Defendants shall be liable for stipulated penalties for their failure thereafter to complete the work in accordance with the extended or modified schedule.

61. Malfunctions. The Defendants shall notify EPA in writing of each Malfunction impacting a pollution control technology or Unit at the Rockview, Laurel Highlands, Muncy or Huntingdon Facilities as soon as practicable, but in no event later than twenty-four (24) hours following the date and the time that the Defendants first knew, or by the exercise of due diligence should have known, of the Malfunction. The notice to EPA may be by electronic mail in accordance with Paragraph 79 of this Consent Decree. The Defendants shall be deemed to know of any circumstance which the Defendants, their contractors, or any entity controlled by the Defendants knew or should have known. In this notice, the Defendants shall describe the anticipated length of time that the Malfunction may persist, the

cause or causes of the Malfunction, all measures taken or to be taken by the Defendants to minimize the duration of the Malfunction, and the schedule by which the Defendants propose to implement those measures.

- a. The Defendants shall adopt all reasonable measures to minimize the duration of such Malfunctions and, consistent with 40 C.F.R. § 60.11(d), shall, to the extent practicable, maintain and operate any affected Unit and associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.
- b. A Malfunction, as defined in this Consent Decree, does not constitute a Force Majeure Event pursuant to Section XIV (Force Majeure) of this Consent Decree unless the Malfunction also meets the definition of a Force Majeure Event, as provided in Section XIV.

#### **XV. DISPUTE RESOLUTION**

62. 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.

63. 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 noticing Party shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days following receipt of such notice.

64. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations among the disputing Parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting among the disputing Parties' representatives unless they agree in writing to extend this period.

65. During the informal negotiations period, the disputing Parties may also submit their dispute to a mutually-agreed-upon non-binding alternative dispute resolution ("ADR") forum if the Parties agree that the non-binding ADR activities can be completed within the 30-day informal negotiations period (or such longer period as the Parties may agree to in writing).

66. If the disputing Parties are unable to reach agreement during the informal negotiation period, the United States shall provide the Defendants with a

written summary of its position regarding the dispute. The written position provided by the United States shall be considered binding unless, within forty-five (45) calendar days thereafter, the Defendants seek judicial resolution of the dispute by filing a petition with this Court. The United States may respond to the petition within forty-five (45) calendar days of filing.

67. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their initial filings with the Court under Paragraph 66, the disputing Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

## **XVI. PERMITS**

68. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires the Defendants to secure a permit to authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under state law, the Defendants shall make such application in a timely and complete manner. The Defendants shall identify and obtain all applicable permits, licenses and approvals required for performance of activities or work required by this Consent Decree in sufficient time to perform the activities or work as scheduled.

69. When permits are required, the Defendants shall complete and submit applications for such permits to the appropriate authorities to allow sufficient time for processing and review of the permit request, including requests for additional information by the permitting authorities. Any failure by the Defendants to submit a timely and complete permit application for any Unit at Huntingdon, Laurel Highlands, Rockview or Muncy Facilities shall bar any use by the Defendant of Section XIV (Force Majeure) of this Consent Decree, where a Force Majeure claim is based on permitting delays.

70. Within ninety (90) days from the date of entry of this Consent Decree, the Defendants shall submit applications to PADEP for the Muncy Facility to incorporate Unit-specific fuel-burning requirements, operational requirements and prohibitions, or other requirements established by Section V of this Consent Decree into federally enforceable operating permits (other than a CAA Title V permit) and/or plan approvals as applicable for the Muncy Facility. Following submission of the permit or plan approval applications, Defendants shall cooperate with PADEP by promptly submitting to PADEP all information that PADEP seeks following its receipt of the permit or plan approval applications. If the Defendants, with approval from EPA, select an alternative control technology or fuel for a Unit at Muncy, then the Defendants shall submit to PADEP a plan

approval application and apply to modify, renew, or obtain any applicable plan approval or operating permit to incorporate such Unit-specific control technology requirements or fuel-burning requirements within ninety (90) days of making such election.

