IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
FAIRBANKS DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. GOLDEN VALLEY ELECTRIC ASSOCIATION, INC., Defendant.	Civil Action No. 3:18-cv-00162-SLG

CONSENT DECREE

TABLE OF CONTENTS

WHEREAS, Plaintiff, the United States of America ("the United States"), on behalf of the United States Environmental Protection Agency ("EPA"), is concurrently filing a Complaint and Consent Decree for injunctive relief and penalties under Section 113(b) of the Clean Air Act ("Act" or "CAA"), 42 U.S.C. §7413(b), alleging that Golden Valley Electric Association, Inc. ("GVEA" or "Defendant") violated Section 112 of the CAA, 42 U.S.C. § 7412, and the National Emission Standards for Hazardous Air Pollutants from Coal and Oil-Fired Electric Utility Steam Generating Units, 40 C.F.R. Part 63, Subpart UUUUU (also known as the "Mercury Air Toxics Standard" or "MATS")" at Units 1 and 2 of the Healy Power Plant in Healy, Alaska.

WHEREAS, Defendant is a small, not-for-profit rural electric power generating cooperative serving approximately 44,000 meters and with an approximate peak demand of 220 megawatts.

WHEREAS, Defendant serves the Alaskan Interior where, because of extreme climate conditions, prudent utility practice is to conduct construction and maintenance on generating and transmission facilities generally during April through October, and where dispatch schedules may be impacted by extreme climate during winter months.

WHEREAS, Defendant is an isolated power generating system operating without connection to an interstate transmission grid.

WHEREAS, Unit 1 at the Healy Power Plant in Healy, Alaska, is an approximately 25 megawatt ("MW") coal-fired electric generating unit owned and operated by Defendant.

WHEREAS, Unit 2 at the Healy Power Plant, the Healy Clean Coal Project ("HCCP" or "Unit 2") is an approximately 50 MW coal-fired electric generating unit owned and operated by Defendant.

WHEREAS, a Consent Decree entered by this Court on November 12, 2012, in United States v. Golden Valley Electric Assn., Inc., No. 4:12-cv-00025 ("2012 Consent Decree"), required Defendant to install a pollution control device known as Selective Catalytic Reduction ("SCR") on Unit 2 on or before August 4, 2017, and to thereafter Continuously Operate such SCR on Unit 2 to reduce emissions of oxides of nitrogen ("NO_X").

WHEREAS, the 2012 Consent Decree also required Unit 1 and Unit 2 at the Healy Power Plant to comply with applicable mercury emissions requirements of MATS.

WHEREAS, as set forth in more detail in a First Amended Consent Decree filed on August 8, 2017 (Docket No. 19) ("First Amended Consent Decree"), Unit 2 became subject to MATS on or after June 13, 2015.

WHEREAS, because of operational difficulties, Unit 2 did not obtain 30 days of normal operations required for the initial compliance demonstration for the mercury emission limits in MATS until February 25, 2016.

WHEREAS, Defendant reported in an April 22, 2016 Notice of Compliance Status that mercury emissions from Unit 2 during testing were 4.76 pounds of mercury per TerraBtu of heat input ("lb/TBtu"), approximately 19% over the applicable emissions limit of 4.0 lb/TBtu.

WHEREAS, as set forth in the First Amended Consent Decree, due to explosions in Unit 2 in March and November 2016, one of which EPA agreed qualified as a Force Majeure Event under the 2012 Consent Decree, Unit 2 has operated for fewer than 60 days between March 3, 2016, and the Date of Lodging.

WHEREAS, based on these events, the First Amended Consent Decree extended the deadline for installation of SCR on Unit 2 until no later than 120 "Unit Operating Days" after "Restart" of Unit 2 as those terms are defined in the First Amended Consent Decree and the 2012

Consent Decree. See First Amended Consent Decree (Docket No. 19), ¶ 2 (amendment to Paragraph 59.a. of 2012 Consent Decree).

WHEREAS, Defendant restarted Unit 2 on July 2, 2018.

WHEREAS, the United States alleges that Unit 1 and Unit 2 have failed to comply with certain provisions of MATS, in violation of the Section 112 of the CAA, MATS, and Paragraph 91 of the 2012 Consent Decree, and that Defendant has further failed to timely report its mercury emissions violations, in violation of Paragraph 91 of the 2012 Consent Decree.

WHEREAS, Defendant expects that it will be able to meet the mercury MATS emission limit once it achieves steady operations and that installation of SCR on Unit 2 is expected to further reduce mercury emissions such that Unit 2 will be able to achieve continuous compliance with the mercury emission limits in MATS without the installation of mercury-specific controls.

WHEREAS, Defendant denies the allegations set forth above, and in the Complaint in this matter, and does not admit any liability to the United States or any other person.

