

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 KENTUCKY UTILITIES COMPANY,)
)
 Defendant.)

Case No. 3:12-cv-00076-GFVT

CONSENT DECREE

Eastern District of Kentucky
FILED

AUG 21 2013

AT FRANKFORD
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

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WHEREAS, Plaintiff, the United States of America (the "United States"), on behalf of the United States Environmental Protection Agency ("EPA"), is filing with this Consent Decree a Complaint for injunctive relief and civil penalties pursuant to Section 113(b)(2) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7413(b)(2), alleging that Defendant, Kentucky Utilities Company ("KU") violated the Clean Air Act, 42 U.S.C. §§ 7401 to 7671, and the federally enforceable Kentucky State Implementation Plan ("SIP"), set forth in the Kentucky Administrative Regulations ("KAR"), Title 401 Chapters 51-68.

WHEREAS, EPA issued a Notice of Violation ("NOV") to KU dated September 26, 2007, pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), alleging violations at Ghent Station of opacity limits for Units 1 and 3 under applicable federal New Source Performance Standards requirements, 40 C.F.R. § 60.42(a)(2), and Kentucky SIP regulations, 401 KAR 61:015, Section 4(4), 401 KAR 59:015, Section 4(2).

WHEREAS, EPA issued a subsequent NOV to KU dated March 19, 2009, pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), alleging violations relating to sulfuric acid mist ("SAM") emissions at Ghent Station of the following:

- (a) the Prevention of Significant Deterioration ("PSD") provisions in Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492,
- (b) Subchapter V of the Act, 42 U.S.C. §§ 7661-7661f, and
- (c) the federally enforceable Kentucky SIP, including 401 KAR 51:017.

WHEREAS, in the Complaint, the United States alleges that KU failed to obtain the necessary permits and install the controls necessary under the Act to reduce SAM emissions at Ghent Station, that KU failed to obtain an operating permit for Ghent Station under Title V of the Act that reflects applicable requirements imposed under Part C of

Subchapter I of the Act, and that KU violated state and federal opacity limits at Ghent Station.

WHEREAS, EPA provided actual notice to KU and the Commonwealth of Kentucky of the alleged violations and commencement of the action in accordance with Section 113(a)(1) and (b) of the Act, 42 U.S.C. § 7413(a)(1) & (b).

WHEREAS, the United States' Complaint states claims upon which, if proven, relief can be granted against KU under Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477, and 28 U.S.C. § 1355.

WHEREAS, KU has denied and continues to deny the violations alleged in the Complaint and the NOVs, contends that it has defenses to the alleged violations, and maintains that it has been and remains in compliance with the Act, federal implementing regulations, Kentucky air regulations and statutes including the Kentucky SIP, and the Title V permit for Ghent Station, and nothing herein shall constitute an admission of liability.

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

NOW, THEREFORE, with the consent of the Parties and without any admission or adjudication of the violations alleged in the Complaint or the NOVs, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and over the Parties. Venue lies in this District

pursuant to 42 U.S.C. § 7413(b) and under 28 U.S.C. § 1391(b) and (c), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district.

2. Solely for purposes of this Decree, KU consents to the Court's jurisdiction over this Decree, any such action to enforce this Decree, and over KU, and consents to venue in this judicial district.

II. APPLICABILITY

3. Upon entry of this Consent Decree, the provisions of this Consent Decree shall apply to and be binding upon and inure to the benefit of the Parties, their successors and assigns, and upon KU's directors, officers, employees, and agents, solely in their capacity as such.

4. KU shall provide a copy of the applicable provisions of the final Consent Decree (or a link to the information on the internet) to each consulting or contracting firm that is retained to perform any of the work required by this Consent Decree. Copies of the applicable portions of the Consent Decree (or a link to the information on the internet) do not need to be supplied to firms who are retained solely to supply materials or equipment to satisfy the requirements of this Consent Decree. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under the Consent Decree, KU shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree.

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

KU establishes that such failure resulted from a Force Majeure Event, as defined in Section X of this Consent Decree.

III. DEFINITIONS

6. Terms used in this Consent Decree that are defined in the Clean Air Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the statute or such regulations, unless otherwise provided in this Consent Decree.

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

a. “Clean Air Act” or “Act” shall mean the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q, and its implementing regulations;

b. “Commonwealth” shall mean the Commonwealth of Kentucky;

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

d. “Consent Decree” shall mean this Decree and Appendices A and B attached hereto;

e. “Continuously Operate” or “Continuous Operation” shall mean that when a SAM emission control device, such as a sorbent injection system, is installed at the Units, such control device shall be operated at all times the Unit it serves is in operation except during a Malfunction of such control device, consistent with the technological limitations, manufacturers’ specifications and operating instructions, and good engineering and maintenance practices for such device and the Unit;

f. “Date of Entry” shall mean the date this Consent Decree is approved or signed by the United States District Court Judge.

g. “Date of Lodging” shall mean the date this Consent Decree is lodged by filing with the Clerk of Court for the United States District Court for the Eastern District of Kentucky.

h. “Day” shall mean a calendar day unless expressly stated to be a business day. 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 of the next business day;

i. “Defendant” shall mean Kentucky Utilities Company;

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

k. “Effective Date” shall have the definition provided in Section XIX;

l. “Emission Rate” shall mean the parts per million volumetric dry (ppmvd) at 3% O₂ of that pollutant emitted from the Unit flue gas desulfurization outlet, measured in accordance with this Consent Decree;

m. “Enhanced Sorbent Injection Controls” shall mean reconfigured sorbent injection systems designed to improve reagent effectiveness and enhance SAM reduction efficiency, and (1) for Units 3 and 4, Trona milling equipment designed to allow grinding of Trona to a particle size of Diameter (D) 50 of 20 μm and D90 of 45 μm using Trona delivered at a size distribution of d50 of 35-46 μm, or (2) for Unit 1, Trona milling equipment designed to allow grinding of Trona to a particle size of Diameter (D) 50 of 20 μm and D90 of 45 μm using Trona delivered at a size distribution of d50 of 35-46 μm after the ESP and equipment designed to allow effective delivery of hydrated lime after the SCR outlet and other potential injection locations. Subject to the compliance

assurance requirements of Paragraph 23.c. of this Consent Decree, KU may change the sorbent or the injection locations used to maintain compliance with the applicable SAM Emission Limits at Units 1, 3 and 4.

