IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA and the STATE OF ILLINOIS,

Plaintiffs,

CITIZENS AGAINST RUINING THE ENVIRONMENT,

Intervenor-Plaintiff,

v.

MIDWEST GENERATION, LLC,

Defendant.

Civil Action No. 09-cv-05277

Judge John J. Tharp, Jr.
Magistrate Judge Maria Valdez

CONSENT DECREE

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On August 27, 2009, Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), and the State (as defined below) (collectively, "the Governments"), filed a complaint in this action, against Defendant, Midwest Generation, LLC ("MWG" or "Defendant"), pursuant to Sections 113(b) and 167 of the Clean Air Act ("Clean Air Act" or "Act"), 42 U.S.C. §§ 7514(b) and 7477. MWG is or was the owner and/or operator of the electric generating units located at the following six plants in Illinois: the Crawford Station, including Crawford Unit 7 and Crawford Unit 8, in Chicago, Illinois ("Crawford"); the Fisk Station, including Fisk Unit 19, in Chicago, Illinois ("Fisk"); the Joliet Station, including Joliet Unit 6, Joliet Unit 7, and Joliet Unit 8, in Joliet, Illinois ("Joliet"); the Powerton Station, including Powerton Unit 5 and Powerton Unit 6, in Pekin, Illinois ("Powerton"); the Waukegan Station, including Waukegan Unit 6, Waukegan Unit 7, and Waukegan Unit 8, in Waukegan, Illinois ("Waukegan"); and the Will County Station, including Will County Unit 1, Will County Unit 2, Will County Unit 3, and Will County Unit 4, in Romeoville, Illinois ("Will County").

The Complaint against MWG sought injunctive relief and civil penalties for alleged violations at its six coal-fired electricity generating power plants in Illinois of (1) the Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. §§ 7470-92; (2) visible air pollutant ("opacity") and particulate matter ("PM") limitations under the State Implementation Plan ("SIP") adopted by Illinois and approved by U.S. EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410; and (3) Title V of the Act, 42 U.S.C. § 7661-7661f, the Title V regulations at 40 C.F.R. Part 70, and the Illinois Environmental Protection Act, 415 Illinois Compiled Statutes ("ILCS"), 5/1 *et seq.*, including the Title V permit program, 5/39.5.

On October 9, 2009, Citizens Against Ruining the Environment ("CARE"), the Environmental Law and Policy Center ("ELPC"), the Natural Resources Defense Council, Inc. ("NRDC"), the Respiratory Health Association of Metropolitan Chicago, and the Sierra Club (collectively, the "Citizen Groups") moved to intervene. On October 20, 2009, the district court granted that motion. The Citizen Groups' Complaint alleged violations of the Illinois SIP and MWG's Title V permit due to alleged opacity exceedances at MWG's six coal-fired power plants in Illinois.

On December 16, 2009, MWG moved to dismiss: (1) all the Governments' PSD claims for civil penalties; (2) the Governments' PSD claims for injunctive relief at all of MWG's units that were subject to PSD claims except Will County Unit 4; and (3) the portion of the Governments' Title V claims linked to their alleged PSD violations. On March 9, 2010, the district court granted MWG's motion.

On June 2, 2010, the Citizen Groups filed an Amended Complaint re-asserting opacity and Title V violations at all of MWG's coal-fired electricity generating power plants in Illinois, as well as PM and PSD violations at Will County Unit 4. On June 3, 2010, the Governments filed a First Amended Complaint alleging that MWG was liable as a successor for injunctive relief for the claimed PSD violations at its coal-fired electricity generating power plants in Illinois. The Governments also reasserted their opacity, PM, and Title V allegations. On September 17, 2010, MWG moved to dismiss all the Governments' PSD claims for injunctive relief at all units except Will County Unit 4, as well as the Governments' Title V claims related to their PSD claims. MWG also moved to dismiss the Citizen Groups' PSD claims related to

Will County Unit 4. On March 16, 2011, the district court granted MWG's motion as to the Governments' claims but denied MWG's motion to dismiss the Citizen Groups' claims for relief arising from alleged PSD violations at Will County Unit 4.

On November 3, 2011, the district court granted the Governments' motion for entry of partial final judgment pursuant to Fed. R. Civ. P. 54(b) and stayed the opacity, Title V, and PSD claims that remained pending. On January 4 and 6, 2012, the Governments filed notices of appeal. On March 22, 2012, the district court entered a Stipulation and Order dismissing without prejudice all the claims alleged by Plaintiff Intervenors ELPC, NRDC, Respiratory Health Association of Metropolitan Chicago, and Sierra Club against MWG. On July 8, 2013, the Seventh Circuit affirmed the district court's judgment.

In 2007, MWG ceased operation of Waukegan Unit 6. In 2011, MWG ceased operation of Will County Units 1 and 2. In 2012, MWG ceased operation of Fisk Unit 19 and Crawford Units 7 and 8.

Effective December 7, 2015, the State amended regulations found at 35 Ill. Adm. Code 225.296(b) under which MWG "must not combust coal" at Will County Unit 3 on or after April 16, 2015, and at Joliet Units 6, 7, and 8 on or after December 31, 2016. The Illinois Environmental Protection Agency has submitted this provision for inclusion in its State Implementation Plan and EPA has published its proposed rule in the Federal Register, 82 Fed. Reg. 41376 (Aug. 31, 2017). On October 16, 2015, the Illinois Environmental Protection Agency issued a construction permit to MWG, authorizing the conversion of Joliet Units 6, 7, and 8 to natural gas and the termination of its coal-firing capability.

Counts 4, 5, 9, 10, 14, 15, 19, 20, 24-27, 31, 32, 36, 37, 41, 42, 46-54, 58, and 59 of the Governments' Amended Complaint (ECF No. 93) and CARE's claims in its Amended Complaint (ECF No. 92) remain pending, in whole or in part, in the district court and have been stayed since the filing of the entry of partial final judgment.

Defendant does not admit any liability to the United States, the State, or CARE arising out of the transactions or occurrences alleged in the Amended Complaints.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid further litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, 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 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 113(b), 167, and 304 of the Act, 42 U.S.C. § 7413(b), 7477, and 7604, and over the Parties. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because certain violations alleged in the Amended Complaints are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Decree, or any action

to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

II. APPLICABILITY

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

3. Unless effected by operation of law, at least 30 Days prior to any transfer of ownership or operation of any of the Operating Facilities, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall contemporaneously provide written notice of the prospective transfer to U.S. EPA Region 5, the United States Attorney for the Northern District of Illinois, the United States Department of Justice ("U.S. DOJ"), and the State, in accordance with the notice provisions of this Consent Decree, together with a copy of the written agreement to transfer, which agreement shall commit the transferee to assume the obligations of MWG under and to be substituted for MWG as a party to this Decree with respect to the transferred Operating Facility or Operating Facilities. The Defendant may submit such agreement as Confidential Business Information pursuant to Paragraph 79. No agreement to transfer of ownership or operation of the Operating Facilities, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake the obligations required by this Decree and to be substituted for the Defendant as a Party under the Decree with respect to the transferred Operating Facility or Operating Facilities and thus be bound by the terms thereof, and (2) the United States, after consulting with the State, consents to relieve Defendant of its obligations. The United States may refuse to approve the substitution of the transferee for Defendant if it determines that the proposed transferee does not possess the requisite technical abilities or financial means. If any transfer of ownership or operation of the Joliet Station or Powerton Station is effected by operation of law, Defendant shall provide a copy of the Consent Decree to the transferee and written notice of the transfer to the listed governmental parties within 14 Days of the transfer and shall be relieved of further obligation to ensure that the terms of this Consent Decree are implemented post-transfer in the absence of any order of the Court to the contrary. Defendant shall provide notice to U.S. EPA Region 5, the United States Attorney for the Northern District of Illinois, the United States Department of Justice ("U.S. DOJ"), and the State within 7 days of when it has reason to believe a transfer by operation of law may occur, such as when it receives a notice of eviction or a notice of foreclosure. Any attempt to transfer ownership or operation of any of the Facilities by Defendant without complying with this Paragraph constitutes a violation of this Consent Decree.

