



west virginia department of environmental protection

Appendix E

Federal Consent Decrees and State Consent Orders

Promoting a healthy environment.

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Federal Consent Decrees

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
and)
)
STATE OF NEW YORK, ET AL.,)
)
Plaintiff-Intervenors,)
)
v.)
)
AMERICAN ELECTRIC POWER SERVICE)
)
CORP., ET AL.,)
)
Defendants.)

JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Terence P. Kemp

Civil Action No C2-99-1250
(Consolidated with C2-99-1182)

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
v.)
)
AMERICAN ELECTRIC POWER SERVICE)
)
CORP., ET AL.,)
)
Defendants.)

JUDGE GREGORY L. FROST
Magistrate Judge Norah McCann King

Civil Action No C2-05-360

)	
OHIO CITIZEN ACTION, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	JUDGE GREGORY L. FROST
)	Magistrate Judge Norah McCann King
)	
AMERICAN ELECTRIC POWER SERVICE)	
CORP., ET AL.,)	Civil Action No. C2-04-1098
)	
Defendants.)	
)	

CONSENT DECREE

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Appendix A: Environmental Mitigation Projects

Appendix B: Reporting Requirements

Appendix C: Monitoring Strategy and Calculation of 30-Day Rolling Average
Removal Efficiency for Conesville Units 5 and 6

WHEREAS, the following complaints have been filed against American Electric Power Service Corporation, Indiana Michigan Power Company, Ohio Power Company, Appalachian Power Company, Cardinal Operating Company, and Columbus Southern Power Company in the above-captioned cases, *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action Nos. C2-99-1182 and C2-99-1250 (“*AEP I*”) and *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action Nos. C2-04-1098 and C2-05-360 (“*AEP II*”):

(a) the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), filed initial complaints on November 3, 1999 and April 8, 2005, and filed amended complaints on March 3, 2000 and September 17, 2004, pursuant to Sections 113(b), 165, and 167 of the Clean Air Act (the “Act”), 42 U.S.C. §§ 7413, 7475, and 7477;

(b) the States of New York, Connecticut, New Jersey, Vermont, New Hampshire, Maryland, and Rhode Island, and the Commonwealth of Massachusetts, after their motion to intervene was granted, filed initial complaints on December 14, 1999 and November 18, 2004, and filed amended complaints on April 5, 2000, September 24, 2002, and September 17, 2004, pursuant to Section 304 of the Act, 42 U.S.C. § 7604; and

(c) Ohio Citizen Action, Citizens Action Coalition of Indiana, Hoosier Environmental Council, Valley Watch, Inc., Ohio Valley Environmental Coalition, West Virginia Environmental Council, Clean Air Council, Izaak Walton League of America, United States Public Interest Research Group, National Wildlife Federation, Indiana Wildlife Federation, League of Ohio Sportsmen, Sierra Club, and Natural Resources Defense Council,

Inc. filed an initial complaint on November 19, 1999, and filed amended complaints on January 1, 2000 and September 16, 2004, pursuant to Section 304 of the Act, 42 U.S.C. § 7604;

WHEREAS, the complaints filed against Defendants in *AEP I* and *AEP II* sought injunctive relief and the assessment of civil penalties for alleged violations of, *inter alia*, the:

(a) Prevention of Significant Deterioration and Nonattainment New Source Review provisions in Part C and D of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, 7501-7515; and

(b) federally-enforceable state implementation plans developed by Indiana, Ohio, Virginia, and West Virginia;

WHEREAS, EPA issued notices of violation (“NOVs”) to Defendants with respect to such allegations on November 2, 1999, November 22, 1999, and June 18, 2004;

WHEREAS, EPA provided Defendants and the States of Indiana, Ohio, and West Virginia, and the Commonwealth of Virginia, with actual notice pertaining to Defendants’ alleged violations, in accordance with Section 113(a)(1) and (b) of the Act, 42 U.S.C. § 7413(a)(1) and (b);

WHEREAS, in their complaints, the United States, the States, and Citizen Plaintiffs (collectively, the “Plaintiffs”) alleged, *inter alia*, that Defendants made major modifications to major emitting facilities, and failed to obtain the necessary permits and install the controls necessary under the Act to reduce sulfur dioxide, nitrogen oxides, and/or particulate matter emissions, and further alleged that such emissions damage human health and the environment;

WHEREAS, the Plaintiffs' complaints state claims upon which relief can be granted against Defendants under Sections 113, 165, and 167 of the Act, 42 U.S.C. §§ 7413, 7475, and 7477, and 28 U.S.C. § 1355;

WHEREAS, Defendants have denied and continue to deny the violations alleged in the complaints and NOV's, maintain that they have been and remain in compliance with the Act and are not liable for civil penalties or injunctive relief, and state that they are agreeing to the obligations imposed by this Consent Decree solely to avoid the costs and uncertainties of litigation and to improve the environment;

WHEREAS, Defendants have installed and operated SCR technology on several Units in the AEP Eastern System, as those terms are defined herein, during the five (5) month ozone season to achieve emission reductions in compliance with the NO_x SIP Call;

WHEREAS, the Plaintiffs and Defendants anticipate that this Consent Decree, including the installation and operation of pollution control technology and other measures adopted pursuant to this Consent Decree, will achieve significant reductions of emissions from the AEP Eastern System and thereby significantly improve air quality;

WHEREAS, the liability phase of *AEP I* was tried on July 6-7, 2005, and July 11-12, 2005, and no decision has been rendered;

WHEREAS, the Parties have agreed, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and at arm's length; that this settlement is fair, reasonable, and in the public interest, and consistent with the goals of the Act; and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, without any admission by Defendants, and without adjudication of the violations alleged in the complaints or the NOV's, 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, Sections 113, 167, and 304 of the Act, 42 U.S.C. §§ 7413, 7477, and 7604. Solely for the purposes of this Consent Decree, venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c). Solely for the purposes of this Consent Decree and the underlying complaints, and for no other purpose, Defendants waive all objections and defenses that they may have to the Court's jurisdiction over this action, to the Court's jurisdiction over Defendants, and to venue in this District. Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Solely for the purposes of the complaints filed by the Plaintiffs in this matter and resolved by the Consent Decree, for the purposes of entry and enforcement of this Consent Decree, and for no other purpose, Defendants waive any defense or objection based on standing. Except as expressly provided for herein, this Consent Decree shall not create any rights in or obligations of any party other than the Plaintiffs and Defendants. Except as provided in Section XXV (Public Comment) of this Consent Decree, the Parties consent to entry of this Consent Decree without further notice. To facilitate entry of this Consent Decree, upon the Date of Lodging of this Consent Decree the Parties shall file a Joint Motion to Consolidate *AEP I* and *AEP II* so that *AEP II* is consolidated into *AEP I*.

II. APPLICABILITY

2. Upon entry, the provisions of the Consent Decree shall apply to and be binding upon and inure to the benefit of Plaintiffs and Defendants, and their respective successors and assigns, and upon their officers, employees, and agents, solely in their capacities as such.

3. Defendants shall be responsible for providing a copy of this Consent Decree to all vendors, suppliers, consultants, contractors, agents, and any other company or other organization retained to perform any of the work required by this Consent Decree. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under this Consent Decree, Defendants shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree. For this reason, in any action to enforce this Consent Decree, Defendants shall not assert as a defense the failure of their officers, directors, employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree, unless Defendants establish that such failure resulted from a Force Majeure Event, as defined in Paragraph 158 of this Consent Decree.

III. DEFINITIONS

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

4. A “1-hour Average NO_x Emission Rate” for a re-powered gas-fired, electric generating unit means, and shall be expressed as, the average concentration in parts per million

(“ppm”) by dry volume, corrected to 15% O₂, as averaged over one (1) hour. In determining the 1-Hour Average NO_x Emission Rate, Defendants shall use CEMS in accordance with applicable reference methods specified in 40 C.F.R. Part 60 to calculate the emissions for each 15-minute interval within each clock hour, except as provided in this Paragraph. Compliance with the 1-Hour Average NO_x Emission Rate shall be shown by averaging all 15-minute CEMS interval readings within a clock hour, except that any 15-minute CEMS interval that contains any part of a startup or shutdown shall not be included in the calculation of that 1-Hour average. A minimum of two 15-minute CEMS interval readings within a clock hour, not including startup or shutdown intervals, is required to determine compliance with the 1-Hour average NO_x Emission Rate. All emissions recorded by CEMS shall be reported in 1-Hour averages.