- n. "Facility" shall mean KU's Ghent Station power plant located in Ghent, Kentucky;
- o. "Kentucky Utilities" or "KU" shall mean the defendant, Kentucky Utilities Company;
- p. "Malfunction" shall have the meaning as that term is defined under 40 C.F.R. § 60.2;
- q. "Operational or Ownership Interest" shall mean part or all of Kentucky Utilities' legal or equitable operational or ownership interest in Ghent Station;
- r. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;
- s. "Parties" shall mean the United States and Defendant;
- t. "ppmvd" shall means part per million volumetric dry;
- u. "PSD" or "Prevention of Significant Deterioration" shall mean the prevention of significant deterioration air quality program under Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, and 40 C.F.R. Part 52;
- v. "Project Dollars" means Kentucky Utilities' expenditures and payments incurred or made in carrying out the Environmental Mitigation Projects identified in Section V (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 V (Environmental Mitigation Projects) and Appendix A of this Consent

Decree, and (b) constitute Kentucky Utilities' direct payments for such projects, or Kentucky Utilities' external costs for contractors, vendors, and equipment.

w. "SAM" shall mean sulfuric acid mist or H₂SO₄;

x. "SCR" shall mean selective catalytic reduction device, which is a pollution control device that employs selective catalytic reduction technology for the reduction of nitrogen oxides;

y. "Section" shall mean a portion of this Decree identified by a roman numeral;

z. "Stack Test" shall mean for all Units except Units 2 and 3 a SAM compliance test performed at the stack for the relevant Unit in accordance with the compliance demonstration methodology set forth in Appendix A to this Consent Decree, and for Units 2 and 3 a SAM compliance test performed at the inlet to the stack following the wet flue gas desulfurization system in accordance with the compliance demonstration methodology set forth in Appendix A to this Consent Decree.

aa. "Unit" means, for the purposes of this Consent Decree, one of the four coal-fired electric generating units at Ghent Station, including the coal crusher, stationary equipment that feeds coal to the boiler, the boiler that produces steam from the steam turbine, the steam turbine, the generator, the equipment necessary to operate the generator, the boiler, and all ancillary equipment, including pollution control equipment and systems necessary for the production of electricity.

bb. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

7. Within thirty (30) calendar days after entry of this Consent Decree, KU shall pay to the United States a civil penalty in the amount of \$300,000.

8. KU shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to KU, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Eastern District of Kentucky, 260 West Vine St., Suite 300, Lexington, Kentucky 40507. At the time of payment, KU shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payments are for the civil penalty owed pursuant to the Consent Decree in *United States v. Kentucky Utilities Company*, and shall reference the civil action number and DOJ case number 90-5-2-1-08850/1, to the United States in accordance with Section XVII of this Decree (Notices); by email to: acctreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

9. Failure to timely pay the civil penalty shall subject KU 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 KU 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.

10. 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. ENVIRONMENTAL MITIGATION PROJECTS

11. KU shall implement the Environmental Mitigation Project(s) ("Projects") described in Appendix B to this Decree in compliance with the approved plans and schedules for such Project and other terms of this Consent Decree.

12. KU shall submit plans for each Project to EPA for review and approval pursuant to Section VIII (Review and Approval of Submittals) of this Consent Decree within sixty (60) days after the date of entry of this Consent Decree. In implementing the Project(s), KU shall spend no less than \$500,000 in Project Dollars. KU shall maintain, and present to EPA upon request, all documents to substantiate the Project Dollars expended and shall provide these documents to EPA within thirty (30) days of a request by EPA for such documentation

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

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

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

16. If KU elects (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 KU,

but not including KU's 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 KU contributes the funds. Regardless of whether KU elected (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, KU acknowledges that it will receive credit for the expenditure of such funds only if KU demonstrates that the funds have been actually spent by either KU or by the person or instrumentality receiving them, and that such expenditures met all requirements of this Consent Decree.

17. Beginning six (6) months after entry of this Consent Decree, and continuing until completion of the Project(s) (including any applicable periods of demonstration or testing), KU shall provide EPA with semi-annual updates concerning the progress of the Project(s).

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

VI. SULFURIC ACID MIST REDUCTION AND CONTROL

A. Installation of Enhanced Sorbent Injection and Performance Requirements

19. Beginning no later than the Date of Lodging of the Consent Decree, KU will Continuously Operate the existing SAM controls at Ghent Station Units 1, 2, 3 and 4.

20. Ghent Station Units 1, 3, and 4

a. By no later than August 31, 2012 at Units 1 and 3, and no later than December 31, 2012 at Unit 4, KU will install and Continuously Operate Enhanced Sorbent Injection Controls to reduce SAM emissions with the goal of achieving a SAM Emission Rate of no greater than 5 ppmvd (at 3% O₂) for each of these units.

b. Interim SAM Emission Rates. KU shall comply with the following SAM Emission Rates during the interim periods set forth in this subparagraph:

i. Ghent Station Unit 1: KU shall achieve and maintain compliance with a SAM Emission Rate of 7 ppmvd (at 3% O₂) between August 31, 2012 and June 30, 2015.

ii. Ghent Station Unit 3: KU shall achieve and maintain compliance with a SAM Emission Rate of 7 ppmvd (at 3% O₂) between August 31, 2012 and June 30, 2014.

iii. Ghent Station Unit 4: KU shall achieve and maintain compliance with a SAM Emission Rate of 10 ppmvd (at 3% O₂) between December 31, 2012 and December 31, 2014.

c. Permanent SAM Emission Rates. KU shall comply with the following SAM Emission Rates commencing with the dates set forth in this subparagraph:

i. Ghent Station Unit 1: Commencing June 30, 2015, KU shall achieve and maintain compliance with a SAM Emission Rate of 5 ppmvd (at 3% O₂).

ii. Ghent Station Unit 3: Commencing June 30, 2014, KU shall achieve and maintain compliance with a SAM Emission Rate of 5 ppmvd (at 3% O₂).

iii. Ghent Station Unit 4: Commencing December 31, 2014, KU shall achieve and maintain compliance with a SAM Emission Rate of 5 ppmvd (at 3% O₂).