4. Defendant shall provide a copy of this Consent Decree (in hard copy or electronically) to all officers, managerial employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work under this Consent Decree, which contractor is performing such work as of the Effective Date or is retained to do so thereafter. Defendant shall condition any contract with such contractor entered into after the Effective Date upon performance of the work in conformity with the terms of this Consent Decree. The obligations in this Paragraph, however, shall not

apply to any person or firm retained solely to supply materials or equipment to satisfy the obligations of this Consent Decree or to perform stack testing or maintenance on PM CEMS.

5. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, managers, members, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree unless such failure is occasioned by a Force Majeure Event as defined in Section XII of this Decree.

III. DEFINITIONS

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

"30-Day Rolling Average Emission Rate for NO_x" for Will County Unit 4 shall be determined for each period of thirty (30) Unit Operating Days, where each such period shall consist of the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days, by (1) summing the total pounds of NO_x emitted from the Unit during such thirty (30) Unit Operating Day period ("Total Pounds of NO_x Emissions") and (2) separately summing the total heat input (in Btu) during such thirty (30) Unit Operating Day period ("Total Btus") and then dividing the Total Pounds of NO_x Emissions by the Total Btus during that thirty (30) Unit Operating Day period and presenting that quotient, *i.e.*, the actual NO_x emission rate from the Unit, in pounds of NO_x emissions of that pollutant per million (1,000,000) Btu heat input (lb/MMBtu). A new 30-Day Rolling Average Emission Rate for NO_x shall be calculated for each new Unit Operating Day. Each 30-Day Rolling Average Emission Rate for NO_x shall include all NO_x emissions that occur during all periods within any Unit Operating Day, including emissions from startup, shutdown, malfunction, and breakdown.

"Amended Complaints" shall mean the amended complaint filed by the United States and the State in this action and the amended complaint filed by CARE in this action.

"Consent Decree" or "Decree" means this Decree.

"Continuous Opacity Monitoring System" or "COMS" means the total equipment used to sample and condition (if applicable), to analyze, and to provide a record of the opacity of emissions from a Unit.

"Continuously Operate," when used in connection with a requirement that a pollution control technology (including Low NO_x Burners, Over-Fire Air, or ESPs), COMS, or PM CEMS is to be operated at a unit pursuant to this Consent Decree, means that the pollution control technology, COMS, or PM CEMS shall be operated at all times that the unit it serves is in operation subject to technological limitations, manufacturers' specifications, good engineering and maintenance practices, and good air pollution practices (as defined by 40 C.F.R. § 60.11(d)), as applicable, for such equipment and the

unit. For COMS and PM CEMS, Continuously Operate also means operating in compliance with 40 CFR § 60.13(e).

"Day" means a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree prescribed for reporting or providing notice, 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" means Midwest Generation, LLC.

"Effective Date" shall have the definition provided in Section XVIII.

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

"Energize," when used in Paragraphs 22(b)(1) and 30(d) of this Decree, means to supply electrical power at some level.

"Facility" or "Facilities" means Defendant's Crawford Station located in Chicago, Illinois ("Crawford"); the Fisk Station located in Chicago, Illinois ("Fisk"); the Joliet Station located in Joliet, Illinois ("Joliet"); the Powerton Station located in Pekin, Illinois ("Powerton"); the Waukegan Station located in Waukegan, Illinois ("Waukegan"); and the Will County Station located in Romeoville, Illinois ("Will County").

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

"lb/MMBtu" means pound per million British thermal units.

"Low NO_x Burner" means a control technology involving a burner design that 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 thermal NO_x emissions to the atmosphere.

"Natural Gas" shall mean natural gas received directly or indirectly through a connection to an interstate pipeline transporting natural gas governed by a tariff approved by the Federal Energy Regulatory Commission.

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

"NO_x Allowance" means an authorization to emit a specified amount of NO_x that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or applicable Illinois State Implementation Plan; provided, however, that with respect to any such program that first applies to emissions occurring after December 31, 2011 (*e.g.*, the Cross-State Air Pollution Rule ("CSAPR"),

76 FR 48208 (August 8, 2011), and CSAPR amendments and updates thereafter), a "NOx Allowance" shall include an allowance created and allocated under such program only for control periods starting on or after the fourth anniversary of the Effective Date of this Consent Decree.

"Operating Facility" or "Operating Facilities" means Defendant's Joliet Station; the Powerton Station; the Waukegan Station; and the Will County Station.

"Over-Fire Air" means a control technology that introduces air into a boiler above the combustion zone for the purpose of reducing NO_x emissions.

"Paragraph" means a portion of this Decree identified by an arabic numeral.

"Parties" means the United States, the State, CARE, and Defendant.

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

"PM CEMS" or "PM Continuous Emission Monitoring System" means the total equipment used to sample and condition (if applicable), to analyze, and to provide a record of PM emissions.

"Refuel" or "Refueled" means the Unit shall only combust Natural Gas and/or Ultra-Low Sulfur Diesel, or another fuel (including any other Fossil Fuel) approved pursuant to a written request in accordance with Paragraph 24 to U.S. EPA and that is consistent with applicable federal and state law.

"Retire," "Retired," or "Retirement" means to shut down permanently a Unit and to comply with applicable state and federal requirements for permanently ceasing operation of the Unit including having asked or asking Illinois EPA to remove the Unit from Illinois's air emissions inventory and withdrawing or amending (or submitting an application to amend) all applicable air permits so as to reflect the permanent shutdown status of such Unit.

"Section" means a portion of this Decree identified by a roman numeral.

"SO_2" means sulfur dioxide.

"SO_2 Allowance" means an authorization to emit a specified amount of SO_2 that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or applicable Illinois State Implementation Plan; provided, however, that with respect to any such program that first applies to emissions occurring after December 31, 2011(*e.g.*, the Cross-State Air Pollution Rule ("CSAPR"), 76 FR 48208 (August 8, 2011), and CSAPR amendments and updates thereafter), an "SO_2 Allowance" shall include an allowance created and allocated under such program only for control periods starting on or after the fourth anniversary of the Effective Date of this Consent Decree.

"State" means the State of Illinois, by and through the Attorney General of the State of Illinois.

"Surrender" or "Surrender of Allowances" means, for purposes of SO_2 or NO_x Allowances, permanently surrendering allowances from the accounts administered by U.S. EPA and the State of Illinois, if applicable, so that such allowances can never be used thereafter to meet any compliance requirements under the Act, a state implementation plan, or this Consent Decree.

"Title V Permit" means the permit required of MWG's major sources pursuant to Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

"Ultra-Low Sulfur Diesel" means, solely for the purposes of this Consent Decree, a distillate fuel commonly or commercially known or sold as No. 1 diesel fuel or No. 2 diesel fuel that contains no more than 15 parts per million sulfur.

"Unit" means the coal pulverizer, stationary equipment that feeds coal to the boiler, the boiler that produces steam for the steam turbine, the steam turbine for that boiler, the generator for that boiler, the on-site equipment necessary to operate that generator, steam turbine, and boiler, and all ancillary equipment, including pollution control equipment and systems necessary for production of electricity. An electric steam generating station may be comprised of one or more Units, in which case the Units may share certain equipment. In any case where equipment is shared between two or more Units at a station and this Consent Decree imposes an obligation at less than all of the Units at the station, then such obligation, including any Retirement or Refuel obligation, shall not include any shared equipment.