5. A “30-Day Rolling Average Emission Rate” for a Unit means, and shall be expressed as, a lb/mmBTU and calculated in accordance with the following procedure: first, sum the total pounds of the pollutant in question emitted from the Unit during an Operating Day and the previous twenty-nine (29) Operating Days; second, sum the total heat input to the Unit in mmBTU during the Operating Day and the previous twenty-nine (29) Operating Days; and third, divide the total number of pounds of the pollutant emitted during the thirty (30) Operating Days by the total heat input during the thirty (30) Operating Days. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Operating Day. Each 30-Day Rolling Average Emission Rate shall include all emissions that occur during all periods of startup, shutdown, and Malfunction within an Operating Day, except as follows:

- a. Emissions and BTU inputs that occur during a period of Malfunction shall be excluded from the calculation of the 30-Day Rolling Average Emission

Rate if Defendants provide notice of the Malfunction to EPA in accordance with Paragraph 159 in Section XIV (Force Majeure) of this Consent Decree;

- b. Emissions of NO_x and BTU inputs that occur during the fifth and subsequent Cold Start Up Period(s) that occur at a given Unit during any 30-day period shall be excluded from the calculation of the 30-Day Rolling Average Emission Rate if inclusion of such emissions would result in a violation of any applicable 30-Day Rolling Average Emission Rate and Defendants have installed, operated, and maintained the SCR in question in accordance with manufacturers' specifications and good engineering practices. A "Cold Start Up Period" occurs whenever there has been no fire in the boiler of a Unit (no combustion of any Fossil Fuel) for a period of six (6) hours or more. The NO_x emissions to be excluded during the fifth and subsequent Cold Start Up Period(s) shall be the lesser of (i) those NO_x emissions emitted during the eight (8) hour period commencing when the Unit is synchronized with a utility electric distribution system and concluding eight (8) hours later, or (ii) those NO_x emissions emitted prior to the time that the flue gas has achieved the minimum SCR operational temperature specified by the catalyst manufacturer; and
- c. For SO₂, shall include all emissions and BTUs commencing from the time the Unit is synchronized with a utility electric distribution system through

the time that the Unit ceases to combust fossil fuel and the fire is out in the boiler.

6. A “30-Day Rolling Average Removal Efficiency” means, for SO₂, at a Unit other than Conesville Unit 5 and Conesville Unit 6, the percent reduction in the mass of SO₂ achieved by a Unit’s FGD system over a 30-Operating Day period and shall be calculated as follows: step one, sum the total pounds of SO₂ emitted as measured at the outlet of the FGD system for the Unit during the current Operating Day and the previous twenty-nine (29) Operating Days as measured at the outlet of the FGD system for that Unit; step two, sum the total pounds of SO₂ delivered to the inlet of the FGD system for the Unit during the current Operating Day and the previous twenty-nine (29) Operating Days as measured at the inlet to the FGD system for that Unit; step three, subtract the outlet SO₂ emissions calculated in step one from the inlet SO₂ emissions calculated in step two; step four, divide the remainder calculated in step three by the inlet SO₂ emissions calculated in step two; and step five, multiply the quotient calculated in step four by 100 to express as a percentage of removal efficiency. A new 30-day Rolling Average Removal Efficiency shall be calculated for each new Operating Day, and shall include all emissions that occur during all periods within each Operating Day except that emissions that occur during a period of Malfunction may be excluded from the calculation if Defendants provide Notice of the Malfunction to Plaintiffs in accordance with Section XIV (Force Majeure) and it is determined to be a Force Majeure Event pursuant to that Section.

7. “AEP Eastern System” means, solely for purposes of this Consent Decree, the following coal-fired, electric steam generating Units (with the nominal nameplate net capacity of each Unit):

- a. Amos Unit 1 (800 MW), Amos Unit 2 (800 MW), and Amos Unit 3 (1300 MW) located in St. Albans, West Virginia;
- b. Big Sandy Unit 1 (260 MW) and Big Sandy Unit 2 (800 MW) located in Louisa, Kentucky;
- c. Cardinal Unit 1 (600 MW), Cardinal Unit 2 (600 MW), and Cardinal Unit 3 (630 MW) located in Brilliant, Ohio;
- d. Clinch River Unit 1 (235 MW), Clinch River Unit 2 (235 MW), and Clinch River Unit 3 (235 MW) located in Carbo, Virginia;
- e. Conesville Unit 1 (125 MW), Conesville Unit 2 (125 MW), Conesville Unit 3 (165 MW), Conesville Unit 4 (780 MW), Conesville Unit 5 (375 MW), and Conesville Unit 6 (375 MW) located in Conesville, Ohio;
- f. Gavin Unit 1 (1300 MW) and Gavin Unit 2 (1300 MW) located in Cheshire, Ohio;
- g. Glen Lyn Unit 5 (95 MW) and Glen Lyn Unit 6 (240 MW) located in Glen Lyn, Virginia;
- h. Kammer Unit 1 (210 MW), Kammer Unit 2 (210 MW), and Kammer Unit 3 (210 MW) located in Moundsville, West Virginia;
- i. Kanawha River Unit 1 (200 MW) and Kanawha River Unit 2 (200 MW) located in Glasgow, West Virginia;
- j. Mitchell Unit 1 (800 MW) and Mitchell Unit 2 (800 MW) located in Moundsville, West Virginia;
- k. Mountaineer Unit 1 (1300 MW) located in New Haven, West Virginia;

- l. Muskingum River Unit 1 (205 MW), Muskingum River Unit 2 (205 MW), Muskingum River Unit 3 (215 MW), Muskingum River Unit 4 (215 MW), and Muskingum River Unit 5 (585 MW) located in Beverly, Ohio;
- m. Picway Unit 9 (100 MW) located in Lockbourne, Ohio;
- n. Rockport Unit 1 (1300 MW) and Rockport Unit 2 (1300 MW) located in Rockport, Indiana;
- o. Sporn Unit 1 (150 MW), Sporn Unit 2 (150 MW), Sporn Unit 3 (150 MW), Sporn Unit 4 (150), and Sporn Unit 5 (450 MW) located in New Haven, West Virginia; and
- p. Tanners Creek Unit 1 (145 MW), Tanners Creek Unit 2 (145 MW), Tanners Creek Unit 3 (205 MW), and Tanners Creek Unit 4 (500 MW) located in Lawrenceburg, Indiana.

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

9. “CEMS” or “Continuous Emission Monitoring System” means, for obligations involving NO_x and SO₂ under this Consent Decree, the devices defined in 40 C.F.R. § 72.2 and installed and maintained as required by 40 C.F.R. Part 75.

10. “Citizen Plaintiffs” means, collectively, Ohio Citizen Action, Citizens Action Coalition of Indiana, Hoosier Environmental Council, Ohio Valley Environmental Coalition,

West Virginia Environmental Council, Clean Air Council, Izaak Walton League of America, United States Public Interest Research Group, National Wildlife Federation, Indiana Wildlife Federation, League of Ohio Sportsmen, Sierra Club, and Natural Resources Defense Council, Inc.

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

12. “Clean Air Interstate Rule” or “CAIR” means the regulations promulgated by EPA on May 12, 2005, at 70 Fed. Reg. 25,161, which are entitled, “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to NO_x SIP Call; Final Rule,” and any subsequent amendments to that regulation, and any applicable, federally-approved state implementation plan or the federal implementation plan to implement CAIR.

13. “Consent Decree” or “Decree” means this Consent Decree and the appendices attached hereto, which are incorporated into this Consent Decree.

14. “Continuously Operate” or “Continuous Operation” means that when an SCR, FGD, ESP, or Other NO_x Pollution Controls are used at a Unit, except during a Malfunction, they shall be operated at all times such Unit is in operation, consistent with the technological limitations, manufacturers’ specifications, and good engineering and maintenance practices for such equipment and the Unit so as to minimize emissions to the greatest extent practicable.

15. “Date of Entry” means the date this Consent Decree is approved or signed by the United States District Court Judge; provided, however, that if the Parties’ Joint Motion to Consolidate, as specified in Paragraph 1, is denied or not decided, then the “Date of Entry”

means the date that the last of the two United States District Court Judges hearing these cases approves or signs this Consent Decree.

16. “Date of Lodging” means the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Southern District of Ohio.

17. “Day” means, unless otherwise specified, calendar day.

18. “Defendants” or “AEP” means American Electric Power Service Corporation, Kentucky Power Company d/b/a American Electric Power, Indiana Michigan Power Company d/b/a American Electric Power, Ohio Power Company d/b/a American Electric Power, Cardinal Operating Company and its owners (Ohio Power and Buckeye Power, Inc.), Appalachian Power Company d/b/a American Electric Power, and Columbus Southern Power Company d/b/a American Electric Power.