71. Prior to commencing construction on the Rockview, Laurel Highlands, and the Huntingdon Facilities and in compliance with requirements in the Act and in the Pennsylvania SIP, but in no event later than September 30, 2010, Defendants shall submit applications to PADEP for federally enforceable operating permits (other than CAA Title V permits) and/or plan approvals as required to incorporate emission reduction measures required in Sections IV, VI and VII of this Consent Decree as applicable to the Rockview, Laurel Highlands, and Huntingdon Facilities. Following submission of the permit or plan approval applications, Defendants shall cooperate with PADEP by promptly submitting to PADEP all information that PADEP seeks following its receipt of the respective permit or plan approval applications. Upon issuance of such permits or plan approvals or in conjunction with such permitting, Defendants shall file any applications necessary to incorporate the requirements of the permits or plan approvals for the Rockview, Laurel Highlands, and Huntingdon Facilities into the Rockview Title V Permit, the Laurel Highlands Title V Permit, and the

Huntingdon Title V Permit as appropriate. The Parties agree that the incorporation of any requirements of this Consent Decree into the Rockview Title V Permit, into the Laurel Highlands Title V Permit, and into the Huntingdon Title V Permit shall be in accordance with the Commonwealth of Pennsylvania's federally approved Title V provisions.

72. The Defendants shall provide the United States with a copy of each application for a federally enforceable permit or plan approval to allow for timely participation in any public comment opportunity.

73. Notwithstanding the reference to Title V permits in this Consent Decree, the enforcement of such permits shall be in accordance with their own terms and the Act. The Title V permits 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 or limit has or may become part of a Title V permit.

74. Prior to termination of this Consent Decree, in accordance with federal and/or state requirements for issuing, modifying or renewing a Title V permit or other operating permit, the Defendants shall obtain enforceable provisions in their Title V permits for the Huntingdon, Laurel Highlands, and Rockview Facilities and in an enforceable operating permit for the Muncy Facility which incorporate



the requirements and limitations from Sections IV through VII of this Consent Decree.

## **XVII. INFORMATION COLLECTION AND RETENTION**

75. 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 any facility covered under this Consent Decree 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 the Defendants or their representatives, contractors, or consultants;  
and
- d. assessing the Defendants' compliance with this Consent Decree.

76. The Defendants shall retain, and instruct their contractors and agents to preserve, all non-identical copies of all records and documents (including records and documents in electronic form) now in their or their contractors' or agents' possession or control, and that directly relate to the Defendants' performance of

their obligations under this Consent Decree, until December 31, 2020. This record retention requirement shall apply regardless of any document retention policy to the contrary.

77. All information and documents submitted by the Defendants pursuant to this Consent Decree shall be subject to public disclosure based on requests under applicable law providing for such disclosure unless (a) the information and documents are subject to legal privileges or protection or (b) the Defendants claim and substantiate in accordance with 40 C.F.R. Part 2 that the information and documents contain confidential business information.

78. Nothing in this Consent Decree shall limit the authority of the United States to conduct tests and inspections at facilities covered under this Consent Decree under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable federal or state laws, regulations or permits.

### **XVIII. NOTICES**

79. 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:

For 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, D.C. 20044-7611  
DOJ# 90-5-2-1-09099

and

James Hagedorn  
U. S. EPA, Region 3  
Air Protection Division  
1650 Arch Street (3AP12)  
Philadelphia, PA 19103

and

Donna Mastro, Esq.  
U. S. EPA, Region 3  
Office of Regional Counsel  
1650 Arch Street (3RC10)  
Philadelphia, PA 19103

For PADEP:

*For the Rockview and Muncy Facilities:*

Commonwealth of Pennsylvania  
Department of Environmental Protection  
Northcentral Regional Office  
Environmental Program Manager  
Air Quality Program  
208 West Third Street, Suite 101  
Williamsport, PA 17701-6448

*For the Laurel Highlands Facility:*

Commonwealth of Pennsylvania  
Department of Environmental Protection  
Southwest Regional Office  
Air Quality Program Manager  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745

*For the Huntingdon Facility:*

Commonwealth of Pennsylvania  
Department of Environmental Protection  
Southcentral Regional Office  
Environmental Program Manager  
Air Quality Program  
909 Elmerton Avenue  
Harrisburg, PA 17110

For the Defendants:

*For the Department of Corrections:*

Deputy Secretary for Administration  
Department of Corrections  
2520 Lisburn Rd  
PO Box 598  
Camp Hill, PA 17001-0598

Director, Bureau of Operations  
Department of Corrections  
2520 Lisburn Rd  
PO Box 598  
Camp Hill, PA 17001-0598

Chief Counsel  
Department of Corrections  
2520 Lisburn Rd  
PO Box 598  
Camp Hill, PA 17001-0598

*For the Department of General Services:*

Deputy Secretary for Public Works  
Department of General Services  
18th & Herr Streets  
Harrisburg, PA 17125

Director, Bureau of Engineering & Architecture  
Department of General Services  
18th and Herr Streets  
Harrisburg, PA 17125

Chief Counsel  
Department of General Services  
603 North Office Building  
Harrisburg, PA 17125

80. As permitted in this Consent Decree, electronic mail notification to EPA may be provided to Donna Mastro of EPA and James Hagedorn of EPA through [mastro.donna@epa.gov](mailto:mastro.donna@epa.gov) and [hagedorn.james@epa.gov](mailto:hagedorn.james@epa.gov).