"Unit Operating Day" means any Day on which a Unit fires Fossil Fuel.

"United States" means the United States of America, acting on behalf of EPA.

"U.S. EPA" means the United States Environmental Protection Agency and any of its successor departments or agencies.

IV. CIVIL PENALTY

7. Within 30 Days after the Effective Date, Defendant shall pay the sum of Five Hundred Thousand Dollars ($500,000) to the United States as a civil penalty.

8. Defendant shall pay the civil penalty due at 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 Northern District of Illinois 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 Consent Decree. The FLU will provide the payment instructions to: Gaetan Frotte, Treasurer, 804 Carnegie Center, Princeton, NJ 08540; (609) 524-4706; Gaetan.frotte@nrg.com, on behalf of Defendant. Defendant may change

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

At the time of payment, Defendant shall send notice that payment has been made: (i) to U.S. EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at U.S. 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 XVII; and (iii) to U.S. EPA in accordance with Section XVII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States et al. v. Midwest Generation, LLC., and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-09334.

9. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section XI (Stipulated Penalties) in calculating its federal or state income tax.

10. No later than 30 Days after the Effective Date, Defendant shall pay the sum of Five Hundred Thousand Dollars ($500,000) to the State as a civil penalty. The civil penalty shall be made by certified check or money order payable to the "Illinois Attorney General State Projects and Court Ordered Distribution Fund (801 Fund)" for subsequent expenditure as authorized by the Illinois Attorney General. The case name and case number shall appear on the face of the certified check or money order. Payments shall be sent by certified mail and delivered to:

Elizabeth Wallace
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

V. COMPLIANCE REQUIREMENTS

11. Unit Retirements. Consistent with the requirements of 35 Ill. Adm. Code §§ 225.294(b)(1)(A) & 225.296(a) and no later than 180 Days after the Effective Date, MWG shall have Retired or shall Retire Crawford Unit 7, Crawford Unit 8, Fisk Unit 19, Waukegan Unit 6, Will County Unit 1, and Will County Unit 2. Nothing herein shall prevent the installation of a new unit (including a Fossil Fuel-fired unit) provided that MWG applies for, and obtains, all required permits and complies will all other applicable federal and state requirements.

12. Refuel. Consistent with the requirements of 35 Ill. Adm. Code § 225.296(b) and as of the date of lodging of this Consent Decree, MWG shall only operate Will County Unit 3, if it is Refueled. Consistent with the requirements of 35 Ill. Adm. Code § 225.296(b) and no later than the Effective Date, MWG shall only operate Joliet Unit 6, Joliet Unit 7, and Joliet Unit 8, if they are Refueled. Nothing herein shall prevent the installation of a new unit (including a Fossil Fuel-fired unit) provided that MWG applies for, and obtains, all required permits and complies with all other applicable federal and state requirements.

13. NO_x Emission Rate at Will County Unit 4. As of the Effective Date, MWG shall Continuously Operate its Low NO_x Burners and Over-Fire Air and shall achieve and maintain a 30-Day Rolling Average Emission Rate for NO_x no greater than 0.13 lb/MMBtu. In determining a 30-Day Rolling Average Emission Rate for NO_x, Defendant shall use NO_x emission data obtained from a CEMS that is operated in accordance with the procedures of 40 C.F.R. Part 75, except that the missing data substitution procedures of 40 C.F.R. Part 75 shall not apply to such determinations.

14. Rolling Average Emission Rate Effective Date. The Parties expressly recognize that whenever this Consent Decree specifies that a 30-Day Rolling Average Emission Rate shall be achieved and/or maintained commencing or starting by or no later than a certain day or date, then compliance with such Rate shall commence immediately upon the date specified but no sooner than 30 Unit Operating Days after the Effective Date of this Decree, and that compliance as of such specified date (*e.g.*, December 30) shall be determined based on data from that date and the 29 prior Unit Operating Days (*e.g.*, December 1-29).

15. Rounding. Performance standards, emissions limits, and other quantitative standards set by or under this Consent Decree must be met to the number of significant digits in which the standard or limit is expressed. For example, an Emission Rate of 0.030 lb/MMBtu is not met if the actual Emission Rate is 0.031 lb/MMBtu. Defendant shall round the fourth significant digit to the nearest third significant digit, or the third significant digit to the nearest second significant digit, depending upon whether the limit is expressed to three or two significant digits. For example, if an actual Emission Rate is 0.0304, that shall be reported as 0.030, and shall be in compliance with an Emission Rate of 0.030, and if an actual Emission Rate is 0.0305, that shall be reported as 0.031, and shall not be in compliance with an Emission Rate of 0.030. Defendant shall report data to the number of significant digits in which the standard or limit is expressed.

16. Continuous Operation of COMS.

a. As of the date of lodging of this Consent Decree, MWG shall Continuously Operate its COMS for Powerton Units 5 & 6, Waukegan Units 7 & 8, and Will County Unit 4. This requirement shall not apply to a Unit, if in a calendar quarter, MWG operates that Unit solely on Natural Gas during that entire calendar quarter, except that MWG may startup Will County 4 using its oil igniters until it is able to establish a stable Natural Gas flame.

b. If Natural Gas becomes commercially unavailable during a calendar quarter when MWG intended to and is operating a Unit solely on Natural Gas, MWG may operate that Unit on Ultra-Low Sulfur Diesel if MWG either:

(1) operates its COMS while it is burning Ultra-Low Sulfur Diesel; or

(2) conducts U.S. EPA Reference Method 22 ("Method 22") readings until MWG can conduct U.S. EPA Reference Method 9 ("Method

9") readings for no less than 30 minutes (5 six-minute averages) once every four hours during daylight hours but no more than twice in any given day while the Unit is burning Ultra-Low Sulfur Diesel. MWG must begin conducting Method 9 readings no later than three days after commencing operation on Ultra-Low Sulfur Diesel. When conducting Method 22 readings, MWG shall conduct Method 22 readings for no less than 30 minutes twice daily during daylight hours. If visible emissions are observed during a Method 22 reading for 90 seconds or more during the 30-minute observation period, MWG shall document the observation and assess the operation of the facility, document the outcome of the assessment, and continue conducting Method 22 readings in continuous 15-minute intervals until MWG does not observe visible emissions for an entire 15-minute interval, daylight hours have ended, or MWG starts the Method 9 readings mentioned above.

17. Upgraded ESPs at Powerton Unit 5. As of the date of lodging, Defendant shall not operate Powerton Unit 5 unless it has upgraded its ESPs for this Unit as required by this Paragraph. The upgrades shall be designed to achieve on a consistent basis a PM emissions rate of 0.025 lb/MMBtu, which is a design standard and not a new emissions limit. MWG shall supply written affirmation or evidence of the referenced designed-to rate upon request from the U.S. EPA. The upgrades must include the following:

a. Install one auxiliary ESP on each of the two boilers associated with Powerton Unit 5. These auxiliary ESPs will be installed in series to the existing ESPs;

b. Install a new precipitator control and management system capable of controlling operation of one or more of the existing or new auxiliary ESPs at any given time;

c. Install new switchmode power supply systems to provide power to new auxiliary ESPs associated with Powerton Unit 5; and

d. Install an electromagnetic rapper system designed for improved non-destructive rapping on each of the new auxiliary ESPs associated with Powerton Unit 5.