WHEREAS, the Parties have agreed to resolve the United States' claims arising out of the Defendant's alleged violations of MATS by agreeing to and entering into this Consent Decree (hereinafter "Consent Decree").

WHEREAS, prior to lodging of this Consent Decree and in order to settle the United States' claims that Defendant violated Paragraphs 91 and 97 of the 2012 Consent Decree, the United States and Defendant reached an agreement that established the United States' demand for, and Defendant's agreement to pay, $16,000 in stipulated penalties for Defendant's alleged violations of the 2012 Consent Decree.

WHEREAS, nothing in this Consent Decree shall constitute an admission of liability by Defendant in this or any other proceeding.

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

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b). Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b) and under 28 U.S.C. § 1391(b) and (c). For purposes of this Consent Decree, in any action to enforce this Consent Decree, and the underlying Complaint, the Defendant consents to the Court's jurisdiction over this action, to the Court's jurisdiction over the Defendant, and to venue in this district. The Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b).

II. APPLICABILITY

3. Subject to Section XV (Sales or Transfer of Operational or Ownership Interests), the provisions of this Consent Decree apply to and are binding upon the Parties, their successors and assigns, and upon the Defendant's directors, officers, employees, servants, and agents.

4. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any vendors, suppliers, consultants, contractors, agents, and any other company or other organization retained to perform any of the work required by this Consent Decree. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under this Consent Decree, the Defendant shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree, subject to Section VIII (Force Majeure), Defendant shall not assert as a defense the failure of its officers, directors, employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree.

III. DEFINITIONS

5. Every term expressly defined by this Section shall have the meaning given that term herein. Every other term used in this Consent Decree that is also a term used under the Act or in MATS (including applicable definitions in the General Provisions) shall mean in this Consent Decree what such term means under the Act or MATS (including the applicable definitions in the General Provisions).

6. "Boiler Operating Day" means a 24-hour period that begins at midnight and ends the following midnight during which any fuel is combusted at any time in Unit 2, excluding startup or shutdown periods (as those terms are defined in 40 C.F.R. § 63.10042). It is not necessary for the fuel to be combusted the entire 24-hour period.

7. "CMS for mercury" or "Continuous Monitoring System for mercury" means a monitoring system meeting the requirements of MATS, including those requirements set forth in

40 C.F.R. §§ 63.8, 63.9, 63.10, 63.10000, 63.10020, 63.10030, 63.10031, 63.10032, 63.10033, and 40 C.F.R. Part 63, Subpart UUUUU, Appendix A.

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

9. "Complaint" means the complaint filed by the United States in this action.

10. "Consent Decree" means this Consent Decree.

11. "Continuously Operate" or "Continuous Operation" means that when a pollution control technology or combustion control is required to be used at Unit 2 pursuant to this Consent Decree (i.e., Mercury-Specific Add-On Controls), it shall be operated at all times Unit 2 is in operation, except as otherwise provided by Section XIII (Force Majeure), so as to minimize emissions to the greatest extent practicable, consistent with the technological limitations, manufacturer's specifications, and good engineering and maintenance practices for such equipment and the Unit.

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

13. "Date of Lodging" means the Day this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Alaska.

14. "Day" means calendar day unless otherwise specified in this Consent Decree. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business on the next business day.

15. "Defendant" means GVEA.

16. "Effective Date" shall have the definition provided in Section XIV.

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

18. "Fossil Fuel" means natural gas, oil, coal, and any form of solid, liquid, or gaseous fuel derived from such material.

19. "GVEA" means Golden Valley Electric Association, Inc., and its wholly owned subsidiaries.

20. "General Provisions" means the provisions of 40 C.F.R. Part 63, Subpart A, that apply to Unit 1 or Unit 2, as provided in MATS.

21. "Healy Power Plant" means, solely for purposes of this Consent Decree, the Healy Power Plant, consisting of the following pulverized coal-fired boilers designated as Unit 1 (nominally 25 MW) and Unit 2 (nominally 50 MW) and related emission control equipment, which is located in Healy, Alaska.

22. "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

23. "MATS" means 40 C.F.R. Part 63, Subpart UUUUU.

24. "Month" means calendar month unless otherwise specified in this Consent Decree.

25. "Operational or Ownership Interest" means part or all of Defendant's legal or equitable ownership interest in any Unit ("Ownership Interest") or the right to be the operator (as that term is used and interpreted under the Act) of any Unit.

26. "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral.

27. "Parties" means the United States of America on behalf of EPA, and GVEA. "Party" means one of the named "Parties."

28. "Restart" means the first time that Unit 2 is fired with Fossil Fuel after August 1, 2017.

29. "Section" means a portion of this Consent Decree identified by a Roman numeral.