19. “Eastern System-Wide Annual Tonnage Limitation” means the limitations, as specified in this Consent Decree, on the number of tons of the air pollutants that may be emitted from the AEP Eastern System during the relevant calendar year (i.e., January 1 through December 31), and shall include all emissions of the air pollutants emitted during all periods of startup, shutdown, and Malfunction, except that emissions that occur during a period of Malfunction may be excluded from the calculation if Defendants provide Notice of the Malfunction to Plaintiffs in accordance with Section XIV (Force Majeure) and it is determined to be a Force Majeure Event pursuant to that Section.

20. “Emission Rate” means the number of pounds of pollutant emitted per million BTU of heat input (“lb/mmBTU”), measured in accordance with this Consent Decree.

21. “EPA” means the United States Environmental Protection Agency.

22. “ESP” means electrostatic precipitator, a pollution control device for the reduction of PM.

23. “Environmental Mitigation Project” means a project funded or implemented by Defendants as a remedial measure to mitigate alleged damage to human health or the environment, including National Parks or Wilderness Areas, claimed to have been caused by the alleged violations described in the complaints or to compensate Plaintiffs for costs necessitated as a result of the alleged damages.

24. “Existing Unit” means a Unit that commenced operation prior to the Date of Lodging of this Consent Decree.

25. “Flue Gas Desulfurization System,” or “FGD,” means a pollution control device with one or more absorber vessels that employs flue gas desulfurization technology for the reduction of SO₂.

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

27. An “Improved Unit” for NO_x means an AEP Eastern System Unit equipped with an SCR or scheduled under this Consent Decree to be equipped with an SCR, or required to be Retired, Retrofitted, or Re-powered. A Unit may be an Improved Unit for one pollutant without being an Improved Unit for another. Any Other Unit in the AEP Eastern System can become an Improved Unit for NO_x if it is equipped with an SCR and the requirement to Continuously Operate such SCR is incorporated into a federally-enforceable non-Title V permit or site-specific amendment to the state implementation plan and the Title V Permit applicable to that Unit.

28. An “Improved Unit” for SO₂ means an AEP Eastern System Unit equipped with an FGD or scheduled under this Consent Decree to be equipped with an FGD, or required to be Retired, Retrofitted, or Re-powered. A Unit may be an Improved Unit for one pollutant without being an Improved Unit for another. Any Other Unit in the AEP Eastern System can become an Improved Unit for SO₂ if it is equipped with an FGD and the requirement to Continuously Operate such FGD is incorporated into a federally-enforceable non-Title V permit or site-specific amendment to the state implementation plan and the Title V Permit applicable to that Unit.

29. “KW” means kilowatt or one thousand watts.

30. “lb/mmBTU” means one pound per million British thermal units.

31. “Malfunction” means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not Malfunctions.

32. “MW” means a megawatt or one million watts.

33. “NSR Permit” means a preconstruction permit issued by the permitting authority pursuant to Parts C or D of Subchapter I of the Clean Air Act.

34. “National Ambient Air Quality Standards” or “NAAQS” means national ambient air quality standards that are promulgated pursuant to Section 109 of the Act, 42 U.S.C. § 7409.

35. “New and Newly Permitted Unit” means a Unit that commenced operation after the Date of Lodging of this Consent Decree, and that has been issued a final NSR Permit for SO₂ and NO_x that includes applicable Best Available Control Technology (“BACT”) and/or Lowest

Achievable Emission Rate (“LAER”) limitations, as those terms are respectively defined at 42 U.S.C. §§ 7479(3), 7501(3).

36. “Nonattainment NSR” means the nonattainment area New Source Review program within the meaning of Part D of Subchapter I of the Act, 42 U.S.C. §§ 7501-7515, and its regulations, 40 C.F.R. Part 51.

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

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

39. “NO_x CAIR Allocations” means the number of NO_x Allowances allocated to the AEP Eastern System Units pursuant to the Clean Air Interstate Rule, excluding any NO_x Allowances awarded by Indiana, Kentucky, Ohio, West Virginia, and Virginia to an AEP Eastern System Unit from the “compliance supplement pool,” as that phrase is defined at 40 C.F.R. § 96.143, in a federally-approved state implementation plan, or federal implementation plan to implement CAIR.

40. “Operating Day” means any day on which a Unit fires Fossil Fuel.

41. “Other NO_x Pollution Controls” means the measures identified in the table in Paragraph 69 that will achieve reductions in NO_x emissions at the Units specified therein.

42. “Other SO₂ Measures” means the measures identified in Paragraph 90 that will achieve reductions in SO₂ emissions at the Units specified therein.

43. “Other Unit” means any Unit of the AEP Eastern System that is not an Improved Unit for the pollutant in question.

44. “Operational or Ownership Interest” means part or all of Defendants’ legal or equitable operational or ownership interests in any Unit in the AEP Eastern System.

45. “Parties” means the United States, the States, the Citizen Plaintiffs, and Defendants. “Party” means one of the Parties.

46. “Plaintiffs” means the United States, the States, and the Citizen Plaintiffs.

47. “Plant-Wide Annual Rolling Tonnage Limitation for SO₂ at Clinch River” means the sum of the tons of SO₂ emitted during all periods of operation from the Clinch River plant, including, without limitation, all SO₂ emitted during periods of startup, shutdown, and Malfunction, in the most recent month and the previous eleven (11) months. A new Annual Rolling Average Tonnage Limitation for years 2010 through 2014, and for 2015 and continuing thereafter, shall be calculated in accordance with Paragraph 88.

48. “Plant-Wide Annual Tonnage Limitation for SO₂ at Kammer” means the sum of the tons of SO₂ emitted during all periods of operation from the Kammer plant, including, without limitation, all SO₂ emitted during periods of startup, shutdown, and Malfunction, during the relevant calendar year (i.e., January 1 through December 31). A new Plant-Wide Annual Tonnage Limitation shall be calculated for each new calendar year.

49. “PM” means particulate matter, as measured in accordance with the provisions of this Consent Decree.

50. “PM CEMS” or “PM Continuous Emission Monitoring System” means the equipment that samples, analyzes, measures, and provides, by readings taken at frequent intervals, an electronic or paper record of PM emissions.

51. “PM Emission Rate” means the number of pounds of PM emitted per million BTU of heat input (lb/mmBTU), as measured in annual stack tests in accordance with EPA Method 5, 5B, or 17, 40 C.F.R. Part 60, including Appendix A.

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

53. “PSD” means Prevention of Significant Deterioration within the meaning of Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, and its regulations, 40 C.F.R. Part 52.

54. “Re-power” means either (1) the replacement of an existing pulverized coal boiler through the construction of a new circulating fluidized bed (“CFB”) boiler or other technology of equivalent environmental performance that at a minimum achieves and maintains a 30-Day Rolling Average Emission Rate not greater than 0.100 lb/mmBTU or a 30-Day Rolling Average Removal Efficiency of at least ninety-five percent (95%) for SO₂ and a 30-Day Rolling Average Emission Rate not greater than 0.070 lb/mmBTU for NO_x; or (2) the modification of

such Unit, or removal and replacement of Unit components, such that the modified or replaced Unit generates electricity through the use of new combined cycle combustion turbine technology fueled by natural gas containing no more than 0.5 grains of sulfur per 100 standard cubic feet of natural gas, and at a minimum, achieves a 1-hour Average NO_x Emission Rate not greater than 2.0 ppm.

55. “Retire” means that Defendants shall: (a) permanently shut down and cease to operate the Unit; and (b) comply with any state and/or federal requirements applicable to that Unit. Defendants shall amend any applicable permits so as to reflect the permanent shutdown status of such Unit.

56. “Retrofit” means that the Unit must install and Continuously Operate both an SCR and an FGD. For the 600 MW listed in the table in Paragraph 68 and 87, “Retrofit” means that the Unit must meet a federally-enforceable 30-Day Rolling Average Emission Rate of 0.100 lb/mmBTU for NO_x and a 30-Day Rolling Average Emission Rate of 0.100 lb/mmBTU for SO₂, measured in accordance with the requirements of this Consent Decree.

57. “Selective Catalytic Reduction System” or “SCR” means a pollution control device that employs selective catalytic reduction technology for the reduction of NO_x emissions.

58. “Selective Non-Catalytic Reduction” means a pollution control device for the reduction of NO_x emissions that utilizes ammonia or urea injection into the boiler.

59. “SO₂” means sulfur dioxide, as measured in accordance with the provisions of this Consent Decree.

60. “SO₂ Allowance” means “allowance” as defined at 42 U.S.C. § 7651a(3): “an authorization, allocated to an affected unit by the Administrator of EPA under Subchapter IV of the Act, to emit, during or after a specified calendar year, one ton of sulfur dioxide.”

61. “SO₂ Allocations” means the number of SO₂ Allowances allocated to the AEP Eastern System Units.

62. “Super-Compliant NO_x Allowance” means an allowance attributable to reductions beyond the requirements of this Consent Decree as determined in accordance with Paragraph 80.