81. All notifications, communications or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or delivery service; (b) certified or registered mail, return receipt requested; or (c) electronic transmission, unless the recipient is not able to review the transmission in electronic form. 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. All notifications, communications, and submissions made by electronic means shall be electronically signed and certified, and shall be deemed submitted on the date that the Defendants receive written acknowledgment of receipt of such transmission.

82. Any 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.

#### **XIX. SALES OR TRANSFERS OF OWNERSHIP INTERESTS**

83. If the Defendants propose to sell or transfer part or all of their ownership interest in any of their real property or operations subject to this Consent Decree (“Ownership Interest”) to an entity unrelated to the Defendants (“Third Party Purchaser”), they 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 United States pursuant to Section XVIII (Notices) at least sixty (60) days before such proposed sale or transfer.

84. No sale or transfer of an Ownership Interest shall take place before the Third Party Purchaser and the United States have executed, and the Court has approved, a modification pursuant to Section XXII (Modification) of this Consent Decree making the Third Party Purchaser a party defendant to this Consent Decree and jointly and severally liable with the Defendants for all the requirements of this Consent Decree that may be applicable to the transferred or purchased Ownership Interests, except as provided in Paragraph 85, below.

85. This Consent Decree shall not be construed to impede the transfer of any Ownership Interests between the Defendants and any Third Party Purchaser as long the requirements of this Consent Decree are met. In addition, this Consent Decree shall not be construed to prohibit a contractual allocation—as between the Defendants and any Third Party Purchaser of Ownership Interests—of the burdens of compliance with this Decree, provided that both the Defendants and such Third Party Purchaser shall remain jointly and severally liable to the United States for the obligations of the Decree applicable to the transferred or purchased Ownership Interests, except as provided in Paragraph 85.

86. If the United States consents, it may join the Defendants, and the Third Party Purchaser that has become a party defendant to this Consent Decree pursuant to Paragraph 83, in executing a modification that relieves the Defendants of their liability, and that makes the Third Party Purchaser liable, for all obligations and liabilities under this Consent Decree applicable to the purchased or transferred Ownership Interests. Notwithstanding the foregoing, however, the Defendants may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Ownership Interests, including the obligations set forth in Section IX (Civil Penalty).



## **XX. EFFECTIVE DATE**

87. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

## **XXI. RETENTION OF JURISDICTION**

88. Continuing Jurisdiction. 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 its interpretation, construction, execution, modification, or adjudication of disputes. During the term of this Consent Decree, any Party to this Consent Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

## **XXII. MODIFICATION**

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

### **XXIII. GENERAL PROVISIONS**

90. 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.

91. Nothing in this Consent Decree shall relieve the Defendants of their obligations to comply with all applicable federal, state, and local laws and regulations. Nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States to obtain penalties, injunctive relief or other relief under the Act or other federal, state, or local statutes, regulations, or permits.

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

93. In any subsequent administrative or judicial action initiated by the United States for injunctive relief or civil penalties relating to the facilities covered by this Consent Decree, the Defendants 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.

94. Every term expressly defined by this Consent Decree shall have the meaning given to that term by this Consent Decree and, except as otherwise provided in this Consent Decree, every other term used in this Consent Decree that is also a term under the Act or the regulations implementing the Act shall mean in this Consent Decree what such term means under the Act or those implementing regulations.

95. 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. 8315 (Feb. 27, 1997)) concerning the use of data for any purpose under the Act, generated either by the reference methods specified herein or otherwise.

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

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

98. 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 supersedes 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 it be used in construing the terms of this Consent Decree.

99. The United States and the Defendants shall bear their own costs and attorneys' fees.

#### **XXIV. SIGNATORIES AND SERVICE**

100. The undersigned representatives of Defendants and the Assistant Attorney General for the United States each certify that he or she is duly authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to the terms of the Decree.

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

102. 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.