21. Ghent Station Unit 2

a. Interim SAM Emission Rate. KU shall achieve and maintain compliance with a SAM Emission Rate of 5 ppmvd (at 3% O₂) between August 31, 2012 and June 30, 2013.

b. By no later than June 30, 2013, KU will install and Continuously Operate a new dry sorbent SAM emission control system at Unit 2 designed to reduce SAM emissions to achieve a SAM emissions rate of no greater than 3 ppmvd (at 3% O₂). KU shall take the following steps in procuring the new sorbent control system:

i. KU shall obtain a written vendor assurance/guarantee that the new sorbent control system is designed to control SAM emissions at Unit 2 to levels no greater than 3 ppmvd (at 3% O₂) taking into account all anticipated Unit operating parameters; and

ii. KU shall ensure that the new sorbent control system includes sorbent milling capabilities and shall consider the use of sorbent milling to enhance SAM emissions reduction.

c. Permanent SAM Emission Rate. Commencing June 30, 2013, KU shall achieve and maintain compliance with a SAM Emission Rate of 4 ppmvd (at 3% O₂).

d. SCR Installation. If KU installs selective catalytic reduction on Unit 2 in order to control emissions of nitrogen oxides, KU shall achieve and maintain compliance with a permanent SAM Emission Rate of 5 ppmvd (at 3% O₂) following commencement of operation of the SCR.

B. Compliance Testing and Assurance

22. Compliance Testing

a. Compliance with each interim or permanent SAM Emission Rate set forth in this Section VI shall be determined through the use of Stack Tests conducted pursuant to the SAM compliance demonstration procedures set forth in Appendix A to this Consent Decree. Such Stack Tests shall be conducted under representative Unit operating conditions, taking into account fuel sulfur content, load, and other parameters known to impact SAM emissions.

b. KU shall conduct the Stack Test necessary to complete the initial compliance demonstration procedures set forth in Appendix A to this Consent Decree for each Unit within 60 days of the applicable date of the interim SAM Emission Rate applicable to that Unit, and shall subsequently conduct a bi-annual Stack Test at each Unit for the two years following the Date of Entry of the Consent Decree. If, after the initial two-year period of bi-annual Stack Tests, KU is able to demonstrate during any subsequent Stack Test that SAM Emission Rates for a Unit are less than 80% of the permanent SAM Emission Rate for that Unit, then KU may reduce the frequency of the

Stack Tests required for that Unit under this Consent Decree to an annual basis until termination of the Consent Decree.

c. KU may petition EPA to change the annual Stack Test and reporting requirements if it can demonstrate that appropriate continuous emissions devices for SAM are available, but KU shall submit SAM emissions control parameters and data on at least an annual basis.

23. Compliance Assurance

a. Within 45 days of the Date of Entry of the Consent Decree, KU shall submit an initial Compliance Assurance Monitoring (“CAM”) plan under 40 C.F.R. Part 64, for the SAM Emission Rates in this Section, to the Kentucky Division of Air Quality (“KDAQ”) for review and approval, with a copy sent to EPA contemporaneously with the submittal to KDAQ.

b. CAM Plan Revision

i. Units 1 and 4: Within 60 days of completion of each Stack Test required under Paragraph 22.b. of this Consent Decree for Units 1 and 4, KU shall submit to KDAQ for review and approval, with a contemporaneous copy to EPA, a revision to its CAM plan that determines average continuous monitored indication of SAM values and minimum sorbent injection rates for applicable load ranges, as provided for in the CAM plan, based on the most recent Stack Test for the relevant Unit.

ii. Units 2 and 3: Within 60 days of completion of the second Stack Test required under Paragraph 22.b. of this Consent Decree and each subsequent Stack Test for Units 2 and 3, KU shall submit to KDAQ

for review and approval, with a contemporaneous copy to EPA, a revision to its CAM plan that determines average continuous monitored indication of SAM values and minimum sorbent injection rates for applicable load ranges, as provided for in the CAM plan, based on the most recent Stack Test for the relevant Unit.

iii. Notwithstanding subsections (i) and (ii) above, if KU demonstrates that the CAM-determined minimum sorbent injection rates have remained consistent for five (5) consecutive testing periods, then KU may submit to KDAQ for review and approval, with a contemporaneous copy to EPA, a revision to its CAM plan that provides for KU to thereafter use the previously determined minimum sorbent injection rates without recalculating based on subsequent testing periods.

c. If any of the events listed below in this Paragraph 23.c.(i) - (ii) occur at any Ghent Unit, KU shall conduct a Stack Test within 60 days of the relevant change at that Unit and use the results of the Stack Test to adjust, as necessary, the CAM-determined sorbent injection rates for applicable load ranges for that Unit described in Paragraph 23.b.

i. The monthly average sulfur content of fuel burned at any Ghent Unit calculated at the end of any calendar month is greater than 20% above the highest sulfur content used at that Unit during the most recent Stack Test; or

ii. To the extent that KU reasonably expects any of the following changes to remain in effect for more than 60 days;

(a) The material replacement, or change in design, of SAM emissions control equipment at any Ghent Unit.

(b) A change in the type of fuel used at any Ghent Unit to a fuel not permitted for use at that Unit prior to the Date of Entry of this Consent Decree.

(c) A change in the type of sorbent material used for SAM emission control at any Ghent Unit.

(d) Any other change that KU would reasonably expect to result in an increase in the SAM emission rate prior to adjustment of control parameters.

iii. KU may rely on the results of a previously scheduled Stack Test in lieu of conducting an additional Stack Test if the previously scheduled Stack Test will occur during the 60-day period after implementation of the relevant change.

d. Following approval by KDAQ of a CAM plan revision submitted pursuant to subparagraphs b. or c. above, at all times that each Unit is in operation, KU shall monitor the continuous monitored indication of SAM and the sorbent injection rate for each Unit for comparison to the applicable performance indicators determined in the CAM plan for the relevant load.

i. Any deviation from the applicable CAM-determined performance indicators shall be addressed through compliance with the response protocols set forth in the CAM plan. Such as deviation shall not

be considered a violation subject to stipulated penalties under this Consent Decree, notwithstanding any language in Section IX (Stipulated Penalties).

ii. Any deviations from the CAM plan shall be subject to the applicable reporting requirements of Section VII of this Consent Decree.

e. KU shall maintain a daily log of the sorbent injection rates and other relevant operating data, including date, average daily unit load (MWg), operating hours for each Day, sorbent injection flow rate (gallons per minute and tons per hour), and sorbent injection density (if injecting liquid sorbent).