18. Upgraded ESPs at Powerton Unit 6. As of the Effective Date, Defendant shall not operate Powerton Unit 6 unless it has upgraded the ESPs for this Unit as required by this Paragraph. The upgrades shall be designed to achieve a PM emissions rate of 0.016 lb/MMBtu, which is a design standard and not a new emissions limit. MWG shall supply written affirmation or evidence of the referenced designed-to rate upon request from the U.S. EPA. The upgrades must include the following:

a. Install eight new purge air systems on the existing ESPs associated with Powerton Unit 6;

b. Install a new precipitator control and management system capable of controlling operation of one or more of the existing ESPs at any given time;

c. Replace the existing power supply systems with new switchmode power supply systems to provide power to each of the ESPs associated with Powerton Unit 6; and

d. Install an electromagnetic rapper system designed for improved non-destructive rapping on each of the new auxiliary ESPs associated with Powerton Unit 6.

19. Upgraded ESP at Waukegan Unit 7. As of the Effective Date of this Decree, Defendant shall not operate Waukegan Unit 7 unless it has upgraded the ESP for this Unit as required by this Paragraph. The upgrade must be designed to achieve a PM emissions rate of 0.016 lb/MMBtu, which is a design standard and not a new emissions limit. MWG shall supply written affirmation or evidence of the referenced designed-to rate upon request from the U.S. EPA. The upgrades must include the following:

a. Convert the existing ESPs from a hot-side to a cold-side system; and

b. Upgrade the existing ESPs monitoring system to improve monitoring of the ESP and associated systems.

20. Upgraded ESPs at Waukegan Unit 8. As of the Effective Date of this Decree, Defendant shall not operate Waukegan Unit 8 unless it has upgraded the ESPs for this unit as required by this Paragraph. The upgrades shall be designed to achieve a PM emissions rate of 0.025 lb/MMBtu, which is a design standard and not a new emissions limit. MWG shall supply written affirmation or evidence of the referenced designed-to rate upon request from the U.S. EPA. The upgrades must include the following:

a. Upgrade the existing ESPs to increase the surface collection area and improve the flow characteristics of the ESPs. This upgrade can be achieved, at least in part, by increasing the height of the ESPs;

b. Replace existing ESP plates and electrodes to accommodate the increased height of the ESPs and increase the surface collection area;

c. Install twenty-four new power supplies for the existing ESPs (to minimize or eliminate power fluctuations which could result from the older power supplies); and

d. Upgrade the existing ESPs control system (DCS) to improve monitoring of the ESP and associated systems.

21. Additional ESP Upgrades, If Necessary at Powerton Units 5 & 6, Waukegan Units 7 & 8, and Will County Unit 4.

a. If Powerton Unit 5, Powerton Unit 6, Waukegan Unit 7, Waukegan Unit 8, or Will County Unit 4 have opacity above 30%, calculated using six-minute averages and subject to the exemptions in 35 IAC 212.123(b) (including exceedances of the 30% limit during periods of Unit startup, shutdown, malfunction and breakdown), for more than 2.5% of the Unit's operating time in any calendar quarter after the first calendar quarter post Effective Date of this Decree, MWG must develop a plan that will recommend any improvements to that Unit's ESP(s) and/or operation to achieve and maintain compliance with the standard set forth in 35 IAC 212.123. MWG shall submit the plan 60 Days after the end of any calendar quarter that triggers the requirements of this Paragraph. The plan would contain a schedule for any recommended improvements. The plan would be subject to the review and approval of U.S. EPA, after consultation with the State and CARE. MWG would implement the approved plan in accordance with the approved schedule. No plan shall be required or submitted for calendar-quarter exceedances that may occur during the implementation phase of a plan submitted under this Paragraph. Triggering the obligations of this Paragraph shall not be considered a violation of the terms of this Decree. Implementation of the approved plan in accordance with the approved schedule shall satisfy MWG's obligations under this Paragraph for the quarter in which the trigger occurred. The requirements of this Paragraph shall not apply to a unit that operated fewer than 200 hours cumulatively in a calendar quarter.

b. If Powerton Unit 5, Powerton Unit 6, Waukegan Unit 7, Waukegan Unit 8, or Will County Unit 4 have opacity above 30%, calculated using six-minute averages and subject to the exemptions in 35 IAC 212.123(b) (including exceedances of the 30% limit during periods of Unit startup, shutdown, malfunction and breakdown), for more than 1.5% of the Unit's operating time in any calendar year starting with calendar year 2018, MWG must develop a plan that will recommend improvements to that Unit's ESP(s) and/or operation to achieve and maintain compliance with the standard set forth in 35 IAC 212.123. MWG shall submit the plan within 60 Days of the end of any calendar year that triggers the requirements of this Paragraph. The plan would contain a schedule for any recommended improvements. The plan would be subject to the review and approval of U.S. EPA, after consultation with the State and CARE. MWG would implement the approved plan in accordance with the approved schedule. No plan shall be required or submitted for calendar-year exceedances that may occur during the implementation phase of a plan submitted under this Paragraph. Triggering the obligations of this Paragraph shall not be considered a violation of the terms of this Decree. Implementation of the approved plan in accordance with the approved schedule shall satisfy MWG's obligations under this Paragraph for the calendar year in which the trigger occurred.

22. ESP Operation at Powerton Units 5 & 6; Waukegan Units 7 & 8; and Will County Unit 4.

a. As of the Effective Date of this Decree, MWG shall, at Powerton Units 5 & 6, Waukegan Units 7 & 8, and Will County Unit 4, Continuously Operate each existing ESP at all times when the associated Unit is combusting coal such that each ESP maximizes opacity and PM emissions reductions and operate each Unit to minimize opacity and PM emissions consistent with the safety, operational, technical, and maintenance limitations of each Unit and ESP.

b. As of the Effective Date of this Decree, Defendant shall, at Powerton Units 5 & 6, Waukegan Units 7 & 8, and Will County Unit 4, reduce particulate emissions and opacity through the following actions, consistent with technical and maintenance limitations and good engineering and air pollution control practices for minimizing emissions:

(1) Energize each section that is available of each ESP for each Unit when combusting coal;

(2) maintain the appropriate energy or power levels delivered to each ESP for each Unit;

(3) make reasonable efforts to repair and return to service as soon as practicable any ESP section or half section that becomes inoperable for any reason; and

(4) for each Unit, set an alarm trigger at 25 percent opacity (as a six-minute average) to alert operational personnel to take appropriate action to minimize the likelihood of any exceedance of the 30 percent opacity limit.

For purposes of this Consent Decree and in light of Paragraphs 17 through 21, this sub-Paragraph does not require MWG to install or upgrade its ESPs.

c. At the end of each calendar year starting with the first full calendar year after the Effective Date, MWG shall review (for the purpose of preparing the report mentioned in the next sentence) Powerton Unit 5's, Powerton Unit 6's, Waukegan Unit 7's, Waukegan Unit 8's, and Will County Unit 4's: (a) ESP rapping frequency and intensity; (b) soot blowing sequencing and duration; (c) load ramping limitations; and (d) startup and shutdown procedures. One Hundred Twenty (120) Days after the end of each such calendar year, MWG shall submit a report to U.S. EPA that: (1) describes the review for the items listed above; (2) cross-references any opacity-related performance-improvement plan submitted for the calendar year in compliance with Paragraph 21(b) above; and (3), if not included in such a plan, summarizes calendar-year maintenance activity and any other performance-improvement recommendations regarding a Unit's ESP(s) identified during the review. MWG shall implement all of its recommended changes after U.S. EPA's approval in accordance with the procedures outlined in Paragraphs 24 to 28. This annual report will be in addition to the quarterly excess

emission reports that are required to be submitted. After the first three full calendar years after the Effective Date, MWG may apply to U.S. EPA and the State to terminate the requirements of this Paragraph for some or all of the identified Units.