63. “Super-Compliant SO₂ Allowance” means an allowance attributable to reductions beyond the requirements of this Consent Decree as determined in accordance with Paragraph 98.

64. “States” means the States of Connecticut, Maryland, New Hampshire, New Jersey, New York, Rhode Island, and Vermont, and the Commonwealth of Massachusetts.

65. “Title V Permit” means the permit required for Defendants’ major sources under Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

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

IV. NO_x EMISSION REDUCTIONS AND CONTROLS

A. Eastern System-Wide Annual Tonnage Limitations for NO_x.

67. Notwithstanding any other provisions of this Consent Decree, except Section XIV (Force Majeure), during each calendar year specified in the table below, all Units in the AEP

Eastern System, collectively, shall not emit NO_x in excess of the following Eastern System-Wide Annual Tonnage Limitations:

Calendar Year	Eastern System-Wide Annual Tonnage Limitations for NO_x
2009	96,000 tons
2010	92,500 tons
2011	92,500 tons
2012	85,000 tons
2013	85,000 tons
2014	85,000 tons
2015	75,000 tons
2016, and each year thereafter	72,000 tons

B. NO_x Emission Limitations and Control Requirements.

68. No later than the dates set forth in the table below, Defendants shall install and Continuously Operate SCR on each Unit identified therein, or, if indicated in the table, Retire, Retrofit, or Re-power such Unit:

Unit	NO_x Pollution Control	Date
Amos Unit 1	SCR	January 1, 2008
Amos Unit 2	SCR	January 1, 2009
Amos Unit 3	SCR	January 1, 2008
Big Sandy Unit 2	SCR	January 1, 2009
Cardinal Unit 1	SCR	January 1, 2009
Cardinal Unit 2	SCR	January 1, 2009

Unit	NO_x Pollution Control	Date
Cardinal Unit 3	SCR	January 1, 2009
Conesville Unit 1	Retire, Retrofit, or Re-power	Date of Entry of this Consent Decree
Conesville Unit 2	Retire, Retrofit, or Re-power	Date of Entry of this Consent Decree
Conesville Unit 3	Retire, Retrofit, or Re-power	December 31, 2012
Conesville Unit 4	SCR	December 31, 2010
Gavin Unit 1	SCR	January 1, 2009
Gavin Unit 2	SCR	January 1, 2009
Mitchell Unit 1	SCR	January 1, 2009
Mitchell Unit 2	SCR	January 1, 2009
Mountaineer Unit 1	SCR	January 1, 2008
Muskingum River Units 1-4	Retire, Retrofit, or Re-power	December 31, 2015
Muskingum River Unit 5	SCR	January 1, 2008
Rockport Unit 1	SCR	December 31, 2017
Rockport Unit 2	SCR	December 31, 2019
Sporn Unit 5	Retire, Retrofit, or Re-power	December 31, 2013
A total of at least 600 MW from the following list of Units: Sporn Units 1-4, Clinch River Units 1-3, Tanners Creek Units 1-3, and/or Kammer Units 1-3	Retire, Retrofit, or Re-power	December 31, 2018

69. Other NO_x Pollution Controls. No later than the dates set forth in the table below, Defendants shall Continuously Operate the Other NO_x Pollution Controls on the Units identified therein:

Unit	Other NO_x Pollution Controls	Date
Big Sandy Unit 1	Low NO _x Burners	Date of Entry
Glen Lyn Units 5 and 6	Low NO _x Burners	Date of Entry
Clinch River Units 1, 2, and 3	Low NO _x Burners, and Selective Non-catalytic Reduction	For Low NO _x Burners, Date of Entry, and, for Selective Non-Catalytic Reduction, December 31, 2009
Conesville Units 5 and 6	Low NO _x Burners	Date of Entry
Kammer Units 1, 2, and 3	Overfire Air	Date of Entry
Kanawha River Units 1 and 2	Low NO _x Burners	Date of Entry
Picway Unit 9	Low NO _x Burners	Date of Entry
Tanners Creek Units 1, 2, and 3	Low NO _x Burners	Date of Entry
Tanners Creek Unit 4	Overfire Air	Date of Entry

C. General Provisions for Use and Surrender of NO_x Allowances.

70. Except as may be necessary to comply with this Section and Section XIII (Stipulated Penalties), Defendants may not use NO_x Allowances to comply with any requirement of this Consent Decree, including by claiming compliance with any emission limitation or Eastern System-Wide Annual Tonnage Limitation required by this Decree, by using, tendering,

or otherwise applying NO_x Allowances to achieve compliance or offset any emissions above the limits specified in this Consent Decree.

71. As required by this Section IV of this Consent Decree, Defendants shall surrender NO_x Allowances that would otherwise be available for sale, trade, or transfer as a result of actions taken by Defendants to comply with the requirements of this Consent Decree.

72. NO_x Allowances allocated to the AEP Eastern System may be used by Defendants to meet their own federal and/or state Clean Air Act regulatory requirements for the Units included in the AEP Eastern System. Subject to Paragraph 70, nothing in this Consent Decree shall prevent Defendants from purchasing or otherwise obtaining NO_x Allowances from another source for purposes of complying with their own federal and/or state Clean Air Act requirements to the extent otherwise allowed by law.

73. The requirements in this Consent Decree pertaining to Defendants' use and surrender of NO_x Allowances are permanent injunctions not subject to any termination provision of this Consent Decree. These provisions shall survive any termination of this Consent Decree.

D. Use of Excess NO_x Allowances.

74. Calculation of Unrestricted and Restricted NO_x Allowances. On an annual basis, beginning in 2009, Defendants shall calculate the difference between the NO_x CAIR Allocations for the Units in the AEP Eastern System for that year and the annual Eastern System-Wide Tonnage Limitations for NO_x for that calendar year. This difference represents the total Excess NO_x Allowances for that calendar year. For purposes of this Consent Decree, for each year commencing in 2009 and ending in 2015, forty-two percent (42%) of the Excess NO_x Allowances shall be Unrestricted Excess NO_x Allowances and fifty-eight percent (58%) shall be

Restricted Excess NO_x Allowances. Commencing in 2016, and continuing thereafter, all Excess NO_x Allowances shall be Restricted Excess NO_x Allowances.

75. Use and Surrender of Unrestricted Excess NO_x Allowances. For each calendar year commencing in 2009 and ending in 2015, Defendants may use Unrestricted Excess NO_x Allowances in any manner authorized by law. No later than March 1, 2016, Defendants must surrender, or transfer to a non-profit third party selected by Defendants for surrender, all unused Unrestricted Excess NO_x Allowances subject to surrender accumulated during the period from 2009 through 2015.

76. Use and Surrender of Restricted Excess NO_x Allowances. Beginning in calendar year 2009, and for each calendar year thereafter, Defendants shall calculate the difference between the number of any Restricted Excess NO_x Allowances and the number of NO_x Allowances that is equal to the amount of actual NO_x emissions from: (a) any New and Newly Permitted Unit as defined in this Consent Decree, and (b) the following five natural-gas plants but only up to a cumulative total of 1200 tons of NO_x in any single year: Ceredo Generating Station located near Ceredo, West Virginia, with a nominal generating capacity of 505 megawatts; Waterford Energy Center located in southeastern Ohio, with a nominal generating capacity of 821 megawatts; Darby Electric Generating Station located near Columbus, Ohio, with a nominal generating capacity of 480 megawatts; Lawrenceburg Generating Station located in Lawrenceburg, Indiana, with a generating capacity of 1,096 megawatts; and a natural gas-fired power plant under construction near Dresden, Ohio, with a nominal generating capacity of 580 megawatts. This difference shall be the amount of Restricted Excess NO_x Allowances

potentially subject to surrender in 2016. During calendar years 2009 through 2015, Defendants may accumulate Restricted Excess NO_x Allowances potentially subject to surrender in 2016.

77. NO_x Allowances from Renewable Energy. Beginning in calendar year 2009, and for each calendar year thereafter, Defendants may subtract from the number of Restricted Excess NO_x Allowances potentially subject to surrender, a number of allowances calculated in accordance with this Paragraph. To calculate such number, Defendants shall use the following method: multiply 0.0002 by the sum of (a) the actual annual generation in MWH/year generated from solar or wind power projects first owned or operated by Defendants after the Date of Lodging of this Consent Decree, and (b) the actual annual generation in MWH/year purchased by Defendants from solar or wind power projects in any year after the Date of Lodging of this Consent Decree. Such figure so calculated shall be subtracted from the number of Restricted Excess NO_x Allowances potentially subject to surrender each year. The remainder shall be the Restricted Excess NO_x Allowances subject to surrender.