30. "Unit 1" means the Foster-Wheeler Boiler pulverized coal-fired steam generator, including emission control equipment, owned and operated by Defendant.

31. "Unit 2" means the Integrated Entrained Combustion System pulverized coal-fired steam generator, including emission control equipment, owned and operated by Defendant.

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

IV. CIVIL PENALTY

33. Within 30 days after the Effective Date, Defendant shall pay to the United States a civil penalty in the amount of $110,570, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging. The civil penalty shall be paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with instructions provided to Defendant by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Alaska 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 payment instructions to:

Ron Woolf
GVEA
758 Illinois St.
Fairbanks, AK 99701
907.458.5803
rewoolf@gvea.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 EPA in accordance with Section XIII (Notices).

34. At the time of payment, Defendant shall send notice that payment has been made to: (i) EPA via email at acctsreceivable.cinwd@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45628; and (ii) the United States via email or regular mail in accordance with Section XIII (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Golden Valley Electric Association Inc.*, and shall refer to the civil action number CDCS Number and DOJ case number 90-5-2-1-10615/2.

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

V. MERCURY EMISSIONS CONTROLS

A. Monitoring of Mercury Emissions

36. No later than the date of Restart of Unit 2, Defendant shall install and operate the CMS for mercury.

37. Defendant shall conduct the initial certification of the CMS for mercury as required by 40 C.F.R. § 63.10000(c)(1)(vi) no later than 150 Boiler Operating Days after the date of Restart of Unit 2.

38. Defendant shall, for a period of no less than three years after the date of Restart of Unit 2, operate the CMS for mercury in compliance with the requirements of MATS, including those requirements set forth in 40 C.F.R. §§ 63.8, 63.9, 63.10, 63.10000, 63.10020, 63.10030, 63.10031, 63.10032, 63.10033, and 40 C.F.R. Part 63, Subpart UUUUU, Appendix A.

39. Defendant shall use the emissions data obtained from the CMS for mercury for Unit 2 to determine compliance with the mercury emission limits of 40 C.F.R. § 63.9991(a) and Table 2 of MATS, and shall do so in accordance with the procedures specified in MATS, including those procedures specified in 40 C.F.R. §§ 63.8, 63.9, 63.10, 63.10000, 63.10020, 63.10030, 63.10031, 63.10032, 63.10033, and 40 C.F.R. Part 63, Subpart UUUUU, Appendix A.

B. Compliance with the Mercury Emissions Limitation for Unit 2

40. No later than 180 Boiler Operating Days after Restart of Unit 2, Defendant shall demonstrate compliance with the mercury emission limits of 40 C.F.R. § 63.9991(a) and Table 2 of MATS by collecting the required 30-Boiler Operating Days of mercury emissions data from the mercury CMS as required by Paragraphs 37-39 and 40 C.F.R. §§ 63.10000(c)(1)(vi), 63.10005, and Table 5, Line 4 of MATS.

41. If, at any time 180 Boiler Operating Days after Restart, Unit 2 is not in compliance with the mercury emission limits in 40 C.F.R. § 63.9991(a) and Table 2 of MATS based on the emissions data from the CMS for mercury required to be installed by Paragraphs 37-39, Defendant shall:

a. Within ten calendar days of such occurrence, notify the United States in writing that mercury emissions from Unit 2 with operation of the SCR are in excess of the mercury emission limits in 40 C.F.R. § 63.9991(a) and Table 2 of MATS, and submit with such notice the 30 boiler-day rolling average mercury emission rates for Unit 2 for the 90 days prior to such occurrence or such shorter time as Unit 2 has been in operation since restart;

b. Within 90 days of such occurrence, submit a report to EPA discussing (i) preliminary design options under consideration by GVEA for the installation of add-on controls for Unit 2 that are specifically designed to reduce emissions of mercury and to achieve continuous compliance with the mercury emission limits in 40 C.F.R. 63.9991(a) and Table 2 of MATS ("Mercury-Specific Add-On Controls"); and (ii) the results of any mercury speciation testing that has been performed on Unit 2 since Restart;

c. Within 180 days of such occurrence, design and order Mercury-Specific Add-On Controls for Unit 2;

d. Within 270 days of such occurrence, submit a report to EPA on the status of delivery and installation of the selected Mercury-Specific Add-On Controls;

e. Within 360 days of such occurrence, install and Continuously Operate the selected Mercury-Specific Add-On Controls on Unit 2; and

f. Within 360 days of such occurrence, submit to the United States the following information relevant to a determination of the economic benefit to Defendant of the delayed and avoided costs resulting from the delayed installation of the Mercury-Specific Add-On Controls on Unit 2 installed pursuant to Paragraph