23. PM CEMS. As of the Effective Date, MWG shall install and thereafter maintain and Continuously Operate PM CEMS at Will County Unit 4. Within 270 Days after the Effective Date, MWG shall install and thereafter maintain and Continuously Operate PM CEMS at Waukegan Unit 7 and Unit 8. Within 270 days after the Effective Date, MWG shall install and thereafter maintain and Continuously Operate one PM CEMS for Powerton Units 5 and 6 combined.

a. Each PM CEMS must have the capability to measure filterable PM concentrations, directly or indirectly, and include a diluent monitor capable of providing the additional information necessary to allow conversion of the PM mass concentration to units of the applicable standard (lbs/MMBtu). Each PM CEMS must be installed downstream of the final PM control device for the monitored process unit (and may be installed in the associated process Unit stack) such that it obtains representative measurements of PM emissions from the monitored process Unit(s). Each PM CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

b. Each PM CEMS required by this decree must be appropriate for the anticipated stack conditions and capable of measuring directly or indirectly filterable PM concentrations on an hourly average basis. MWG shall maintain, in an electronic database that maintains data for at least 5 years, the hourly average emission values of all PM CEMS in lb/MMBtu on a Unit by Unit basis, except for Powerton Units 5 and 6 for which data will be retained in combined format.

c. Within 180 Days of the date MWG is required to install PM CEMS at Waukegan Units 7 and 8 and Powerton Units 5 and 6 as required by this Paragraph, MWG shall certify each PM CEMS in accordance with 40 C.F.R. Part 60, Appendix B, Performance Specification 11. MWG shall submit the results of all certification testing at Waukegan Units 7 and 8 and Powerton Units 5 and 6 (including incomplete testing, partial runs, associated Reference Method Testing, and other relevant information) to U.S. EPA no later than 45 Days after completion of the certification. Within 30 Days of the Effective Date, MWG shall submit to U.S. EPA the results of all certification testing at Will County 4 (including incomplete testing, partial runs, associated Reference Method Testing, and other relevant information).

d. Each PM CEMS must go through periodic evaluations of the PM CEMS performance and quality assurance (QA) and quality control (QC) procedures in accordance with 40 C.F.R. Part 60, Appendix F, Procedure 2. As part of these procedures, MWG must develop and implement a written QA/QC program in accordance with 40 C.F.R. Part 60, Appendix F, Procedure 2, Section 9.0.

e. The requirements of this Paragraph shall not apply to a Unit, if in a calendar quarter, MWG operates that Unit solely on Natural Gas during that entire calendar quarter, except that MWG may startup Will County 4 using its oil igniters until it is able to establish a stable Natural Gas flame. However, if Natural Gas becomes commercially unavailable during a calendar quarter when MWG intended to and is operating a Unit solely on Natural Gas, MWG may operate that Unit on Ultra-Low Sulfur Diesel if MWG either operates its PM CEMS or its COMS while it is burning Ultra-Low Sulfur Diesel or conducts Method 9 or Method 22 readings in accordance with Paragraph 16. If operating on Ultra-Low Sulfur Diesel continuously for more than two days because Natural Gas is commercially unavailable, MWG shall operate its PM CEMS as soon as practicable.

24. Approval of Deliverables. After review of any plan, request, or report that is required to be submitted pursuant to this Consent Decree, U.S. EPA, after consultation with the State and CARE, 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.

25. If the submission is approved pursuant to Paragraph 24, Defendant shall take all actions required by the plan, request, or report, in accordance with the schedules and requirements of the plan or report, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 24(b) or (c), Defendant shall, upon written direction from U.S. EPA, after consultation with the State and CARE, take all actions required by the approved plan, request, or report that U.S. EPA, after consultation with the State and CARE, determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions, the technical severability of the approved and disapproved portions, or the disapproved portions, under Section XIII (Dispute Resolution) of this Decree.

26. If the submission is disapproved in whole or in part pursuant to Paragraph 24(c) or (d), Defendant shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan or report, 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.

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

28. Any stipulated penalties applicable to the original submission, as provided in Section XI, shall accrue during the 45 Day period or other specified period for submission of a revised plan, report or other item pursuant to Paragraphs 25 or 26 of this Consent Decree, 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 Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

VII. PERMITS

29. Where any compliance obligation under this Decree requires Defendant to obtain a federal, state, or local permit or approval, the Defendant shall complete and submit applications for such permits to the applicable State or local agency to allow sufficient time for all legally required processing and review of the permit request, including requests for additional information by the applicable State or local agency; provided, however that any failure to obtain a required permit is not a violation of this Decree. Any failure by Defendant to submit a timely permit application for a Unit, as required by permitting requirements under state, local, and/or federal regulations, shall bar any use of Section XII (Force Majeure) of this Consent Decree where a Force Majeure claim is based on permitting delays.

30. Within one year after the Effective Date of this Consent Decree, the Defendant shall apply or request to permanently include in a federally enforceable construction permit(s) or a revision to the Illinois SIP, the following requirements and limitations of this Consent Decree such that they become and remain "applicable requirements" as that term is defined in 40 C.F.R. Part 70.2:

a. to Continuously Operate Low NO_x Burners and Over-Fire Air at Will County Unit 4 pursuant to Paragraph 13 of this Consent Decree;

b. the 30-Day Rolling Average NO_x Emissions Rate of 0.13 lb/MMBtu at Will County Unit 4 pursuant to Paragraph 13 of this Consent Decree;

c. to Continuously Operate ESPs at Powerton Units 5 & 6; Waukegan Units 7 & 8; and Will County Unit 4 pursuant to Paragraph 22(a) of this Consent Decree;

d. pursuant to Paragraphs 22(b) of this Consent Decree, to Energize each section of each ESP that is available at Powerton Units 5 & 6; Waukegan Units 7 & 8; and Will County Unit 4 when combusting coal;

e. to maintain the appropriate energy or power levels delivered to each ESP at Powerton Units 5 & 6; Waukegan Units 7 & 8; and Will County Unit 4 pursuant to Paragraph 22(b) of this Consent Decree;

f. to make reasonable efforts to repair and return to service as soon as practicable any ESP section or half section that becomes inoperable for any reason at Powerton Units 5 & 6; Waukegan Units 7 & 8; and Will County Unit 4 pursuant to Paragraph 22(b) of this Consent Decree;

g. to set an alarm trigger for the COMS at 25 percent opacity (as a six-minute average) to alert operational personnel to take appropriate action to minimize the likelihood of any exceedance of the 30 percent opacity limit at Powerton Units 5 & 6; Waukegan Units 7 & 8; and Will County Unit 4 pursuant to Paragraph 22(b) of this Consent Decree;

h. to Continuously Operate PM CEMS and COMS at Powerton Units 5 & 6, Waukegan Units 7 & 8, and Will County Unit 4 pursuant to Paragraphs 16 and 23 of this Consent Decree; and

i. to Surrender SO_2 Allowances and NO_x Allowances pursuant to Section VIII.

31. Defendant shall provide the Plaintiffs with a copy of each application submitted pursuant to the preceding Paragraph for a federally enforceable permit or SIP amendment, as well as a copy of any permit or amendment proposed as a result of such application, to allow for timely participation in any public comment opportunity.

VIII. ALLOWANCE SURRENDER REQUIREMENTS

A. Use and Surrender of NO_x and SO_2 Allowances

32. Except as may be necessary to comply with Section XI (Stipulated Penalties), Defendant shall not use NO_x or SO_2 Allowances to comply with any requirement of this Consent Decree at Will County Units 1, 2, 3, and 4, including by claiming compliance with any emission limitation required by this Consent Decree by using, tendering, or otherwise applying NO_x or SO_2 Allowances to offset any excess emissions.