VII. PERIODIC REPORTING

24. Beginning sixty (60) days after the end of the second calendar quarter following the Date of Entry of this Consent Decree, and continuing on a semi-annual basis until termination of the Consent Decree, KU shall submit to EPA a periodic progress report containing the following:

a. Information, including milestone dates, regarding the design and installation of the SAM control technologies required under this Consent Decree, including any problems encountered or anticipated, together with implemented or proposed solutions;

b. Any information indicating that the installation or commencement of operation of a SAM control device might be delayed, including the nature and cause of the delay, and any steps taken by KU to mitigate such delay;

c. Beginning with the first report filed after June 30, 2013, information to demonstrate compliance with the relevant interim or final SAM Emission Rate during the preceding six-month reporting period, including any compliance testing reports for SAM;

d. Information regarding any events or changes identified in Paragraph 23.c(i)-(ii) of this Consent Decree;

e. Information regarding the status of any permit applications submitted or any permit applications required to be submitted under the Consent Decree, including the development of a Compliance Assurance Monitoring (“CAM”) plan.

25. In any periodic report submitted pursuant to this Section, KU may incorporate by reference information previously submitted under its Title V permitting requirements, provided that KU 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.

26. Deviation Reports. In addition to the report required by Paragraph 24, if KU violates or deviates from any provision of this Consent Decree, KU shall submit to the United States a report on the violation or deviation within ten (10) Business Days after KU knew or should have known of the event. In the report, KU shall explain the cause or causes of the violation or deviation and any measures taken or to be taken by KU to cure the reported violation or deviation or to prevent such violation or deviations in the future. If at any time the provisions of this Consent Decree are included in the Title V Permit, consistent with the requirements for such inclusion in this Consent Decree, then the deviation reports required under the applicable Title V regulations shall be deemed to satisfy all the requirements of this Paragraph, provided that such reports are also submitted to the United States.

27. All reports shall be submitted to the persons designated in Section XVII of this Consent Decree (Notices).

28. Each report submitted under this Section shall be signed by an official of KU and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I understand that significant civil and/or criminal penalties may be imposed for submitting false, inaccurate, or incomplete information to the United States.

29. The reporting requirements of this Consent Decree do not relieve KU of any reporting obligations required by the CAA, or its implementing regulations, or by any other federal, state, or local law, regulation, permit or other requirements.

30. Subject to the provisions of Paragraph 75, any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. REVIEW AND APPROVAL OF SUBMITTALS

31. KU shall submit to EPA each submission required to be submitted by KU for EPA review or approval. EPA may approve the submittal or decline to approve it and provide written comments explaining the bases for declining such approval. Within sixty (60) days of receiving written comments from EPA, KU shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal to EPA; or (b) submit the matter for dispute resolution, including the period of informal negotiations, under Section XI (Dispute Resolution) of this Consent Decree.

32. Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to Section XI (Dispute Resolution) of this Consent Decree, KU shall implement the approved submittal in accordance with the schedule specified therein.

IX. STIPULATED PENALTIES

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

34. Failure to Pay Civil Penalties

a. If KU fails to pay the civil penalties required to be paid under Section IV of this Decree when due, KU shall pay a stipulated penalty per Day for each Day that any part of the payment is late.

b. The following stipulated penalties shall accrue per violation per Day for each violation of a requirement of Section IV (Civil Penalties):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$5,000	1st through 14th Day
\$7,500	15th through 30th Day
\$10,000	31st Day and beyond

35. Failure to Implement Environmental Mitigation Project(s)

a. If KU fails to undertake and complete the Environmental Mitigation Project(s) in compliance with Section V (Environmental Mitigation Projects) of this Consent Decree, KU shall pay a stipulated penalty per Day for each Day after the applicable deadline that the Project(s) are not completed.

b. The following stipulated penalties shall accrue per violation per Day for each violation of a requirement of Section V (Environmental Mitigation Projects):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 30th Day
\$5,000	31st Day and beyond

36. Failure to Comply with SAM Emission Rates

a. If KU fails to comply with any interim or final SAM Emission Rate in Section VI of this Consent Decree, KU shall pay a stipulated penalty per Day for each Day that any SAM Emission Rate is exceeded.

b. The following stipulated penalties shall accrue per violation per Day for each violation of the SAM Emission Rates identified in Section VI (Sulfuric Acid Mist Reduction and Controls):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$5,000	1st through 14th Day
\$7,500	15th through 30th Day
\$10,000	31st Day and beyond

37. Failure to Conduct Stack Test for Compliance Demonstration

a. If KU fails to conduct a Stack Test for SAM emissions that is required by Paragraph 22 or 23 of this Consent Decree, KU shall pay a stipulated penalty per Day for each Day that any such compliance requirement is unfulfilled.

b. The following stipulated penalties shall accrue per violation per Day for each failure to conduct a Stack Test required by Paragraph 22 or 23:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,500	1st through 15th Day
\$5,000	16th Day and beyond

38. Failure to Install or Continuously Operate Enhanced Sorbent Injection

Controls

a. If KU fails to install or Continuously Operate Enhanced Sorbent Injection Controls, as required by Section VI of this Consent Decree, KU shall pay a stipulated penalty of \$10,000 per Day for each Day that any such compliance requirement is unfulfilled.

39. Failure to Comply with Other Compliance Requirements in Section VI

a. If KU fails to comply with any compliance requirement in Section VI of this Consent Decree other than the requirements addressed in Paragraphs 36-38 above, KU shall pay a stipulated penalty per Day for each Day that any such compliance requirement is unfulfilled.

b. The following stipulated penalties shall accrue per violation per Day for each violation of such compliance requirements identified in Section VI (Sulfuric Acid Mist Reduction and Controls):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$2,500	15th through 30th Day
\$5,000	31st Day and beyond

40. Failure to Comply with Reporting Requirements

a. If KU fails to comply with any Reporting Requirement in Section VII of this Consent Decree, KU shall pay a stipulated penalty per Day for each Day that any Reporting Requirement is not fulfilled.

b. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Section VII (Periodic Reporting):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$1,500	15th through 30th Day
\$2,500	31st Day and beyond

41. Failure to Comply with Permit Requirements

a. If KU fails to comply with any requirements in Section XII (Permits) of this Consent Decree, KU shall pay a stipulated penalty per Day for each Day that any such requirement is not fulfilled.

b. The following stipulated penalties shall accrue per violation per Day for each violation of such requirements identified in Section XII (Permits):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$1,500	15th through 30th Day
\$2,500	31st Day and beyond

42. If KU fails to comply with any requirement of this Consent Decree not specifically addressed in Paragraphs 34-41 above, KU shall pay a stipulated penalty of \$1,000 per Day for each Day that any such requirement is not fulfilled.

43. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

44. KU shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand and shall continue to make such payments every thirty (30) days thereafter until the violation(s) no longer continue(s), unless KU elects, within twenty (20) Days of receipt of written demand for stipulated penalties from the United States, to dispute the accrual of stipulated penalties in accordance with the provisions in Section XI (Dispute Resolution) of this Consent Decree.