78. Defendants may, solely at their discretion, use Restricted Excess NO_x Allowances at a New and Newly Permitted Unit for which Defendants have received a final NSR Permit from the permitting agency even if the NSR Permit has been appealed but not stayed during the permit appeal process. If Defendants use Restricted Excess NO_x Allowances at such New and Newly Permitted Unit, and the emissions from such New and Newly Permitted Unit are greater than what such Unit is permitted to emit after final adjudication of the appeal process, Defendants shall, within thirty (30) days of such final adjudication, retire an amount of NO_x Allowances equal to the number of tons of NO_x actually emitted that exceeded the finally adjudicated permit limit.

79. No later than March 1, 2016, the total number of Restricted Excess NO_x Allowances subject to surrender accumulated during 2009 through 2015 as calculated in accordance with Paragraphs 74, 76, and 77, shall be surrendered or transferred to a non-profit third party selected by Defendants for surrender, pursuant to Subsection F, below. Beginning in calendar year 2016, and for each calendar year thereafter, the total number of Restricted Excess NO_x Allowances subject to surrender for that year calculated in accordance with Paragraph 74, 76 and 77, shall be surrendered, or transferred to a non-profit third party selected by Defendants for surrender, by March 1 of the following calendar year.

E. Super-Compliant NO_x Allowances.

80. In each calendar year beginning in 2009, and continuing thereafter, Defendants may use in any manner authorized by law any NO_x Allowances made available in that year as a result of maintaining actual NO_x emissions from the AEP Eastern System below the Eastern System-Wide Annual Tonnage Limitations for NO_x under this Consent Decree for each calendar year. Defendants shall timely report the generation of such Super-Compliant NO_x Allowances in accordance with Section XI (Periodic Reporting) and Appendix B of this Consent Decree.

F. Method for Surrender of Excess NO_x Allowances.

81. For purposes of this Consent Decree, the “surrender” of Excess Restricted or Unrestricted Excess NO_x Allowances subject to surrender means permanently surrendering to EPA NO_x Allowances from the accounts administered by EPA so that such NO_x Allowances can never be used thereafter to meet any compliance requirement under the Clean Air Act, a state implementation plan, or this Consent Decree.

82. For all Restricted or Unrestricted Excess NO_x Allowances subject to surrender required to be surrendered to EPA in Paragraphs 79 and 75, above, Defendants or the third party recipient(s) (as the case may be) shall first submit a NO_x Allowance transfer request form to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such NO_x Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. As part of submitting these transfer requests, Defendants or the third party recipient(s) shall irrevocably authorize the transfer of these NO_x Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the NO_x Allowances being surrendered.

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

surrender requirements of this Paragraph until all third party recipient(s) have actually surrendered the transferred NO_x Allowances to EPA.

G. Reporting Requirements for NO_x Allowances.

84. Defendants shall comply with the reporting requirements for NO_x Allowances as described in Section XI (Periodic Reporting) and Appendix B.

H. General NO_x Provisions.

85. To the extent a NO_x Emission Rate is required under this Consent Decree, Defendants shall use CEMS in accordance with the reference methods specified in 40 C.F.R. Part 75 to determine such Emission Rate.

V. SO₂ EMISSION REDUCTIONS AND CONTROLS

A. Eastern System-Wide Annual Tonnage Limitations for SO₂.

86. Notwithstanding any other provisions of this Consent Decree, except Section XIV (Force Majeure), during each calendar year specified in the table below, all Units in the AEP Eastern System, collectively, shall not emit SO₂ in excess of the following Eastern System-Wide Annual Tonnage Limitations:

Calendar Year	Eastern System-Wide Annual Tonnage Limitations for SO₂
2010	450,000 tons
2011	450,000 tons
2012	420,000 tons
2013	350,000 tons
2014	340,000 tons

Calendar Year	Eastern System-Wide Annual Tonnage Limitations for SO₂
2015	275,000 tons
2016	260,000 tons
2017	235,000 tons
2018	184,000 tons
2019, and each year thereafter	174,000 tons

B. SO₂ Emission Limitations and Control Requirements.

87. No later than the dates set forth in the table below, Defendants shall install and Continuously Operate an FGD on each Unit identified therein, or, if indicated in the table, Retire, Retrofit, or Re-power such Unit:

Unit	SO₂ Pollution Control	Date
Amos Units 1 and 3	FGD	December 31, 2009
Amos Unit 2	FGD	December 31, 2010
Big Sandy Unit 2	FGD	December 31, 2015
Cardinal Units 1 and 2	FGD	December 31, 2008
Cardinal Unit 3	FGD	December 31, 2012
Conesville Units 1 and 2	Retire, Retrofit, or Re-power	Date of Entry
Conesville Unit 3	Retire, Retrofit, or Re-power	December 31, 2012
Conesville Unit 4	FGD	December 31, 2010
Conesville Unit 5	Upgrade existing FGD and meet a 95% 30-day Rolling Average Removal Efficiency	December 31, 2009

Unit	SO₂ Pollution Control	Date
Conesville Unit 6	Upgrade existing FGD and meet a 95% 30-day Rolling Average Removal Efficiency	December 31, 2009
Gavin Units 1 and 2	FGD	Date of Entry
Mitchell Units 1 and 2	FGD	December 31, 2007
Mountaineer Unit 1	FGD	December 31, 2007
Muskingum River Units 1-4	Retire, Retrofit, or Re-power	December 31, 2015
Muskingum River Unit 5	FGD	December 31, 2015
Rockport Unit 1	FGD	December 31, 2017
Rockport Unit 2	FGD	December 31, 2019
Sporn Unit 5	Retire, Retrofit, or Re-power	December 31, 2013
A total of at least 600 MW from the following list of Units: Sporn Units 1-4, Clinch River Units 1-3, Tanners Creek Units 1-3, and/or Kammer Units 1-3	Retire, Retrofit, or Re-power	December 31, 2018

88. Plant-Wide Annual Rolling Average Tonnage Limitation for SO₂ at Clinch River.

Beginning on January 1, 2010, and continuing through December 31, 2014, Defendants shall limit their total annual SO₂ emissions at the Clinch River plant to a Plant-Wide Annual Rolling Average Tonnage Limitation of 21,700 tons. Beginning on January 1, 2015, and continuing thereafter, Defendants shall limit their total annual SO₂ emissions at the Clinch River plant to a Plant-Wide Annual Rolling Average Tonnage Limitation of 16,300 tons. For purposes of calculating the Plant-Wide Annual Rolling Average Tonnage Limitation that begins in 2010, Defendants shall use the period beginning January 1, 2010 through December 31, 2010 to

establish the initial annual period that is subject to the Plant-Wide Annual Rolling Average Tonnage Limitation for 2010 through 2014. Defendants shall then calculate a new Plant-Wide Annual Rolling Average Tonnage Limitation each month thereafter through December 31, 2014, by averaging the most recent month with the previous eleven (11) months. For purposes of calculating the Plant-Wide Annual Rolling Average Tonnage Limitation that begins in 2015, Defendants shall use the period beginning January 1, 2015 through December 31, 2015 to establish the initial annual period that is subject to the Plant-Wide Annual Average Rolling Tonnage Limitation for 2015. Defendants shall then calculate a new Plant-Wide Annual Rolling Average Tonnage Limitation each month thereafter by averaging the most recent month with the previous eleven (11) months.

89. Plant-Wide Annual Tonnage Limitation for SO₂ at Kammer. Beginning on January 1, 2010, and continuing annually thereafter, Defendants shall limit their total annual SO₂ emissions at the Kammer plant to a Plant-Wide Annual Tonnage Limitation of 35,000 tons.

90. Other SO₂ Measures. No later than the dates set forth in the table below, Defendants shall comply with the limit on coal sulfur content for such Units, at all times that the Units are in operation:

Unit	Other SO₂ Measures	Date
Big Sandy Unit 1	Units can only burn coal with a sulfur content no greater than 1.75 lb/mmBTU on an annual average basis	Date of Entry
Glen Lyn Units 5 and 6	Units can only burn coal with a sulfur content no greater than 1.75 lb/mmBTU on an annual average basis.	Date of Entry

Unit	Other SO₂ Measures	Date
Kanawha River Units 1 and 2	Units can only burn coal with a sulfur content no greater than 1.75 lb/mmBTU on an annual average basis	Date of Entry
Tanners Creek Units 1, 2, and 3	Units can only burn coal with a sulfur content no greater than 1.2 lb/mmBTU on an annual average basis	Date of Entry
Tanners Creek Unit 4	Unit can only burn coal with a sulfur content no greater than 1.2 % on an annual average basis	Date of Entry

C. Use and Surrender of SO₂ Allowances.

91. Defendants may use SO₂ Allowances allocated to the AEP Eastern System by the Administrator of EPA under the Act, or by any state under its state implementation plan, to meet their own federal and/or state regulatory requirements for the Units included in the AEP Eastern System. Subject to Paragraph 92, nothing in this Consent Decree shall prevent Defendants from purchasing or otherwise obtaining SO₂ Allowances from another source for purposes of complying with their own federal and/or state Clean Air Act requirements to the extent otherwise allowed by law.