33. Except as provided in this Consent Decree, beginning in calendar year 2022 for SO_2 and NO_x Allowances under any program that first applies to emission occurring after December 31, 2011, and beginning in calendar year 2019 for all other SO_2 and NO_x Allowances, Defendant shall not sell, bank, trade, or transfer its interest in any NO_x or SO_2 Allowances allocated to Will County Units 1, 2, 3, and 4. Trading, transferring, or selling among the referenced Will County Units, however, shall be permitted.

34. Beginning in calendar year 2022 for SO_2 and NO_x Allowances under any program that first applies to emissions occurring after December 31, 2011, and beginning in calendar year 2019 for all other SO_2 and NO_x Allowances, Defendant shall Surrender all such NO_x and SO_2 Allowances allocated to Will County Units 1, 2, 3, and 4 for that calendar year that Defendant does not need to meet Clean Air Act and/or State air pollution regulatory requirements for those Units.

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

36. The requirements of this Consent Decree pertaining to Defendant's use and Surrender of NO_x and SO_2 Allowances are permanent and are not subject to any termination provision of this Consent Decree.

B. Method for Surrender of NO_x and SO_2 Allowances

37. Defendant shall Surrender, or transfer to a non-profit third-party selected by Defendant for Surrender, all NO_x and SO_2 Allowances required to be Surrendered pursuant to Section VIII.A by June 30 of the immediately following calendar year.

38. If any Allowances required to be Surrendered under this Consent Decree are transferred directly to a non-profit third-party, Defendant shall include a description of such transfer in the next report submitted to U.S. EPA pursuant to Section X (Reporting Requirements) of this Consent Decree. Such report shall: (a) identify the non-profit third-party recipient(s) of the Allowances and list the serial numbers of the transferred Allowances; and (b) include a certification by the third-party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the Allowances and will not use any of the Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any Allowances, Defendant shall include a statement that the third-party recipient(s) Surrendered the Allowances for permanent Surrender to U.S. EPA in accordance with the provisions of Paragraph 39 within one year after the Defendant transferred the Allowances to them. The Defendant shall not have complied with the Allowance Surrender requirements of this Paragraph until all third-party recipient(s) have actually Surrendered the transferred Allowances to U.S. EPA.

39. For all Allowances required to be Surrendered, Defendant shall, with respect to the Allowances that the Defendant is to Surrender, ensure that an Allowance transfer request form is first submitted to U.S. EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such Allowances to the EPA Enforcement Surrender Account or to any other U.S. EPA account that U.S. EPA may direct in writing. Such Allowance transfer requests may be made in an electronic manner using the U.S. EPA's Clean Air Markets Division Business System, or similar system provided by U.S. EPA. As part of submitting these transfer requests, Defendant shall ensure that the transfer of its Allowances are irrevocably authorized and that the source and location of the Allowances being Surrendered are identified by name of account and any applicable serial or other identification numbers or station names.

IX. PROHIBITION ON NETTING CREDITS OR OFFSETS

40. Emission reductions that result from actions to be taken by Defendant at Will County Units 1, 2, 3, and 4 after the Date of Entry of this Consent Decree to comply with the requirements of this Consent Decree shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a netting credit or offset under the Act's Nonattainment New Source Review and PSD programs. For avoidance of doubt and acknowledging that other examples could be stated, a conversion from coal combustion to Natural Gas and/or fuel oil at Will County Unit 4 would not be considered an action to comply with this Consent Decree.

41. Nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by the applicable state regulatory agency or U.S. 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, PSD increment, or air quality related values, including visibility, in a Class I area.

X. REPORTING REQUIREMENTS

42. Defendant shall submit the following reports:

a. Within 30 Days after the end of each calendar quarter after the Effective Date of this Consent Decree, starting with the first full quarter after the Effective Date, until termination of this Decree pursuant to Section XXI, Defendant shall submit a quarterly report for the preceding quarter that shall include the status of any Consent Decree construction or compliance measures; completion of any other Consent Decree compliance milestones (*e.g.*, a Unit Retirement); Consent Decree compliance problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications related to this Consent Decree; any ESP, PM CEMS or opacity COMS maintenance activities; a calculation of the percentage of operating time each Unit at an Operating Facility had opacity exceedances for purposes of Paragraph 21 of this Consent Decree in the given quarter and year; and a summary of any costs incurred for compliance since the previous report.

b. The report required by this Paragraph shall include all information necessary to determine compliance with requirements with/of Continuous Operation of COMS at Joliet, Powerton, Waukegan, and Will County Unit 4; Continuous Operation of the ESPs at Powerton, Waukegan, and Will County Unit 4; Continuous Operation of PM CEMS at Powerton, Waukegan, and Will County Unit 4; the 30-Day Rolling Average NO_x Emission Rate at Will County Unit 4; Continuous Operation of Low NO_x Burners and Over-Fire Air at Will County Unit 4; and the Surrender of NO_x and SO_2 Allowances pursuant to this Decree. Such information shall include the date, time, magnitude, nature, cause of, and corrective action, if any, taken in response to any exceedance of the NO_x 30-Day Rolling Average Emission Rate set forth in Paragraph 13 of this Decree or any opacity exceedance at Joliet, Powerton, Waukegan, or Will County Unit 4 that requires action by Defendant under Paragraph 21 of this Decree. Data recorded by PM CEMS and COMS shall be provided in electronic format. The PM CEMS data shall be submitted as one-hour averages and converted to lb/MMBtu. As applicable, the report shall include any Method 9 readings, Method 22 readings, and any documentation of any visible emissions observed and a statement of any assessment, including the outcome of such assessment, of the facility performed as required by Paragraph 16(b)(2).

c. The report shall also include a description of any non-compliance with the requirements of this 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 reasonably concludes that it has violated or may violate any requirement of this Consent Decree, Defendant shall notify the United States and the State of such violation and its likely duration, in writing, within 30 business 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. In such case, Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including, if then practicable, a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section XII (Force Majeure).

43. Whenever any violation of this Consent Decree or any other event affecting Defendant's performance under this Decree will pose an immediate threat to the public health or welfare or the environment, Defendant shall notify U.S. EPA and the State orally or by electronic transmission as soon as possible, but no later than 48 hours after Defendant first knew of the violation or event. In the event that Defendant notifies the Governments orally, it shall follow up the oral notification with an electronic transmission within 48 hours. This procedure is in addition to the requirements set forth in the preceding Paragraph.

44. All reports shall be submitted to the persons designated in Section XVII (Notices).

45. 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 have no personal knowledge that the information submitted is other than 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.

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

46. The reporting requirements of this 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.

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

XI. STIPULATED PENALTIES

48. For any failure by Defendant to comply with the terms of this Consent Decree, and subject to the provisions of Sections XII (Force Majeure) and XIII (Dispute Resolution) and the other Paragraphs in this Section of the Consent Decree, Defendant shall pay, within 30 Days after receipt of written demand by the United States or the State, as the case may be, the following stipulated penalties.