41(c): (1) the actual capital costs incurred by Defendant for the installation of the Mercury-Specific Add-On Controls installed pursuant to Paragraph 41(c); (2) copies of all invoices reflecting such capital costs; (3) the first date of operation after installation of the Mercury-Specific Add-on Controls; and (4) an accurate calculation (including the basis of the calculation and all data and information relied on in making the calculation) of the avoided costs Defendant would have incurred had the Mercury-Specific Add-On Controls installed pursuant to Paragraph 41(c) been installed and operational on June 13, 2015. Such estimated avoided costs shall be based on and include copies of (1) the vendor proposal for the purchase of sorbent and the recommended usage per some specified unit of operation, and (2) operating data consistent with the specified unit of operation for each Boiler Operating Day between June 13, 2015, and the date of installation of such Mercury-Specific Add-on Controls.

42. The requirements of Paragraph 41 are subject to the following:

a. If Unit 2 exceeds the mercury emission limits in 40 C.F.R. § 63.9991(a) and Table 2 of MATS due to a claimed Malfunction, Defendant, bearing the burden of proof by a preponderance of the evidence and as provided in Paragraphs 60 through 64, has an affirmative defense to the requirements of Paragraph 41.

b. The requirements of Paragraph 41 apply only to the first event of noncompliance which has not been determined to be due to a Malfunction.

43. If Defendant is required to submit the information described in Paragraph 41(f), above, the United States shall submit a written demand to Defendant for the payment of a civil penalty based on the information described in Paragraph 41(f) reflecting:

a. The economic benefit to Defendant of the delayed and avoided costs resulting from the delayed installation of the Mercury-Specific Add-On Controls installed pursuant to Paragraph 41(e). In making such calculation, EPA shall use the current version of its "BEN" computer model at the time of the calculation with all standard inputs and, for delayed costs, a period of delay from June 13, 2015, and the first date of installation of such controls.

b. A per day penalty for each exceedance of the mercury emission limits in 40 C.F.R. § 63.9991(a) and Table 2 of MATS that occurs after Restart of the Boiler after August 1, 2017 and prior to the first date of operation after installation of the Mercury-Specific Add-on Controls. This per day penalty shall be based on the amounts in Paragraph 52(b), provided that such penalties shall not exceed 20% of the amount required to be paid under Paragraph 43(a). Stipulated penalties for exceedances of the mercury emission limits in 40 C.F.R. § 63.9991(a) and Table 2 of MATS that occur on or after the first date of operation after the installation of the Mercury-Specific Add-On Controls are not subject to this cap.

44. Within 30 days of the date of EPA's demand for payment of penalties under Paragraph 43, Defendant shall pay such civil penalty to the United States in the manner provided in Paragraph 33, subject to Defendant's right to invoke the procedures of Section IX (Dispute Resolution).

45. If Defendant is subject to the requirements of Paragraph 41, Defendant shall, within 390 days of the first such period of noncompliance, achieve and continuously maintain compliance with the mercury emission limits in 40 C.F.R. § 63.9991(a) and Table 2 of MATS.

C. Additional Provisions

46. Nothing in this Consent Decree shall be construed or interpreted to relieve Defendant of any requirements in MATS that may otherwise apply to Unit 1 or Unit 2 of the Healy Power Plant, including requirements that might apply to emissions of other hazardous air pollutants from Unit 1 or Unit 2.

VI. REPORTING REQUIREMENTS

47. Defendants shall, within 15 days after the date on which Unit 2 first fires Fossil Fuel, report to the United States the date on which such first firing of Fossil Fuel in Unit 2 occurred.

48. Defendants shall, semi-annually for each year following the Date of Entry of this Consent Decree, submit to the United States a periodic report of its compliance with the requirements of Section V of this Consent Decree. One such semi-annual report shall cover the period from January 1 to June 30, and shall be due no later than August 31. The other such semi-annual report shall cover the period from July 1 to December 31, and shall be due no later than February 28, provided, however, that the first semi-annual report shall be due on February 28, 2019 and shall cover the period from when Unit 2 first fires coal through December 31, 2018. Each semi-annual report shall include the following information for the period it covers:

a. All information necessary to determine compliance with Section V of this Consent Decree during the reporting period, including but not limited to all CMS data collected during such period by the CMS monitor for mercury on Unit 2;

b. Each Boiler Operating Day, and the type and amount of fuel combusted, during the six-month period;

c. Identification of all periods when any pollution control device required by this Consent Decree to Continuously Operate did not Continuously Operate, the reason(s) for the equipment not operating, and a complete statement of the reason(s) for Defendant's compliance or non-compliance with the Continuous Operation requirements of this Consent Decree.