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

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, KU shall pay accrued penalties agreed or determined to

be owing, together with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, KU shall pay all accrued penalties the Court determines are owed, together with such interest as the Court determines is owed, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, KU shall pay all accrued penalties the Court determines are owed, together with such interest as the Court determines is owed, within fifteen (15) Days of receiving the final appellate court decision.

46. Notwithstanding any other provision in this Consent Decree, the United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree, and the accrued stipulated penalties agreed to by the United States and KU, or determined through Dispute Resolution to be owing may be less than the stipulated penalty amounts set forth in Paragraphs 34-42.

47. Obligations Prior to the Effective Date. Upon the Effective Date of this Consent Decree, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard only to any and all violations of Section VI (Sulfuric Acid Mist Reduction And Control) that have occurred after the Date of Lodging but prior to the Effective Date of the Consent Decree, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

48. KU shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 8, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

49. If KU fails to pay stipulated penalties according to 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 payment became due pursuant to Paragraphs 44 or 45.

50. Subject to the provisions of Section XIV of this Consent Decree (Resolution of Civil Claims), 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 for KU's violation 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, KU shall be allowed a credit for stipulated penalties paid against any statutory penalties also imposed for such violation.

X. FORCE MAJEURE

51. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of KU, of any entity controlled by KU, or of KU's contractors that delays or prevents compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree, despite KU's best efforts to fulfill the obligation. The requirement that KU exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the

greatest extent possible. "Force Majeure" does not include KU's financial inability to perform any obligation under this Consent Decree.

52. 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 KU intends to assert a claim of Force Majeure, KU shall notify the United States in writing as soon as practicable, but in no event later than twenty-one (21) Days following the date KU 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, KU 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 KU to prevent or minimize the delay or violation and any adverse effect of the delay or violation on public health, welfare or the environment, the schedule by which KU proposes to implement those measures, and KU's rationale for attributing a delay or violation to a Force Majeure Event. KU shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure event. KU shall adopt all reasonable measures to avoid or minimize such delays or violations. KU shall be deemed to know of any circumstance which KU, its contractors, or any entity controlled by KU knew or should have known.

53. Failure to Give Notice. If KU fails to comply with the notice requirements of the preceding Paragraph in this Section, the United States may void KU's claim for Force Majeure as to the specific event for which KU has failed to comply with any such notice requirements.

54. United States' Response. EPA shall notify KU in writing regarding KU's claim of Force Majeure within twenty-one (21) Days of receipt of the notice provided under Paragraph 52. If the United States agrees that a delay in performance has been or will be caused by a Force Majeure Event, then the United States and KU 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, the Parties shall make an appropriate modification of the deadline(s) pursuant to Section XXI (Modification) of this Consent Decree.

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

56. Burden of Proof. In any dispute regarding Force Majeure, KU shall bear the burden of proving that any delay or anticipated 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. KU shall also bear the burden of proving that KU complied with the notice requirements set forth in Paragraph 52 of this Section and the burden of proving the anticipated duration and extent of any delay attributable to a Force Majeure Event, and that best efforts were exercised to avoid and mitigate the effects of the delay. 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.

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

XI. DISPUTE RESOLUTION

58. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, provided that the Party invoking such procedure has first made a good faith attempt to resolve the matter with the other Party. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under or with respect to this Consent Decree.

59. 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 twenty-one (21) Days following receipt of such notice.

60. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations among the disputing Parties. Such period of informal negotiations shall not extend beyond thirty (30) Days from the date of the first meeting among the disputing Parties' representatives unless they agree in writing to shorten or extend this period. During the informal negotiations period, the disputing Parties may also submit their dispute to a mutually agreed upon alternative dispute resolution ("ADR") forum if the Parties agree that the ADR activities can be completed

within the thirty (30) Day informal negotiations period (or such longer period as the Parties may agree to in writing).

61. If the disputing Parties are unable to reach agreement during the informal negotiation period, the United States shall provide KU with a written summary of its position regarding the dispute. The written position provided by the United States shall be considered binding unless, within forty-five (45) Days thereafter, KU seeks judicial resolution of the dispute by filing a petition with the Court. The United States may submit a response to KU's petition within forty-five (45) Days of filing. KU may file a reply memorandum, to the extent permitted by the Local Rules or the Court.

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

63. The Court shall not draw any inferences nor establish any presumptions adverse to any disputing Party as a result of invocation of this Section or the disputing Parties' inability to reach agreement.

64. As part of the resolution of any dispute under this Section, in appropriate circumstances the disputing Parties may agree, or the 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. KU shall be liable for stipulated penalties as applicable under Section IX (Stipulated Penalties) for its failure thereafter to complete the work in accordance with the extended or modified schedule, provided that KU not be precluded from asserting that a Force

Majeure Event has caused or may cause a delay in complying with the extended or modified schedule.

65. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their initial filings with the Court, the disputing Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with the law.

XII. PERMITS

66. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires KU to secure a permit to authorize construction or operation of any device contemplated herein, including all preconstruction, construction, and operating permits required under state law, KU shall make such application in a timely manner. KU shall provide notice to EPA pursuant to Section XVII (Notices) that KU has submitted an application for Ghent Station for any permit described in this Paragraph. EPA shall use best efforts to review expeditiously all permit applications submitted by KU to meet the requirements of this Consent Decree.

67. When permits are required as described in this Section, KU shall complete and submit applications for such permits to the appropriate authorities to allow time for all legally required processing and review of the permit request, including requests for additional information by the permitting authorities. Any failure by KU to submit a timely permit application for Ghent Station shall bar any use by KU of Section X (Force Majeure) of this Consent Decree, where a Force Majeure claim is based on permitting delays.

68. Notwithstanding the reference to Title V permits in this Consent Decree, the enforcement of such permits shall be in accordance with their own terms and the Act. The Title V permits shall not be enforceable under this Consent Decree, although any term or limit or requirement 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.

69. KU shall provide EPA with a copy of each application to amend its Title V permit for Ghent Station, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any public comment opportunity.

70. Prior to termination of this Consent Decree, KU shall apply for and obtain enforceable provisions in its Title V permit for Ghent Station that incorporate all Unit-specific permanent SAM Emission Rates in Paragraphs 20.c. and 21.c. and all applicable compliance assurance requirements set forth in Paragraphs 22 and 23.