Consent Decree Violation	**Stipulated Penalty**
a. Failure to pay the civil penalty as specified in Section IV (Civil Penalty) of this Consent Decree	$10,000 per Day
b. Failure to comply with the NO_x 30-Day Rolling Average Emission Rate at Will County Unit 4	$2,500 per Day per violation where the violation is less than 5% in excess of the lb/MMBtu limit $5,000 per Day per violation where the violation is equal to or greater than 5% but less than 10% in excess of the lb/MMBtu limit $10,000 per Day per violation where the violation is equal to or greater than 10% in excess of the lb/MMBtu limit
c. Failure to Continuously Operate Low NO_x Burners or Over-Fired Air at Will County Unit 4 as required under this Consent Decree	$10,000 per Day per violation
d. Failure to Retire Units, Refuel, or upgrade ESPs as required under this Consent Decree	$10,000 per Day per violation
e. Failure to install or operate PM CEMS, COMS or ESPs as required in this Consent Decree	$5,000 per Day per violation
f. Failure to apply for any permit or SIP revision required by Paragraph 30	$3,000 per Day per violation

Consent Decree Violation	**Stipulated Penalty**
g. Failure to Surrender SO_2 Allowances as required under Section VIII	$27,500 per Day unless MWG demonstrates the failure is caused by administrative, ministerial, or technical mistake in which case the maximum penalty amount, if any, shall not exceed $1,000 per Day. In addition, $1,000 per SO_2 Allowance not Surrendered
h. Failure to Surrender NO_x Allowances as required under Section VIII	$27,500 per Day unless MWG demonstrates the failure is caused by administrative, ministerial, or technical mistake in which case the maximum penalty amount, if any, shall not exceed $1,000 per Day. In addition, $1,000 per NO_x Allowance not Surrendered
i. Using, selling, banking, trading, or transferring NO_x Allowances or SO_2 Allowances except as permitted under this Consent Decree:	Surrender of Allowances in an amount equal to four times the number of Allowances used, sold, banked, traded, or transferred in violation of this Consent Decree
j. Failure to timely submit or implement, as approved, the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree.	$3,000 per Day per violation
k. Failure to take Method 9 or Method 22 readings in accordance with Paragraph 16(b)	$2,500 per Day
l. Failure to document any visible emissions observed or assess of the facility in accordance with Paragraph 16(b)	$2,500 per Day
m. Any other violation of this Consent Decree	$1,000 per Day per violation

49. Any violation of an applicable 30-Day Rolling Average Emission Rate shall constitute thirty (30) Days of violation, but where such a violation (from the same Unit) recurs within periods less than thirty (30) Operating Days, the Defendant shall not be obligated to pay a daily stipulated penalty for any Day of the recurrence for which a stipulated penalty has already been paid.

50. Except as provided in Paragraphs 48(i), 53, and 54, 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 Consent Decree.

51. Subject to the provisions of Sections XII (Force Majeure) and XIII (Dispute Resolution) and the other Paragraphs in this Section of the Consent Decree, Defendant shall pay stipulated penalties that are due under this Consent Decree to the United States and the State within 30 Days of a written demand by either Governmental Plaintiff. Defendant shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to the State, regardless of which Plaintiff makes the demand. The Governmental entity making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Governmental entity. For purposes of the stipulated penalty provisions that require an additional Allowance Surrender, Defendant shall make the Surrender of any such Allowances by June 30 of the immediately following calendar year.

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

53. Stipulated penalties shall continue to accrue as provided in Paragraphs 48 and 50, 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 the Plaintiffs or the United States that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States and the State within 30 Days of the effective date of the agreement or the receipt of the Plaintiffs or the United States' decision or order.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 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 15 Days of receiving the final appellate court decision.

54. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 8, 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. All Allowance Surrender stipulated penalties shall comply with the Allowance Surrender procedures of Section VIII (Allowance Surrender Requirements). Defendant shall pay stipulated penalties owing to the State in the manner set forth in Paragraph 10.

55. If Defendant fails to pay stipulated penalties according to the terms of this 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 or the State from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

56. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

57. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' or the State's exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XV (Effect of Settlement/Reservation of Rights), the United States and the State expressly reserve the right to seek any other relief they deem appropriate for Defendant's violation of this Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of a statute, rule or permit that is also a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

XII. FORCE MAJEURE

58. 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 Defendant, its contractors, or any entity controlled by Defendant that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts to fulfill the obligation" include using the best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay and any adverse environmental effect of the violation is minimized to the greatest extent possible.

59. 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 Defendant intends to assert a claim of Force Majeure, Defendant shall notify the United States and the State in writing as soon as practicable, but in no event later than 30 Days following the date Defendant 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, Defendant 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 Defendant to prevent or minimize the delay and any adverse environmental effect of the violation, the schedule by which Defendant proposes to implement those measures, and Defendant's rationale for attributing a delay or violation to a Force Majeure Event. Defendant shall adopt all reasonable measures to avoid or minimize such delays or violations. Defendant shall be deemed to know of any circumstance which Defendant its contractors, or any entity controlled by Defendant knew or should have known.

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

61. United States' Response. The United States shall notify Defendant in writing regarding Defendant's claim of Force Majeure as soon as reasonably practicable. If the United States (after consultation with the State and CARE) agrees that a Force Majeure Event has delayed or prevented, or will delay or prevent, compliance with any provision of this Consent Decree, or has otherwise caused or will cause noncompliance with any provision of this Consent Decree, the United States and Defendant shall stipulate to an extension of deadline(s) for performance of the affected compliance requirement(s) by a period equal to the delay or period of noncompliance actually caused by the event.

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

63. Burden of Proof. In any dispute regarding Force Majeure, Defendant 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. Defendant shall also bear the burden of proving that Defendant gave the notice required by this Section and the burden of proving the anticipated duration and extent of any delay(s) attributable to a Force Majeure Event. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.

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

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

timely fashion; and accepting lawful permit terms and conditions after expeditiously exhausting any legal rights to appeal terms and conditions imposed by the permitting authority.

66. As part of the resolution of any matter submitted to this Court under Section XIII (Dispute Resolution) regarding a claim of Force Majeure, the Plaintiffs and Defendant by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay agreed to by the United States or approved by the Court. Defendant shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule (provided that Defendant shall not be precluded from making a further claim of Force Majeure with regard to meeting any such extended or modified schedule).

XIII. DISPUTE RESOLUTION

67. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

68. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when a Party sends to its Counter-Party a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 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, within 10 Days after the conclusion of the informal negotiation period, any Party may invoke formal dispute resolution procedures as set forth below.

69. Formal Dispute Resolution. A Party shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the Counter-Party 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 the initiating Party's position and any supporting documentation relied upon.

70. The Counter-Party shall serve its Statement of Position within 45 Days of receipt of the initiating Party's Statement of Position. The Counter-Party's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon. Upon completion of the exchange of Statements of Position, the parties shall engage in further negotiations toward resolution for a period not to exceed 20 Days unless extended by agreement. The United States' Statement of Position, including any amendments that may be made during the period of further negotiations, shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

71. After exhaustion of the process set forth in Paragraphs 68, 69, and 70, the Defendant may seek judicial review of the dispute by filing with the Court and serving on the other Parties, in accordance with the notice provisions of this Decree, a motion requesting

judicial resolution of the dispute. The motion must be filed within 10 Days after the expiration of informal and formal negotiations pursuant to the preceding Paragraphs. The motion shall contain a written statement of the 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 Consent Decree.

72. The other Parties shall respond to the filing Party's motion within the time period allowed by the Local Rules of this Court. The Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

73. Standard of Review. The Court shall decide all disputes pursuant to applicable principles of resolving such disputes. In their initial filings with the Court, the disputing Parties shall state their respective positions as to the applicable standard for resolving the particular dispute.

74. 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 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 53. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

XIV. INFORMATION COLLECTION AND RETENTION

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

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

b. verify any data or information submitted to the Plaintiffs in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request and if applicable, splits of any samples taken by Defendant or its representatives, contractors, or consultants pursuant to this Consent Decree;

d. obtain documentary evidence, including photographs and similar data related to compliance with this Consent Decree; and

e. assess Defendant's compliance with this Consent Decree.

76. Upon request, Defendant shall provide U.S. EPA and the State or their authorized representatives splits of any samples taken by Defendant pursuant to this Consent Decree. Upon

request, U.S. EPA and the State shall provide Defendant splits of any samples taken by U.S. EPA or the State.