92. Except as may be necessary to comply with this Section and Section XIII (Stipulated Penalties), Defendants may not use any SO₂ Allowances to comply with any requirement of this Consent Decree, including by claiming compliance with any emission limitation, Eastern System-Wide Annual Tonnage Limitations, Plant-Wide Annual Rolling Average Tonnage Limitation for SO₂ at Clinch River, or Plant-Wide Annual Tonnage Limitation

for SO₂ at Kammer required by this Consent Decree by using, tendering, or otherwise applying SO₂ Allowances to achieve compliance or offset any emissions above the limits specified in this Consent Decree.

93. On an annual basis beginning in 2010, and continuing thereafter, Defendants shall calculate the number of Excess SO₂ Allowances by subtracting the number of SO₂ Allowances equal to the annual Eastern System-Wide Tonnage Limitations for SO₂ for each calendar year times the applicable allowance surrender ratio from the annual SO₂ Allocations for all Units within the AEP Eastern System for the same calendar year. Defendants shall surrender, or transfer to a non-profit third party selected by Defendants for surrender, all Excess SO₂ Allowances that have been allocated to the AEP Eastern System for the specified calendar year by the Administrator of EPA under the Act or by any state under its state implementation plan. Defendants shall make the surrender of SO₂ Allowances required by this Paragraph to EPA by March 1 of the immediately following calendar year.

D. Method for Surrender of Excess SO₂ Allowances.

94. For purposes of this Subsection, the “surrender” of Excess SO₂ Allowances means permanently surrendering allowances from the accounts administered by EPA so that such allowances can never be used thereafter to meet any compliance requirement under the Clean Air Act, a state implementation plan, or this Consent Decree.

95. If any SO₂ Allowances required to be surrendered under this Consent Decree are transferred directly to a non-profit third party, Defendants shall include a description of such transfer in the next report submitted to EPA pursuant to Section XI (Periodic Reporting) of this Consent Decree. Such report shall: (i) identify the non-profit third party recipient(s) of the SO₂

Allowances and list the serial numbers of the transferred SO₂ Allowances; and (ii) 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 SO₂ Allowances to meet any obligation imposed by any environmental law. No later than the second periodic report due after the transfer of any SO₂ Allowances, Defendants shall include a statement that the third party recipient(s) surrendered the SO₂ Allowances for permanent surrender to EPA in accordance with the provisions of Paragraph 96 within one (1) year after Defendants transferred the SO₂ Allowances to them. Defendants shall not have complied with the SO₂ Allowance surrender requirements of this Paragraph until all third party recipient(s) have actually surrendered the transferred SO₂ Allowances to EPA.

96. For all SO₂ Allowances surrendered to EPA, Defendants or the third party recipient(s) (as the case may be) shall first submit an SO₂ Allowance transfer request form to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such SO₂ Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. As part of submitting these transfer requests, Defendants or the third party recipient(s) shall irrevocably authorize the transfer of these SO₂ Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the SO₂ Allowances being surrendered.

97. The requirements in this Consent Decree pertaining to Defendants' surrender of SO₂ Allowances are permanent injunctions not subject to any termination provision of this Decree. These provisions shall survive any termination of this Consent Decree in whole or in part.

E. Super-Compliant SO₂ Allowances.

98. In each calendar year beginning in 2010, and continuing thereafter, Defendants may use in any manner authorized by law any SO₂ Allowances made available in that year as a result of maintaining actual SO₂ emissions from the AEP Eastern System below the Eastern System-Wide Annual Tonnage Limitations for SO₂ under this Consent Decree for each calendar year. Defendants shall timely report the generation of such Super-Compliant SO₂ Allowances in accordance with Section XI (Periodic Reporting) and Appendix B of this Consent Decree.

F. Reporting Requirements for SO₂ Allowances.

99. Defendants shall comply with the reporting requirements for SO₂ Allowances as described in Section XI (Periodic Reporting) and Appendix B.

G. General SO₂ Provisions.

100. To the extent an Emission Rate or 30-Day Rolling Average Removal Efficiency for SO₂ is required under this Consent Decree, Defendants shall use CEMS in accordance with the reference methods specified in 40 C.F.R. Part 75 to determine such Emission Rate.

101. Notwithstanding Paragraphs 6 and 100, the 30-Day Rolling Average Removal Efficiency for SO₂ at Conesville Unit 5 and Conesville Unit 6 shall be determined in accordance with Appendix C.

VI. PM EMISSION REDUCTIONS AND CONTROLS

A. Optimization of Existing ESPs.

102. Beginning thirty (30) days after the Date of Entry, and continuing thereafter, Defendants shall Continuously Operate each ESP on Cardinal Unit 1, Cardinal Unit 2, and Muskingum River Unit 5 to maximize PM emission reductions at all times when the Unit is in

operation, provided that such operation of the ESP is consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for the ESP. Defendants shall, at a minimum, to the extent reasonably practicable: (a) fully energize each section of the ESP for each unit, and repair any failed ESP section at the next planned Unit outage (or unplanned outage of sufficient length); (b) operate automatic control systems on each ESP to maximize PM collection efficiency; (c) maintain power levels delivered to the ESPs, consistent with manufacturers' specifications, the operational design of the Unit, and good engineering practices; and (d) inspect for and repair during the next planned Unit outage (or unplanned outage of sufficient length) any openings in ESP casings, ductwork, and expansion joints to minimize air leakage.

B. PM Emission Rate and Testing.

103. No later than the dates specified in the table below, Defendants shall Continuously Operate each Unit specified therein to achieve and maintain a PM Emission Rate no greater than 0.030 lb/mmBTU:

Unit	Date to Achieve and Maintain PM Emission Rate
Cardinal Unit 1	December 31, 2009
Cardinal Unit 2	December 31, 2009
Muskingum River Unit 5	December 31, 2012

104. On or before the date established by this Consent Decree for Defendants to achieve and maintain 0.030 lb/mmBTU at Cardinal Unit 1, Cardinal Unit 2, and Muskingum River Unit 5, Defendants shall conduct a performance test for PM that demonstrates compliance with the PM Emission Rate required by this Consent Decree. Within forty-five (45) days of each such performance test, Defendants shall submit the results of the performance test to Plaintiffs pursuant to Section XVIII (Notices) of this Consent Decree.

C. PM Emissions Monitoring.

105. Beginning in calendar year 2010 for Cardinal Unit 1 and Cardinal Unit 2, and calendar year 2013 for Muskingum River Unit 5, and continuing in each calendar year thereafter, Defendants shall conduct a stack test for PM on each stack servicing Cardinal Unit 1, Cardinal Unit 2, and Muskingum River Unit 5. The annual stack test requirement imposed by this Paragraph may be satisfied by stack tests conducted by Defendants as required by their permits from the State of Ohio for any year that such stack tests are required under the permits.

106. The reference methods and procedures for determining compliance with PM Emission Rates shall be those specified in 40 C.F.R. Part 60, Appendix A, Method 5, 5B, or 17, or an alternative method that is promulgated by EPA, requested for use herein by Defendants, and approved for use herein by EPA. Use of any particular method shall conform to the EPA requirements specified in 40 C.F.R. Part 60, Appendix A and 40 C.F.R. § 60.48Da(b) and (e), or any federally-approved method contained in the Ohio State Implementation Plan. Defendants shall calculate the PM Emission Rates from the stack test results in accordance with 40 C.F.R. § 60.8(f). The results of each PM stack test shall be submitted to EPA within forty-five (45) days of completion of each test.

D. Installation and Operation of PM CEMS.

107. Defendants shall install, calibrate, operate, and maintain PM CEMS, as specified below. Each PM CEMS shall comprise a continuous particle mass monitor measuring particulate matter concentration, directly or indirectly, on an hourly average basis and a diluent monitor used to convert the concentration to units of lb/mmBTU. Defendants shall maintain, in an electronic database, the hourly average emission values produced by all PM CEMS in lb/mmBTU. Defendants shall use reasonable efforts to keep each PM CEMS running and producing data whenever any Unit served by the PM CEMS is operating.

108. No later than December 31, 2011, Defendants shall submit to EPA pursuant to Section XII (Review and Approval of Submittals) of this Consent Decree: (a) a plan for the installation and certification of each PM CEMS, and (b) a proposed Quality Assurance/Quality Control (“QA/QC”) protocol that shall be followed in calibrating such PM CEMS. In developing both the plan for installation and certification of the PM CEMS and the QA/QC protocol, Defendants shall use the criteria set forth in 40 C.F.R. Part 60, Appendix B, Performance Specification 11, and Appendix F, Procedure 3. Following approval by EPA of the protocol, Defendants shall thereafter operate each PM CEMS in accordance with the approved protocol.