## **XXV. PUBLIC COMMENT**

103. 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 the Consent Decree is inappropriate, improper, or inadequate. The Defendants 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 the Defendants, in writing, that the United States no longer supports entry of the Consent Decree.

## **XXVI. TERMINATION**

104. This Consent Decree may be terminated after the Defendants have complied for at least forty-eight (48) consecutive months with the requirements in Sections IV through VII of this Consent Decree, and have made the payment of all civil and stipulated penalties in Sections IX and XIII.

105. To terminate this Consent Decree, the Defendants shall submit to the United States, and EPA an affidavit signed by a person responsible for environmental management and compliance for PA Department of Corrections

that certifies, in accordance with Paragraph 41, that the Defendants have completed and complied with Sections IV through VIII of this Consent Decree. In addition, the Defendants' affidavit shall state that the Defendants have complied with those provisions for forty-eight consecutive months. The United States shall either: (a) submit the affidavit of the Defendants to the Court, with a notice that the United States does not object to the termination of this Consent Decree; or (b) notify the Defendants that the United States does not agree that the Defendants have completed and complied with the requirements in Sections IV through VIII of this Consent Decree. In the latter event, the Parties shall attempt to resolve the disagreement within thirty (30) days after the Defendants receive the notice of disagreement from the United States. If the Parties are unable to resolve the disagreement, the Defendants shall petition the Court to resolve the disagreement. If the United States does not (a) submit the Defendants' affidavit to the court or (b) notify the Defendants of its disagreement with the affidavit on or before the 120th day after receiving the affidavit, the Defendants may submit a motion to the Court for termination which the United States may oppose. If the Defendants petition the Court to resolve a dispute with the United States over termination, or if the Defendants submit a motion for termination to the Court, the Defendants

shall bear the burden of proving in such proceedings that it has complied with the provisions in Sections IV through VIII of this Consent Decree.

**XXVII. FINAL JUDGMENT**

106. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment in the above-captioned matter between the United States and the Defendants.

SO ORDERED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

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UNITED STATES DISTRICT COURT JUDGE

**FOR THE UNITED STATES OF AMERICA:**

11/22/10  
Date

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

12/27/10  
Date

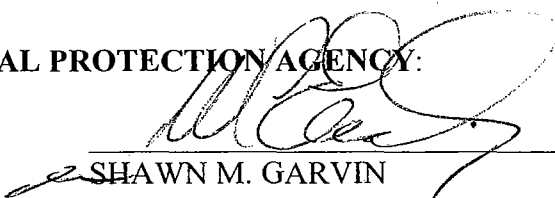
K. M. Kane  
KATHERINE M. KANE  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice



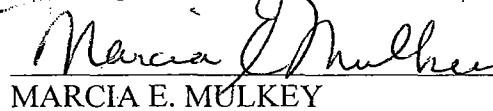
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FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

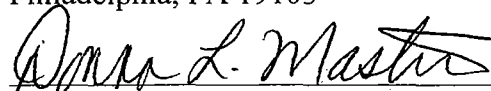
3/26/10  
Date

  
SHAWN M. GARVIN  
Regional Administrator  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103

March 25, 2010  
Date

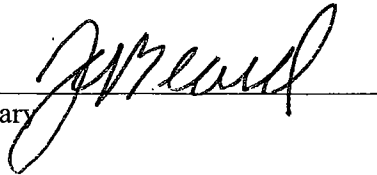
  
MARCIA E. MULKEY  
Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103

March 24, 2010  
Date

  
DONNA L. MASTRO  
Senior Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 10103

FOR THE COMMONWEALTH OF PENNSYLVANIA:  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS

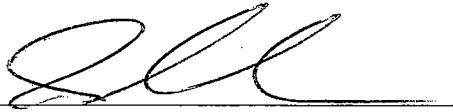
Secretary



1/27/10

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES


Secretary



Date

8/10/10

GOVERNOR

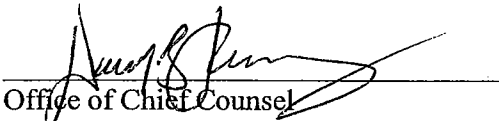
  
Edward G. Rendell

Date

8/17/10

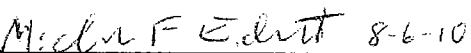
Approved for Form and Legality:

Office of Chief Counsel  
Department of Corrections



Date

7/23/10

 8-6-10  
Office of Chief Counsel

Date

Department of General Services





Office of General Counsel

8.13.10

Date

Amylee Thickett 8/26/10

Office of Attorney Counsel