71. If KU sells or transfers to an entity unrelated to KU ("Third Party Purchaser") part or all of its Operational or Ownership Interest covered under this Consent Decree, KU shall comply with the requirements of Section XVIII (Sales or Transfers of Operational or Ownership Interests) of this Consent Decree with regard to that Operational or Ownership Interest prior to any such sale or transfer unless, following any such sale or transfer, KU remains the holder of the Title V permit for such facility.

XIII. INFORMATION COLLECTION AND RETENTION

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

- a. monitor the progress of activities required under this Consent Decree;
- b. conduct stack testing for sulfuric acid mist emissions;
- c. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- d. obtain samples;
- e. obtain documentary evidence, including photographs and similar data; and
- f. assess KU's compliance with this Consent Decree.

73. Upon request, KU shall provide EPA or its contractors splits of any samples taken by KU or its contractors, consultants or authorized representatives. Upon request, EPA shall provide KU splits of any samples taken by EPA or its contractors, consultants or authorized representatives.

74. KU shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, and that relate directly to KU's performance of its obligations under this Consent Decree for the following periods: (a) until ten (10) years after the Date of Entry of this Consent Decree for records concerning physical or operational changes undertaken in accordance with Section VI (Sulfuric Acid Mist

Reduction and Controls); and (b) until seven (7) years after the Date of Entry of this Consent Decree for all other records. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information retention period, upon request by the United States, KU shall provide copies of documents, records, or other information required to be maintained under this Paragraph.

75. All information and documents submitted by KU 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) KU claims and substantiates in accordance with 40 C.F.R. Part 2 that the information and documents contain confidential business information.

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

XIV. RESOLUTION OF CIVIL CLAIMS

77. Entry of this Decree shall resolve all civil claims of the United States against KU that arose from any modifications commenced at Ghent Station Units 1-4 prior to the Date of Lodging of this Consent Decree but only to the extent such claims are based on an alleged increase in SAM emissions, including but not limited to those modifications alleged in the United States' Complaint in this civil action and in the Notice of Violation issued to KU on March 19, 2009, under:

a. Parts C or D of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, 7501-7515, and the implementing federal regulations, but only to the extent that such claims are based on alleged significant net increases in SAM emissions;

b. Section 111 of the Clean Air Act, 42 U.S.C. § 7411, and 40 C.F.R. § 60.14, but only to the extent that such claims are based on alleged increases in SAM emissions;

c. 401 KAR 51:017 and all relevant prior versions of these regulations, but only to the extent that such claims are based on alleged significant net increases in SAM emissions;

d. Title V of the Clean Air Act, 42 U.S.C. §§ 7661-7661f, and the implementing regulations promulgated under the Act, but only to the extent that such claims are based on KU's alleged failure to obtain an operating permit for Ghent Station that reflects applicable requirements for SAM imposed under Parts C or D of Subchapter I, or Section 111 of the Clean Air Act; and

e. 401 KAR 52.020 and all relevant prior versions of these regulations, but only to the extent that such claims are based on KU's alleged failure to obtain an operating permit for Ghent Station that reflects applicable requirements for SAM imposed under Parts C or D of Subchapter I, or Section 111 of the Clean Air Act.

78. Entry of this Decree also shall resolve all civil claims of the United States against KU that arise from any alleged exceedances of opacity limits at Ghent Station Units 1-4 caused or contributed to by SAM emissions and occurring prior to the Date of Lodging of this Consent Decree, including but not limited to those claims alleged in the United States' Complaint in this civil action and in the Notice of Violation issued to KU on September 26, 2007, under applicable federal New Source Performance Standards requirements, 40 C.F.R. § 60.42(a)(2), Kentucky SIP regulations, 401 KAR 61:015,

Section 4(4), 401 KAR 59:015, Section 4(2), and any past or present version of the Ghent Station Title V Permit.

79. The United States 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, KU's Ghent Station, whether related to the violations addressed in this Consent Decree or otherwise.

XV. GENERAL PROVISIONS

80. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief or civil penalties relating to the Ghent Station, KU 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; provided, however, that nothing in this Paragraph is intended to affect the validity of Section XIV (Resolution of Civil Claims).

81. This Consent Decree is not a permit. Compliance with the terms of this Consent Decree does not guarantee compliance with all applicable federal, state, or local laws or regulations. Nothing in this Consent Decree shall relieve KU of its obligation to comply with all applicable federal, state, local laws and regulations, and permits. Subject to the provisions in Section IX (Stipulated Penalties) and Section XIV (Resolution of Civil Claims), nothing in this Consent Decree shall be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits.

82. This Consent Decree does not limit, enlarge or affect the rights of KU or of the United States as against any third parties, not party to this Consent Decree.

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

XVI. COSTS

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

XVII. NOTICES

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

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08850/1

To EPA:

David Lloyd
Air, Pesticides and Toxic Management Division
Air and EPCRA Enforcement Branch
U.S. Environmental Protection Agency, Region 4
61 Forsythe Street
Atlanta, Georgia 30303

As to Kentucky Utilities Company:

General Counsel
LG&E and KU Energy
220 West Main Street
Louisville, KY 40202

86. Any Party may, by written notice to the other Parties, change its designated notice recipient, notice address or means of transmittal to it (e.g., to electronic format).

87. All notifications, communications or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or overnight delivery service, or (b) certified or registered mail, return receipt requested. All notifications, communications and transmissions (a) sent by overnight, certified or registered mail shall be deemed submitted on the date they are postmarked, or (b) sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service.

XVIII. SALES OR TRANSFER OF OWNERSHIP INTERESTS

88. If KU proposes to sell or transfer an Operational or Ownership Interest to a Third Party Purchaser, KU 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 XVII (Notices) of this Consent Decree at least sixty (60) Days before such proposed sale or transfer.

89. 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 XXI (Modification) of this Consent Decree making the Third Party Purchaser a party to this Consent Decree, jointly

and severally liable with KU for all the requirements of this Decree that may be applicable to the transferred or purchased Operational or Ownership Interest.

90. This Consent Decree shall not be construed to impede the transfer of any Operational or Ownership Interest between KU 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 – as between KU and any Third Party Purchaser of Operational or Ownership Interests – of the burdens of compliance with this Decree, provided that both KU and such Third Party Purchaser shall remain jointly and severally liable to the United States for the obligations of the Decree applicable to the transferred or purchased Operational or Ownership Interest. If the United States agrees, then the United States, KU, and the Third Party Purchaser that has become a party to this Consent Decree pursuant to Paragraph 89, may execute a modification that relieves KU 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 Interest. Notwithstanding the foregoing, however, KU 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 Interest, including the obligations set forth in Sections IV (Civil Penalty) and V (Environmental Mitigation Projects). KU 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 Interest, to the extent such obligations may be adequately separated in an enforceable manner.