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

50. In addition to the reports required pursuant to this Section VI, if Defendant violates or deviates from any provision of this Consent Decree, Defendant shall submit to the United States a report on the violation or deviation within 10 business days after Defendant knew or by the exercise of due diligence should have known of the event. In the report, Defendant shall explain the cause or causes of the violation or deviation and any measures taken or to be taken by Defendant to cure the reported violation or deviation or to prevent such violation or deviation in the future. If at any time, the provisions of this Consent Decree are included in a Title V Permit, consistent with the requirements for such inclusion in this Consent Decree, then the deviation reports required under applicable Title V regulations shall be deemed to satisfy all the requirements of this Paragraph.

51. Each of Defendant's reports shall be signed by the Responsible Official as defined in Title V of the Act for the Healy Power Plant, as appropriate, and shall contain the following certification:

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

VII. STIPULATED PENALTIES

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

Consent Decree Violation	**Stipulated Penalty**
a. Failure to pay the civil penalty as specified in Section IV (Civil Penalty) of this Consent Decree	$5,000 per Day
b. Failure to comply with the mercury emission limits in 40 C.F.R. § 63.9991(a) and Table 2 of MATS	$1,250 per Day per violation where the violation is less than 5% in excess of the limit $2,500 per Day per violation where the violation is equal to or greater than 5% but less than 10% in excess of the limit $5,000 per Day per violation where the violation is equal to or greater than 10% in excess of the limit
c. Failure to install and commence Continuous Operation, or Continuously Operate the Mercury-Specific Add-On Controls as required under this Consent Decree	$5,000 per Day per violation during the first 30 Days; $19,000 per Day per violation thereafter
d. Failure to install or operate the CMS for mercury as required in this Consent Decree	$500 per Day per violation

e. Failure to timely submit, modify, or implement, as approved, the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree	$375 per Day per violation during the first 10 Days; $500 per Day per violation thereafter
f. Any other violation of this Consent Decree	$500 per Day per violation

53. All stipulated penalties shall begin to accrue on the Day after the performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases, whichever is applicable. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree. Notwithstanding any other provision of this Consent Decree, the United States may, in its unreviewable discretion, waive all or any part of any stipulated penalties which may have accrued pursuant to this Consent Decree.

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

55. Stipulated penalties shall continue to accrue as provided in accordance with Paragraph 54 during any dispute if Unit 2 is operating, with interest on accrued stipulated penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement, or by a decision of the United States pursuant to Section IX (Dispute Resolution) of this Consent Decree that is not

appealed to the Court, accrued stipulated penalties agreed or determined to be owing, together with accrued interest, shall be paid within 30 Days of the effective date of the agreement or of the receipt of the United States' decision;

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

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

56. Notwithstanding any other provision of this Consent Decree, the accrued stipulated penalties agreed by the United States and Defendant, or determined by the United States through Dispute Resolution to be owing, may be less than the stipulated penalty amounts set forth in Paragraph 52.

57. All monetary stipulated penalties shall be paid in the manner set forth in Section IV (Civil Penalty) of this Consent Decree, except that the transmittal letter shall state that the payment is for stipulated penalties and shall reference the demand letter date and state for which violation(s) penalties are being paid.

58. Should Defendant fail to pay stipulated penalties in compliance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date the payment became due.

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

60. Affirmative Defense for Excess Emissions Occurring During Malfunctions

If Unit 2 exceeds the mercury emission limits in 40 C.F.R. § 63.9991(a) and Table 2 of MATS or fails to meet a Continuously Operate requirement set forth in this Consent Decree due to a claimed Malfunction, Defendant, bearing the burden of proof by a preponderance of the evidence, has an affirmative defense to stipulated penalties under this Consent Decree and to the requirements of Paragraph 41 if Defendant has complied with the reporting requirements of Paragraph 62 and has demonstrated all of the following:

a. the excess emissions or failure to Continuously Operate was/were caused by a sudden, unavoidable breakdown of technology, beyond Defendant's control;

b. the excess emissions or failure to Continuously Operate (1) did not stem from any activity or event that could have been foreseen and avoided, or planned for, and (2) could not have been avoided by better operation and maintenance practices in accordance with manufacturers' specifications and recommendations and good engineering and maintenance practices;

c. to the maximum extent practicable, the air pollution control equipment and processes were maintained and operated in a manner consistent with approved

plans, QA/QC procedures, manufacturers' specifications and recommendations, and good engineering and maintenance practices for minimizing emissions;

d. repairs to equipment and processes were made in an expeditious fashion when such repairs were needed to prevent the exceedance of an emission limit or the shutdown of air pollution control equipment. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;

e. the amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions, and consistent with manufacturers' specifications and recommendations and good engineering and maintenance practices;

f. all possible steps were taken to minimize the excess emissions in accordance with approved plans, QA/QC protocols, manufacturers' specifications and recommendations, and good engineering and maintenance practices;

g. all emission monitoring systems were kept in operation if at all possible and in accordance with approved plans, QA/QC protocols, manufacturers' specifications and recommendations, and good engineering and maintenance practices;

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

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

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

61. If excess emissions occurred due to a Malfunction during routine startup and shutdown, then those instances shall be treated as other Malfunctions subject to Paragraph 60.