109. No later than the dates specified below, Defendants shall install, certify, and operate PM CEMS on the stacks or common stacks for Cardinal Unit 1, Cardinal Unit 2, and a third Unit, as further described in Paragraph 110:

Stack	Date to Commence Operation of PM CEMS
Cardinal Unit 1	December 31, 2012
Cardinal Unit 2	December 31, 2012
Unit to be identified pursuant to Paragraph 110	December 31, 2012

110. No later than December 31, 2011, Defendants shall identify, subject to Plaintiffs' approval, the third Unit required by Paragraph 109.

111. No later than ninety (90) days after Defendants begin operation of the PM CEMS, Defendants shall conduct tests of each PM CEMS to demonstrate compliance with the PM CEMS installation and certification plan submitted to and approved by EPA.

112. Demonstration that PM CEMS are Infeasible. Defendants shall operate the PM CEMS for at least two (2) years on each of the Units specified in Paragraphs 109 and 110. After two (2) years of operation, Defendants may attempt to demonstrate that it is infeasible to continue operating PM CEMS. As part of such demonstration, Defendants shall submit an alternative PM monitoring plan for review and approval by EPA. The plan shall explain the basis for stopping operation of the PM CEMS and propose an alternative PM monitoring plan. If the United States disapproves the alternative PM monitoring plan, or if the United States rejects Defendants' claim that it is infeasible to continue operating PM CEMS, such disagreement is subject to Section XV (Dispute Resolution).

113. "Infeasible to Continue Operating PM CEMS" Standard. Operation of a PM CEMS shall be considered no longer feasible if: (a) the PM CEMS cannot be kept in proper

condition for sufficient periods of time to produce reliable, adequate, or useful data consistent with the QA/QC protocol, or (b) Defendants demonstrate that recurring, chronic, or unusual equipment adjustment or servicing needs in relation to other types of continuous emission monitors cannot be resolved through reasonable expenditures of resources. If EPA determines that Defendants have demonstrated pursuant to this Paragraph that operation is no longer feasible, Defendants shall be entitled to discontinue operation of and remove the PM CEMS.

114. PM CEMS Operations Will Continue During Dispute Resolution or Proposals for Alternative Monitoring. Until EPA approves an alternative monitoring plan, or until the conclusion of any proceeding under Section XV (Dispute Resolution), Defendants shall continue to operate the PM CEMS. If EPA has not issued a decision regarding an alternative monitoring plan within 120 days, Defendants may initiate action under Section XV (Dispute Resolution).

E. PM Reporting.

115. Defendants shall comply with the reporting requirements for PM as described in Section XI (Periodic Reporting) and Appendix B.

F. General PM Provisions.

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

VII. PROHIBITION ON NETTING CREDITS OR OFFSETS FROM REQUIRED CONTROLS

117. Emission reductions that result from actions required to be taken by Defendants after the Date of Entry of this Consent Decree to comply with the requirements of this Consent Decree shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a netting credit or offset under the Clean Air Act's Nonattainment NSR and PSD programs.

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

VIII. ENVIRONMENTAL MITIGATION PROJECTS

119. Defendants shall implement the Environmental Mitigation Projects ("Projects") described in Appendix A to this Consent Decree and fund the categories of Projects described in Subsection B, below, in compliance with the approved plans and schedules for such Projects and other terms of this Consent Decree. In funding and/or implementing all such Projects in Appendix A and Subsection B, Defendants shall expend moneys and/or implement Projects valued at no less than \$36 million for the Projects identified in Appendix A and \$24 million for the payments to the States to fund Projects within the categories set forth in Subsection B. Defendants shall fund and/or implement such Projects over a period of no later than five (5) years from the Date of Entry. Defendants may propose establishing one or more qualified settlement funds within the meaning of Treas. Reg. §1.468B-1 in conjunction with one or more

Mitigation Projects. Any such trust would be established pursuant to a trust agreement in a form to be mutually agreed upon by the affected Parties. Nothing in the foregoing is intended by the United States to be a determination or opinion regarding whether such trust would meet the requirements of Treas. Reg. §1.468B-1 or is otherwise appropriate.

A. Requirements for Projects Described in Appendix A (\$36 million).

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

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

122. Defendants shall certify, as part of each plan submitted to EPA for any Project, that Defendants are not otherwise required by law to perform the Project described in the plan, that Defendants are unaware of any other person who is required by law to perform the Project, and that Defendants will not use any Project, or portion thereof, to satisfy any obligations that it may have under other applicable requirements of law, including any applicable renewable portfolio standards.

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

124. If Defendants elect (where such an election is allowed) to undertake a Project by contributing funds to another person or entity that will carry out the Project in lieu of Defendants, but not including Defendants' agents or contractors, that person or instrumentality

must, in writing: (a) identify its legal authority for accepting such funding; and (b) identify its legal authority to conduct the Project for which Defendants contribute the funds. Regardless of whether Defendants elect (where such election is allowed) to undertake a Project by itself or to do so by contributing funds to another person or instrumentality that will carry out the Project, Defendants acknowledge that they will receive credit for the expenditure of such funds as Project Dollars only if Defendants demonstrate that the funds have been actually spent by either Defendants or by the person or instrumentality receiving them, and that such expenditures met all requirements of this Consent Decree.

125. Defendants shall comply with the reporting requirements for Appendix A Projects as described in Section XI (Periodic Reporting) and Appendix B.

126. Within sixty (60) days following the completion of each Project required under this Consent Decree (including any applicable periods of demonstration or testing), Defendants shall submit to the United States a report that documents the date that the Project was completed, Defendants' results of implementing the Project, including the emission reductions or other environmental benefits achieved, and the Project Dollars expended by Defendants in implementing the Project.

B. Mitigation Projects to be Conducted by the States (\$24 million).

127. The States, by and through their respective Attorneys General, shall jointly submit to Defendants Projects within the categories identified in this Subsection B for funding in amounts not to exceed \$4.8 million per calendar year for no less than five (5) years following the Date of Entry of this Consent Decree beginning as early as calendar year 2008. The funds for these Projects will be apportioned by and among the States, and Defendants shall not have approval rights for the Projects or the apportionment. Defendants shall pay proceeds as

designated by the States in accordance with the Projects submitted for funding each year within seventy-five (75) days after being notified in writing by the States. Notwithstanding the \$4.8 million and 5-year limitation above, if the total costs of the projects submitted in any one or more years are less than \$4.8 million, the difference between that amount and \$4.8 million will be available for funding by Defendants of new or previously submitted projects in the following years, except that all amounts not designated by the States within ten (10) years after the Date of Entry of this Consent Decree shall expire.

128. Categories of Projects. The States agree to use money funded by Defendants to implement Projects that pertain to energy efficiency and/or pollution reduction. Such projects may include, but are not limited by, the following:

- a. Retrofitting land and marine vehicles (e.g., automobiles, off-road and on-road construction and other vehicles, trains, ferries) and transportation terminals and ports, with pollution control devices, such as particulate matter traps, computer chip reflashing, and battery hybrid technology;
- b. Truck-stop and marine port electrification;
- c. Purchase and installation of photo-voltaic cells on buildings;
- d. Projects to conserve energy use in new and existing buildings, including appliance efficiency improvement projects, weatherization projects, and projects intended to meet EPA's Green Building guidelines (see <http://www.epa.gov/greenbuilding/pubs/enviro-issues.htm>) and/or the Leadership in Energy and Environmental Design (LEED) Green Building Rating System (see <http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>), and projects to

collect information in rental markets to assist in design of efficiency and conservation programs;

- e. Construction associated with the production of energy from wind, solar, and biomass;
- f. “Buy back” programs for dirty old motors (e.g., automobile, lawnmowers, landscape equipment);
- g. Programs to remove and/or replace oil-fired home heating equipment to allow use of ultra-low sulfur oil, and outdoor wood-fired boilers;
- h. Purchase and retirement of SO₂ and NO_x allowances; and
- i. Funding program to improve modeling of mobile source sector.

IX. CIVIL PENALTY

129. Within thirty (30) days after the Date of Entry, Defendants shall pay to the United States a civil penalty in the amount of \$15,000,000. The civil penalty shall be paid by Electronic Funds Transfer (“EFT”) to the United States Department of Justice, in accordance with current EFT procedures, referencing USAO File Number 1999v01542 and DOJ Case Number 90-5-2-1-06893 and the civil action case name and consolidated case numbers of this action. The costs of such EFT shall be Defendants’ responsibility. Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the U.S. Attorney’s Office for the Southern District of Ohio. Any funds received after 2:00 p.m. EDT shall be credited on the next business day. At the time of payment, Defendants shall provide notice of payment, referencing the USAO File Number, the DOJ Case Number, and the civil action case name and consolidated case numbers, to the Department of Justice and to EPA in accordance with Section XVIII (Notices) of this Consent Decree.