XIX. EFFECTIVE DATE

91. The Effective Date of this Consent Decree shall be the Date of Entry as defined in Paragraph 6.f; provided, however, that KU hereby agrees that, after the Consent Decree is lodged with the Court, shall be bound to perform duties and comply with Consent Decree terms scheduled to occur prior to the Effective Date. If this Consent Decree is not entered by the Court in the form presented to the Court or the United States withholds consent to this Consent Decree before filing, its terms shall be null and void and the Parties shall have no obligation or rights hereunder and the terms of this Consent Decree shall not be used as evidence in any litigation between or among the Parties to the Consent Decree.

XX. RETENTION OF JURISDICTION

92. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, modification, or adjudication of disputes. During the term of this Consent Decree, any Party to this Consent Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XXI. MODIFICATION

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

XXII. TERMINATION

94. This Consent Decree may be terminated in full when, in response to a certification from KU, the United States determines that KU has satisfactorily completed performance of its obligations required by this Decree, provided that KU has fulfilled all other obligations of this Decree, including payment of civil penalties under Section IV of this Decree; completion of the Environmental Mitigation Project(s) under Section V; obtaining a final Title V permit for Ghent Units 1-4 as required under Section XII of this Consent Decree; and payment of any outstanding stipulated penalties under Section IX. The Parties shall file with the Court an appropriate stipulation reciting that the requirements of the Consent Decree have been met and requesting termination of the Decree.

95. If the United States does not agree that the Decree may be terminated, KU may invoke Dispute Resolution under Section XI of this Decree. However, KU shall not seek Dispute Resolution of any dispute regarding termination, under Section XI, until 150 days after service of its Request for Termination.

XXIII. PUBLIC PARTICIPATION

96. 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. KU consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified KU in writing that it no longer supports entry of the Decree.

XXIV. SIGNATORIES/SERVICE

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

98. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

99. Each Party 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.

100. Unless otherwise ordered by the Court, the United States agrees that KU will not be required to file any answer or other pleading responsive to the Complaint in this matter until and unless the Court expressly declines to enter this Consent Decree.

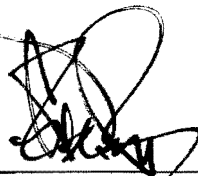
XXV. INTEGRATION

101. This Consent Decree, including the attached Appendices A and B, constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXVI. FINAL JUDGMENT

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

Dated and entered this day of August, 2013.



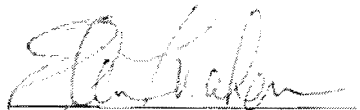
UNITED STATES DISTRICT JUDGE
Eastern District of Kentucky

Signature Page for Consent Decree in:

United States of America
v.
Kentucky Utilities Company

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Date: 12/10/12



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

Date: 12/13/12



JAMES W. BEERS, JR.
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Signature Page for Consent Decree in:

United States of America

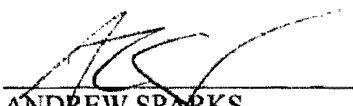
v.

Kentucky Utilities Company

FOR PLAINTIFF THE UNITED STATES OF AMERICA (continued):

KERRY B. HARVEY
United States Attorney

Date: 12/13/12




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Signature Page for Consent Decree in:

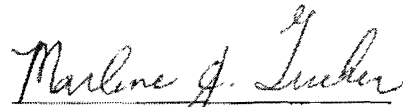
United States of America
v.
Kentucky Utilities Company

FOR PLAINTIFF THE UNITED STATES OF AMERICA (continued):

Date: 12/11/12


MARY J. WILKES
Regional Counsel and Director
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303

Date: 12-11-12



MARLENE J. TUCKER
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Signature Page for Consent Decree in:

United States of America
v.
Kentucky Utilities Company

FOR DEFENDANT KENTUCKY UTILITIES COMPANY:

Date: 11/12/12



RALPH BOWLING
Vice President, Power Production
LG&E and KU Energy

UNITED STATES v. KENTUCKY UTILITIES COMPANY

APPENDIX A TO CONSENT DECREE

**COMPLIANCE DETERMINATION METHODOLOGY FOR SULFURIC ACID MIST EMISSION RATES:
KENTUCKY UTILITIES/GHENT STATION**

Testing methodology for determination of compliance with Sulfuric Acid Mist (SAM) Emission Rates

For determination of compliance with sulfuric acid mist (SAM) Emission Rates at Ghent Station, EPA conditional test method 13 (CTM-13) (aka, the controlled condensate method or NCASI Method 8A) is to be used. Testing will be performed using a single sampling train sampling at a single point at a constant sampling rate as referenced in CTM-13. However, the owner may choose to use paired or simultaneous sampling trains to accomplish the testing. Sampling runs shall be a minimum of 30 minutes in length. Testing shall consist of a minimum of three sampling runs. Samples will be analyzed by either the barium-thorin titration method described in EPA CTM-13 or through ion chromatography analysis (similar to that described in ASTM D4856). Compliance testing shall be conducted consistent with the timing established in the Consent Decree at each unit's emission point identified in Paragraph 6.z. of the Consent Decree.

Calculation methodology for determination of SAM Emission Rate compliance

Multiple sampling runs are necessary to enhance confidence in the accuracy of SAM emissions measured during a test program. Typically, three test runs are averaged to yield the results of performance tests. However, the variability inherent in the CTM-13 test method requires a more sophisticated approach with the potential for additional sampling runs. In an effort to eliminate "outlier" sampling results, the following calculation methodology shall be used for SAM sampling runs to determine compliance with any SAM Emission Rate.

- 1) A minimum of three sampling runs will be used in the compliance analysis.
- 2) A sample run would be invalidated if proper sampling method or QA/QC procedures are not followed.
- 3) If paired/simultaneous sampling trains are used, then the relative deviation of the samples must be within 10% to be used in the compliance determination.
 - $\text{Relative Deviation} = \frac{(\text{Sample A} - \text{Sample B})}{(\text{Sample A} + \text{Sample B})} * 100$
 - The average of a valid paired/simultaneous sample that passes the relative deviation criteria will be used as the sample run result for evaluation in the event deviation criteria described in Nos. 5) and 6) below.
- 4) If paired/simultaneous sampling trains are not used, then all valid sample results will be used unless excluded under the event deviation criteria in Nos. 5) and 6) below.
- 5) For each sampling run to be used in the compliance determination, an event deviation value will be calculated to determine if the sampling run falls within 15% of the average of the sampling runs to be used.
 - $\text{Event Deviation} = \frac{(\text{Sampling Run 1} - \text{Average of sampling runs to be used})}{(\text{Sampling Run 1} + \text{Average of sampling runs to be used})} * 100$
- 6) An average of those sampling runs that fall within the 15% event deviation criteria will be used in the compliance determination for the testing period.