62. Defendant shall provide notice to United States in writing of Defendant's intent to assert an affirmative defense for Malfunction under Paragraph 60, as soon as practicable, but in no event later than 21 Days following the date of the Malfunction. This notice shall be submitted pursuant to the provisions of Section XIII (Notices). The notice shall contain:

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

b. the magnitude of the excess emissions expressed in the form of the standard and the operating data and calculations used in determining the magnitude of the excess emissions;

c. the time and duration or expected duration of the excess emissions or failure to Continuously Operate;

d. the identity of the equipment causing the excess emissions or failure to Continuously Operate;

e. the nature and suspected cause of the excess emissions or failure to Continuously Operate;

f. the steps taken, if the excess emissions or failure to Continuously Operate were the result of a Malfunction, to remedy the Malfunction and the steps taken or planned to prevent the recurrence of the Malfunction;

g. the steps that were or are being taken to limit the excess emissions or limit the duration of the failure to Continuously Operate; and

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

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

64. The affirmative defense provided herein is only an affirmative defense to stipulated penalties for violations of this Consent Decree and to the requirements of Paragraph 41, and not a defense to any civil or administrative action for penalties or injunctive relief.

VIII. FORCE MAJEURE

65. 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 delay or violation is minimized to the greatest extent practicable.

66. 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 in writing as soon as practicable, but in no event later than 21 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 or violation; the schedule by which Defendant proposes to implement those measures; and Defendant's rationale for attributing the delay or violation to a Force Majeure Event. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable 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.

67. Failure to Give Notice. If Defendant fails to comply with the notice requirements of this Section, the United States may void Defendant's claim for Force Majeure as to the specific event for which Defendant have failed to comply with such notice requirement.

68. United States' Response. The United States shall notify Defendant in writing regarding Defendant's claim of Force Majeure within 30 Days after receipt of the notice provided in Paragraph 66. If the United States agrees that a delay in performance has been or will be caused by a Force Majeure Event, 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 actually caused by the event. In such circumstances, an appropriate modification shall be made pursuant to Section XVII (Modification) of this Consent Decree.

69. Disagreement. If the United States does not accept Defendant's claim of Force Majeure, or if the United States and Defendant cannot agree on the length of the delay actually

caused by the Force Majeure Event, the matter shall be resolved in accordance with Section IX (Dispute Resolution) of this Consent Decree.

70. 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 by a preponderance of the evidence 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.

71. 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. Force Majeure also does not include Defendant's financial inability to perform any obligation under this Consent Decree.

72. Potential Force Majeure Events. The Parties agree that, depending upon the circumstances related to an event and the 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 or emission control or monitoring device; unanticipated coal supply or pollution control reagent delivery interruptions; acts of God; acts of war or terrorism; the need of Defendant to supply electricity in response to a system-wide (regional) emergency that temporarily precludes compliance with the mercury emission limits in 40 C.F.R. § 63.9991(a) and Table 2 of MATS or the duty to Continuously Operate the Mercury-Specific Add-On Controls. 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 obtain the necessary permit, including without limitation, 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.

73. As part of the resolution of any matter submitted to this Court under Section IX (Dispute Resolution) regarding a claim of Force Majeure, the United States 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 this Court. Defendant shall be liable for stipulated penalties pursuant to Section VII (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).

IX. DISPUTE RESOLUTION

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

75. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Party advising of a dispute pursuant to this Section. The notice

shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice, and the Parties in dispute shall expeditiously schedule a meeting to discuss the dispute informally not later than 14 Days following receipt of such notice.

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

77. If the Parties are unable to reach agreement during the informal negotiation period, the United States shall provide Defendant with a written summary of its position regarding the dispute. The written position provided by the United States shall be considered binding unless, within 45 Days thereafter, Defendant seeks judicial resolution of the dispute by filing a petition with this Court. The United States may submit a response to the petition within 45 Days of filing.

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

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

80. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under this Section

regarding the adequacy of the Defendant's implementation of the requirements of Section V of this Consent Decree (Mercury Emissions Controls), and in all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with the law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under this Section, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

81. The invocation of dispute resolution procedures shall not, by itself, extend, postpone, or affect any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. As part of the resolution of any dispute under this Section, in appropriate circumstances the Parties may agree, or this Court may order, an extension or modification of the schedule for the completion of the activities required under this Consent Decree to account for the delay that occurred as a result of dispute resolution. Defendant shall be liable for stipulated penalties pursuant to Section VII (Stipulated Penalties) for their failure thereafter to complete the work in accordance with the extended or modified schedule.