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

131. Payment made pursuant to this Section is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and is not a tax-deductible expenditure for purposes of federal law.

X. RESOLUTION OF CIVIL CLAIMS AGAINST DEFENDANTS

A. Resolution of the United States' Civil Claims.

132. Claims Based on Modifications Occurring Before the Date of Lodging of this Consent Decree. Entry of this Decree shall resolve all civil claims of the United States against Defendants that arose from any modifications commenced at any AEP Eastern System Unit prior to the Date of Lodging of this Consent Decree, including but not limited to, those modifications alleged in the Notices of Violation and complaints filed in *AEP I* and *AEP II*, under any or all of: (a) Parts C or D of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, 7501-7515; (b) Section 111 of the Clean Air Act, 42 U.S.C. § 7411, and 40 C.F.R. § 60.14; (c) the federally-approved and enforceable Indiana State Implementation Plan, Kentucky State Implementation Plan, Ohio State Implementation Plan, Virginia State Implementation Plan, and West Virginia State Implementation Plan; or (d) Sections 502(a) and 504(a) of Title V of the Clean Air Act, 42 U.S.C §§ 7611(a) and 7611(c), but only to the extent that such claims are based on Defendants' failure to obtain an operating permit that reflects applicable requirements imposed under Parts C or D of Subchapter I, or Section 111 of the Clean Air Act.

133. Claims Based on Modifications after the Date of Lodging of This Consent Decree. Entry of this Consent Decree also shall resolve all civil claims of the United States against Defendants that arise based on a modification commenced before December 31, 2018, or solely for Rockport Unit 2, before December 31, 2019, for all pollutants, except Particulate Matter, regulated under Parts C or D of Subchapter I of the Clean Air Act, and under regulations promulgated thereunder, as of the Date of Lodging of this Consent Decree, and:

- a. where such modification is commenced at any AEP Eastern System Unit after the Date of Lodging of this Consent Decree; or
- b. where such modification is one this Consent Decree expressly directs Defendants to undertake.

The term “modification” as used in this Paragraph shall have the meaning that term is given under the Clean Air Act and under the regulations in effect as of the Date of Lodging of this Consent Decree, as alleged in the complaints in *AEP I* and *AEP II*.

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

B. Pursuit by the United States of Civil Claims Otherwise Resolved by Subsection

A.

135. Bases for Pursuing Resolved Claims for the AEP Eastern System. If Defendants violate: (a) the Eastern System-Wide Annual Tonnage Limitations for NO_x required pursuant to Paragraph 67; (b) the Eastern System-Wide Annual Tonnage Limitations for SO₂ required pursuant to Paragraph 86; or (c) operate a Unit more than ninety (90) days past a date established in this Consent Decree without completing the required installation, upgrade, or commencing Continuous Operation of any emission control device required pursuant to Paragraphs 68, 69, 87, 102, and 103 then the United States may pursue any claim at any AEP Eastern System Unit that is otherwise resolved under Subsection A (Resolution of United States' Civil Claims), subject to (a) and (b) below.

- a. For any claims based on modifications undertaken at any Unit in the AEP Eastern System that is not an Improved Unit for the pollutant in question, claims may be pursued only where the modification(s) on which such claim is based was commenced within the five (5) years preceding the violation or failure specified in this Paragraph.
- b. For any claims based on modifications undertaken at an Improved Unit, claims may be pursued only where the modification(s) on which such claim is based was commenced: (1) after the Date of Lodging of this Consent Decree and (2) within the five (5) years preceding the violation or failure specified in this Paragraph.

136. Additional Bases for Pursuing Resolved Claims for Modifications at an Improved Unit. Solely with respect to an Improved Unit, the United States may also pursue claims arising

from a modification (or collection of modifications) at an Improved Unit that has otherwise been resolved under Subsection A (Resolution of the United States' Civil Claims) if the modification (or collection of modifications) at the Improved Unit on which such claim is based (a) was commenced after the Date of Lodging of this Consent Decree and (b) individually (or collectively) increased the maximum hourly emission rate of that Unit for NO_x or SO₂ (as measured by 40 C.F.R. § 60.14 (b) and (h)) by more than ten percent (10%).

137. Any Other Unit can become an Improved Unit for NO_x if (a) it is equipped with an SCR, and (b) the operation of such SCR is incorporated into a federally-enforceable non-Title V permit or site-specific amendment to the state implementation plan and incorporated into a Title V permit applicable to that Unit. Any Other Unit can become an Improved Unit for SO₂ if (a) it is equipped with an FGD, and (b) the operation of such FGD is incorporated into a federally-enforceable non-Title V permit or site-specific amendment to the state implementation plan and incorporated into a Title V permit applicable to that Unit.

138. Additional Bases for Pursuing Resolved Claims for Modifications at Other Units.

a. Solely with respect to Other Units, i.e., a Unit that is not an Improved Unit under the terms of this Consent Decree, the United States may also pursue claims arising from a modification (or collection of modifications) at an Other Unit that has otherwise been resolved under Subsection A (Resolution of the United States' Civil Claims), if the modification (or collection of modifications) at the Other Unit on which the claim is based was commenced within the five (5) years preceding any of the following events:

1. a modification (or collection of modifications) at such Other Unit commenced after the Date of Lodging of this Consent Decree increases the maximum hourly

emission rate for such Other Unit for the relevant pollutant (NO_x or SO₂) (as measured by 40 C.F.R. § 60.14(b) and (h));

2. the aggregate of all Capital Expenditures made at such Other Unit exceed \$125/KW on the Unit's Boiler Island (based on the generating capacities identified in Paragraph 7) during the period from the Date of Entry of this Consent Decree through December 31, 2015. (Capital Expenditures shall be measured in calendar year 2007 constant dollars, as adjusted by the McGraw-Hill Engineering News-Record Construction Cost Index); or

3. a modification (or collection of modifications) at such Other Unit commenced after the Date of Lodging of this Consent Decree results in an emissions increase of NO_x and/or SO₂ at such Other Unit, and such increase: (i) presents, by itself, or in combination with other emissions or sources, "an imminent and substantial endangerment" within the meaning of Section 303 of the Act, 42 U.S.C. §7603; (ii) causes or contributes to violation of a NAAQS in any Air Quality Control Area that is in attainment with that NAAQS; (iii) causes or contributes to violation of a PSD increment; or (iv) causes or contributes to any adverse impact on any formally-recognized air quality and related values in any Class I area. The introduction of any new or changed NAAQS shall not, standing alone, provide the showing needed under Subparagraphs (3)(ii) or (3)(iii) of this Paragraph, to pursue any claim for a modification at an Other Unit resolved under Subparagraph A of this Section.

b. Solely with respect to Other Units at the plant listed below, the United States may also pursue claims arising from a modification (or collection of modifications) at such Other Units commenced after the Date of Lodging of this Consent Decree if such modification (or collection of modifications) results in an emissions increase of SO₂ at such Other Unit, and such increase causes the emissions at the plant at issue to exceed the Plant-Wide Annual Rolling

Average Tonnage Limitation for SO₂ at Clinch River listed in the table below for year 2010-2014 and/or 2015 and beyond:

<u>Plant</u>	<u>Year</u>	<u>SO₂ Tons Limit</u>
Clinch River	2010 - 2014	21,700
Clinch River	2015 and each year thereafter	16,300

C. Resolution of Past Claims of the States and Citizen Plaintiffs and Reservation of Rights.

139. The States and Citizen Plaintiffs agree that this Consent Decree resolves all civil claims that have been alleged in their respective complaints or could have been alleged against Defendants prior to the Date of Lodging of this Consent Decree for violations of: (a) Parts C or D of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, 7501-7515, and (b) Section 111 of the Act, 42 U.S.C. § 7411, and 40 C.F.R § 60.14, at Units within the AEP Eastern System.

140. The States and Citizen Plaintiffs expressly do not join in giving the Defendants the covenant provided by the United States through Paragraph 133 of this Consent Decree, do not release any claims under the Clean Air Act and its implementing regulations arising after the Date of Lodging of this Consent Decree, and reserve their rights, if any, to bring any actions against the Defendants pursuant to 42 U.S.C. § 7604 for any claims arising after the Date of Lodging of this Consent Decree.

141. Notwithstanding Paragraph 140, the States and Citizen Plaintiffs release Defendants from any civil claim that may arise under the Clean Air Act for Defendants' performance of activities that this Consent Decree expressly directs Defendants to undertake,