77. Until 3 years after the termination of this 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, save for voicemail recordings and texts, if any) 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 address Defendant's performance of its obligations under this 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 or the State, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph, subject to Paragraph 78 of this Consent Decree, including privilege claims.

78. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the Plaintiffs at least 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 or the State, Defendant shall deliver any such documents, records, or other information to U.S. EPA or the State. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by applicable state or federal law. If Defendant asserts such a privilege in response to a document request under Paragraphs 77 or 78 of this Consent Decree, 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.

79. 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, and as to the State, as provided by Illinois law. 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, and as to the State, as provided by Illinois law.

80. This 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 or the State pursuant to applicable federal or state 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.

XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

81. This Consent Decree resolves the civil claims of the United States, the State, and CARE for the violations alleged in the Amended Complaints filed in this action through the date of lodging. This Consent Decree also resolves all civil claims of the United States, the State, and CARE against MWG that arose from any modification commenced at Will County Unit 4 through January 31, 2018, or the date of lodging, whichever is sooner, including but not limited

to the Will County Unit 4 claims alleged in the Amended Complaints in this action and/or asserted in the Notices of Violation issued by U.S. EPA to MWG on July 31, 2007, under any or all of (a) Parts C or D of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, 7501-7515, and the implementing PSD and Nonattainment New Source Review provisions of the Illinois SIP; (b) Section 111 of the Act, 42 U.S.C. § 7411, and 40 C.F.R. § 60.14; and (c) Title V of the Act, 42 U.S.C. § 7661-7661f, but only to the extent that such Title V claims are based on MWG's failure to obtain an operating permit that reflects any applicable requirements imposed under Parts C or D of Subchapter I of the Clean Air Act.

82. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. Except as provided in Paragraph 81 of this Consent Decree, this Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions. The United States and the State further reserve 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, any of Defendant's Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

83. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to any of the Facilities or Defendant's alleged violations, 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 or the State 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 81.

84. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Nothing in this Consent Decree shall relieve Defendant of its obligations to comply with all applicable federal, state, and local laws, regulations, and permits; and Defendant's compliance with this 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 and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. §§ 7514(b) and 7477, et seq., or with any other provisions of federal, state, or local laws, regulations, or permits.

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

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

XVI. COSTS

87. The Parties shall bear their own costs of this action, including attorneys' fees, except that the Plaintiffs shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant, and except that MWG, within 14 Days of the Effective Date, shall make a Thirty Thousand Dollar ($30,000) payment to CARE, which payment is in respect to CARE's attorneys' fees incurred in this action and, when made, resolves and releases any claim for attorneys' fees on the part of CARE.

XVII. NOTICES

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

As to the United States by email:	eescdcopy.enrd@usdoj.gov Re: DJ # 90-5-2-1-09334
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 # 90-5-2-1-09334
As to U.S. EPA:	Compliance Tracker U.S. Environmental Protection Agency Region 5, (AE-17J) 77 West Jackson Boulevard Chicago, Illinois 60601 r5airenforcement@epa.gov Vuilleumier.kevin@epa.gov Tennenbaum.Susan@epa.gov
As to the State:	Stephen J. Sylvester Senior Assistant Attorney General Environmental Bureau Illinois Attorney General's Office 69 W. Washington Street, Suite 1800 Chicago, Illinois 60602 ssylvester@atg.state.il.us

As to CARE:

Keith I. Harley
Chicago Legal Clinic, Inc.
211 W. Wacker, Suite 750
Chicago, IL 60606
Kharley@kentlaw.edu

As to MWG:

Walter Stone
804 Carnegie Center
Princeton, NJ 08540
walter.stone@nrg.com

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

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

XVIII. EFFECTIVE DATE

91. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter to the 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 any duties scheduled under this Consent Decree to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XIX. RETENTION OF JURISDICTION

92. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XIII and XX, or effectuating or enforcing compliance with the terms of this Decree.

XX. MODIFICATION

93. The terms of this 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 Decree, it shall be effective only upon approval by the Court.

94. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 73, 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).

XXI. TERMINATION

95. Once MWG has:

a. completed the requirements of Section V (Compliance Requirements);

b. maintained continuous compliance with this Consent Decree, including Continuous Operation of all pollution controls required by this Consent Decree and the requirements of Section VIII for a period of 24 months, and has successfully completed all actions necessary to Retire a Unit or Refuel at a Unit as required by this Consent Decree;

c. paid the civil penalty and any accrued stipulated penalties required by this Consent Decree;

d. either included the Consent Decree requirements and limitations specified in Paragraph 30 of this Consent Decree into a federally enforceable construction permit or Illinois SIP amendment, as described in Section VII (Permits), such that such specified requirements and limitations become and remain "applicable requirements" as that term is defined in 40 C.F.R. Part 70.2; and

e. certified that it is after December 31, 2022,

MWG may serve on the Plaintiffs a Request for Termination, certifying that MWG has satisfied these requirements, together with all necessary supporting documentation.

96. Following receipt by the Plaintiffs 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 set forth in Paragraph 95 for termination of this Consent Decree. If the United States, after consultation with the State and CARE, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

97. If the United States, after consultation with the State and CARE, does not agree that Defendant has satisfied the requirements of Paragraph 95 for termination of the Consent Decree and that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section XIII. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 60 Days after service of its Request for Termination.

XXII. PUBLIC PARTICIPATION

98. This Consent Decree shall be lodged with the Court for a period of not less than 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 Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree; provided, however, that this Consent Decree may not be revised prior to entry, including in response to any public comments, without Defendant's consent.

XXIII. SIGNATORIES/SERVICE

99. Each undersigned representative of Defendant, CARE, the State, the U.S. EPA, 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 Consent Decree and to execute and legally bind the Party he or she represents to this document.

100. This 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 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.

XXIV. INTEGRATION

101. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the 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 Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXV. FINAL JUDGMENT

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

Dated and entered this __ day of _____, 2018.

_____
JUDGE JOHN J. THARP JR.
UNITED STATES DISTRICT JUDGE

Signature Page for *United States et al., v. Midwest Generation, LLC* Consent Decree

FOR THE UNITED STATES OF AMERICA:

3/8/18
Date

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

KRISTIN M. FURRIE
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611

JOHN R. LAUSCH, JR.
United States Attorney
Northern District of Illinois

JONATHAN HAILE
Assistant United States Attorney
Northern District of Illinois

Signature Page for *United States et al., v. Midwest Generation, LLC* Consent Decree

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

3/8/18

Date

SUSAN PARKER BODINE
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

PHILLIP A. BROOKS
Director, Air Enforcement Division
U.S. Environmental Protection Agency

TERESA DYKES
Attorney-Advisor
U.S. Environmental Protection Agency

Signature Page for *United States et al., v. Midwest Generation, LLC* Consent Decree

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

3/7/2018
Date

T. LEVERETT NELSON
Regional Counsel
U.S. Environmental Protection Agency, Region 5

SUSAN TENNENBAUM
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
Office of Regional Counsel

Signature Page for *United States et al., v. Midwest Generation, LLC* Consent Decree

FOR THE STATE OF ILLINOIS:

By LISA MADIGAN, Attorney General
of the State of Illinois

MATHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

2/15/18
Date

BY: Elizabeth Wallace

ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

Signature Page for *United States et al., v. Midwest Generation, LLC* Consent Decree

FOR CITIZENS AGAINST RUINING THE ENVIRONMENT

2/23/18
Date

Keith I Harley

KEITH I. HARLEY
Counsel for Citizens Against Ruining the Environment

Signature Page for *United States et al., v. Midwest Generation, LLC* Consent Decree

FOR MIDWEST GENERATION:

February 6, 2018

Date

Judith Lagano