X. PERMITS

82. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires Defendant to secure a permit to authorize construction or operation of any device, including all preconstruction, construction,

and operating permits required under State law, Defendant shall make such application in a timely manner.

83. When permits are required, Defendant shall complete and submit applications for such permits to the applicable State 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 agency. Any failure by Defendant to submit a timely permit application for Unit 2, as required by permitting requirements under state and/or federal regulations, shall bar any use by Defendant of Section VIII (Force Majeure) of this Consent Decree where a Force Majeure claim is based on permitting delays.

84. Notwithstanding any reference to Defendant's Title V Permit in this Consent Decree, the enforcement of such permit shall be in accordance with its own terms and the Act and its implementing regulations, and nothing in this Decree shall be construed to relax any terms and conditions in the Title V Permit. Defendant's Title V Permit shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of a Title V Permit, subject to the terms of Section XXII (Termination) of this Consent Decree.

XI. INFORMATION COLLECTION AND RETENTION

85. Any authorized representative of the United States, including its attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry to the Healy Power Plant at any reasonable time for the purpose of:

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

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

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

d. obtain documentary evidence, including photographs and similar data; and

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

86. From the Date of Entry until five years after the termination of this Consent Decree, Defendant shall retain, and instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records and documents in electronic form) that are in its or its contractors' or agents' possession or control, and that directly relate to Defendant's performance of their obligations under this Consent Decree. This record retention requirement shall apply regardless of any corporate document retention policy to the contrary. At any time during the information retention period, upon request by the United States, Defendant shall provide copies of any documents, records or other information required to be maintained under this Paragraph.

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

88. Nothing in this Consent Decree shall limit the authority of EPA to conduct tests and its right of entry, or right to obtain information under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable federal laws, regulations, or permits, nor does it limit or affect

any duty or obligation of the Defendant to maintain documents, records or other information imposed by applicable federal or state laws, regulations or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

89. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging.

90. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 89. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 89. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Healy Power Plant, whether related to the violations addressed in this Consent Decree or otherwise.

91. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Healy Power Plant or Defendant's 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 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 89.

92. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining compliance 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 does not, by its 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 or with any other applicable provisions of federal, State, or local laws, regulations, or permits.

93. This Consent Decree does not limit or affect the rights of Defendant or of the United States 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.

94. 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.

XIII. NOTICES

95. Unless otherwise provided herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as set forth below. Where a notification, submission, or communication is required to be given to the "United States," it shall be addressed to both the United States and EPA as set forth below. Where a notification, submission, or communication is required to be given to "EPA," it need only be addressed to EPA as set forth below.

As to the United States of America:

(if by mail service)
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
DJ# 90-5-2-1-10615/2

(if by commercial delivery service)
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
ENRD Mailroom, Room 2121
601 D Street, NW
Washington, DC 20004
DJ# 90-5-2-1-10615/2

and

Manager of Air Enforcement and Data Management Unit
EPA Region 10 (OCE-101)
U.S.EPA Region 10
1200 Sixth Avenue Ste. 151
Seattle, WA 98101

As to GVEA:

President & CEO
Golden Valley Electric Association, Inc.
PO Box 71249
Fairbanks, AK 99707-1249

and

Vice President of Power Supply
Golden Valley Electric Association, Inc.
PO Box 71249
Fairbanks, AK 99707-1249

All notifications, communications, or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or overnight delivery service with signature required for delivery,

(b) certified or registered mail, return receipt requested, or (c) email. All notifications, communications, and transmissions (a) sent by overnight, certified, or registered mail shall be deemed submitted on the date they are postmarked, (b) sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service or (c) sent by email shall be deemed submitted on the date they are electronically transmitted. Defendant may provide the notifications, communications, or submissions made pursuant to this Section electronically or in hard copy.

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

XIV. EFFECTIVE DATE

97. 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 the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. SALES OR TRANSFERS OF OPERATIONAL OR OWNERSHIP INTERESTS

98. If Defendant proposes to sell or transfer an Operational or Ownership Interest in the Healy Power Plant to another entity (a Third Party Purchaser) Defendant shall advise the Third Party Purchaser in writing of the existence of this Consent Decree prior to such sale or transfer, and shall send a copy of such written notification to the United States pursuant to Section XIII (Notices) of this Consent Decree at least 60 Days before such proposed sale or transfer.