UNITED STATES v. KENTUCKY UTILITIES COMPANY

APPENDIX B TO CONSENT DECREE

In compliance with, and in addition to, the requirements in Section V of this Consent Decree (“Environmental Mitigation Projects”), Kentucky Utilities shall comply with the requirements of this Appendix to ensure that the benefits of the \$500,000 in Project Dollars are achieved.

I. Overall Environmental Mitigation Projects Schedule and Budget

A. Within one hundred twenty (120) days from entry of this Consent Decree, as further described below, KU shall submit plans to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree for spending the \$500,000 in Project Dollars specified in this Appendix in accordance with the deadlines established in this Appendix. EPA shall determine, prior to approval, that all Environmental Mitigation Projects (“Projects”) are consistent with federal law.

B. KU may, at its election, consolidate any plans required by this Appendix into a single plan.

C. Consistent with Paragraph 17 of the Consent Decree, beginning six months from entry of this Consent Decree, and continuing semi-annually thereafter until completion of each Project (including any applicable periods of demonstration or testing), KU shall provide EPA with written reports detailing the progress of each Project, including an accounting of Project Dollars spent to date.

D. Consistent with Paragraph 18 of the Consent Decree, within sixty (60) days following the completion of each Project required under this Consent Decree (including any applicable periods of demonstration or testing), KU shall submit to the United States a report that documents the date that the Project was completed, KU’s results of implementing the Project, including the emission reductions or other environmental benefits achieved, and the Project Dollars expended by KU in implementing the Project.

E. Upon EPA’s approval of the plans required by this Appendix, KU shall complete the Projects according to the approved plans. Nothing in the Consent Decree or this Appendix shall be interpreted to prohibit KU from completing the Projects before the deadlines specified in the schedule of an approved plan.

II. Environmental Mitigation Projects

A. Funding of Coal-Fired Boiler Replacement for Kentucky School(s) (“Boiler Project”): There are multiple public schools within Kentucky that use coal-fired boilers for heat generation. Replacement of those boilers with lower-emitting or zero emission heating and cooling technologies will reduce emissions of SO₂, SAM, PM, and other air pollutants being emitted in the vicinity of children and young adults. By December 31, 2013, KU shall provide

funding of \$500,000 for use in the replacement (including design, equipment purchase, installation, and project start up) of one or more coal-fired boilers utilized by public schools located in Kentucky through installation of geothermal technologies.

1. Boiler Project Plan: Within ninety (90) days from the Date of Entry of the Consent Decree, KU shall submit to EPA for review and approval pursuant to Section VIII (Review and Approval of Submittals) of this Consent Decree a plan to implement the Boiler Project described above. The proposed plan for the Boiler Project shall:

a) Describe the process KU will utilize to identify public schools that may be eligible to participate in the Boiler Project and to solicit their interest in participating in the Project. In awarding funding, KU shall consider the following factors: (1) capability of the school to participate in, complete, and operate a replacement project; (2) proximity of the school to the Ghent Station; (3) emissions reductions that will result from the project; and (4) experience and demonstrated interest of applicant in implementing geothermal projects.

b) Ensure that schools participating in the Boiler Project do not otherwise have a legal obligation to reduce emissions through replacement of their coal-fired boilers.

c) Ensure that participating schools will bind themselves to operate the replacement heating and cooling systems for a period of at least three years.

d) Provide a schedule for completing each portion of the Boiler Project, including solicitation of interest, preparation of project budgets, and completion of projects.

e) Describe generally the expected environmental benefits of the Boiler Project, including any fuel efficiency improvements, and quantify emissions reductions expected.

f) Provide for periodic reporting on the progress of the Boiler Project consistent with Section I.C. and D., above.

2. Performance: Upon EPA's approval of the plan, KU shall complete the Boiler Project according to the approved plan and schedule.

B. Unspent Funds: If, as of December 31, 2014, there are any funds allocated for the Boiler Project that have not been expended, and are not expected to be expended, on the Boiler Project ("Unspent Funds"), KU shall provide notice to EPA and the U.S. Department of Justice pursuant to Section XVII (Notices) of the Consent Decree of the amount of such Unspent Funds.

1. KU may elect to pay any Unspent Funds up to \$100,000 to the United States Forest Service to be used for the restoration of land, watersheds, vegetation, and forests using adaptive management techniques designed to improve ecosystem health and mitigate harmful effects from air pollution. This may include reforestation or restoration of native species and acquisition of equivalent resources and support for collaborative initiatives with state and local agencies and other stakeholders to develop plans to assure resource protection over the long-term. Projects will focus on the Daniel Boone National Forest area in Kentucky or other appropriate forests in the region. If Unspent Funds are to be paid to the U.S. Forest Service, KU shall submit payment to the U.S. Forest Service in the appropriate amount within 30 days of the receipt of payment instructions from the U.S. Department of Justice.

2. If the amount of Unspent Funds exceeds \$100,000, KU shall include in its notice of Unspent Funds pursuant to Section II.B. above a proposed plan and schedule for one or more new environmental mitigation projects. The new project or projects, in combination with any Unspent Funds paid to the United States Forest Service under Section II.B.1. above, shall provide for the expenditure of all remaining Unspent Funds. Upon review and approval of KU's proposed plan by EPA pursuant to Section VIII (Review and Approval of Submittals) of the Consent Decree, Kentucky Utilities shall implement the new environmental mitigation project or projects in accordance with the schedule as approved by EPA.

3. Upon payment of any Unspent Funds to the United States Forest Service consistent with Section II.B.1. above, or use of any Unspent Funds for implementation of a new environmental mitigation project or projects pursuant to Section II.B.2. above, KU shall have no further responsibilities to use such Unspent Funds for implementation of the Boiler Project or any other mitigation project under Section V (Environmental Mitigation Projects) of this Consent Decree and this Appendix B.

4. Nothing herein shall obligate KU to spend in excess of \$500,000 total on environmental mitigation projects.