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

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

101. If the United States agrees, the United States, the Defendant, and the Third Party Purchaser that has become a party to this Consent Decree pursuant to Paragraph 99 may execute a modification that relieves Defendant of its liability under this Consent Decree for, and makes the Third Party Purchaser liable for, all obligations and liabilities applicable to the purchased or transferred Operational or Ownership Interests. Notwithstanding the foregoing, however, Defendant may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Operational or Ownership Interests, including the obligations set forth in Section IV (Civil Penalty). Defendant may propose and the United States may agree to restrict the scope of the joint and several liability of any purchaser or

transferee for any obligations of this Consent Decree that are not specific to the transferred or purchased Operational or Ownership Interests, to the extent such obligations may be adequately separated in an enforceable manner.

XVI. RETENTION OF JURISDICTION

102. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for the interpretation, construction, execution, or modification of the Consent Decree, or for adjudication of disputes.

XVII. MODIFICATION

103. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by United States and Defendant. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court. Written agreements by Parties to changes in schedule of less than one year are not material changes.

104. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rules of Civil Procedure 60(b).

XVIII. GENERAL CONDITIONS

105. Nothing in this Consent Decree shall be interpreted or construed to relieve Defendant of its obligations under the Memorandum of Agreement that it signed in 1993 with the U.S. Department of the Interior, National Park Service, concerning the Healy Clean Coal Project, Healy Alaska.

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

107. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree, and supersedes all prior agreements and understandings between the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise constitutes any part of this Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

XIX. COSTS

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

XX. SIGNATORIES AND SERVICE

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

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

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

112. Unless otherwise ordered by the Court, the United States agrees that Defendant will not be required to file any answer or other pleading responsive to the United States' concurrently filed Complaint in this matter until and unless the Court expressly declines to enter this Consent Decree, in which case Defendant shall have no less than 45 Days after receiving notice of such express declination to file an answer or other pleading in response to the Complaint.

XXI. PUBLIC COMMENT/AGENCY REVIEW

113. 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 this Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of this Consent Decree.

XXII. TERMINATION

114. After Defendant has completed the requirements of Sections IV (Civil Penalty), V (Mercury Emissions Controls), VI (Reporting Requirements), and VII (Stipulated Penalties) of this Consent Decree, and has maintained continuous satisfactory compliance with this Consent Decree through the date of the request discussed below (i.e., for at least three years from the date of Restart of Unit 2), Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied these requirements, together with all necessary supporting documentation. In seeking such consent, Defendant shall demonstrate that:

a. Defendant has paid all monies, civil penalties, interest, and stipulated penalties due under this Decree;

b. Defendant has complied with all requirements of Sections IV (Civil Penalty), V (Mercury Emissions Controls), VI (Reporting Requirements), and VII (Stipulated Penalties) of this Consent Decree;

c. As of the date Defendant provides any notice or request to terminate this Decree, EPA has not provided Defendant with any Notice of Dispute invoking the Dispute Resolution provisions of this Decree, and there are no unresolved matters subject to dispute resolution pursuant to Section IX (Dispute Resolution); and

d. No enforcement action under this Decree is pending.

115. The United States shall notify Defendant in writing within thirty (30) Days of receiving any request to terminate by Defendant whether the United States does or does not object to the request. If the United States agrees, then the parties shall jointly file a motion to terminate with the Court. If the United States objects to such request, the parties will work together for a period of at least thirty (30) Days in an effort to informally resolve any disputes. If the United States does not respond to Defendant's request to terminate, or a dispute over whether the Decree can be terminated cannot be informally resolved, Defendant may invoke the provisions of Section IX (Dispute Resolution) concerning its request to terminate. The Decree shall remain in effect pending resolution of the dispute by the parties, or, ultimately, the Court.

XXIII. FINAL JUDGMENT

116. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and Defendant.

SO ORDERED, THIS ____ DAY OF _____ 2018.

_____
UNITED STATES DISTRICT COURT JUDGE

Signature Page for *United States of America v. Golden Valley Electric Assoc.* Consent Decree

FOR THE UNITED STATES DEPARTMENT OF JUSTICE

Respectfully submitted,

NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

7-19-18

FREDERICK S. PHILLIPS
Senior Attorney
Environmental Enforcement Section
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Signature Page for *United States of America v. Golden Valley Electric Assoc. et.al* Consent Decree

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10

Respectfully submitted,

Date: 7/19/18

ALLYN STERN
Regional Counsel
U.S. Environmental Protection Agency
Region 10, ORC-113
1200 Sixth Avenue
Seattle, WA 98101

Date: 7/18/18

JULIE A. VERGERONT
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, ORC-113
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-1497

Signature Page for *United States of America v. Golden Valley Electric Assoc.* Consent Decree

FOR GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.

By: _____
Cory R. Borgeson
President & CEO
Golden Valley Electric Association, Inc.