BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
	)	
Air Quality Designations and Classifications for the Fine Particles (PM-2.5) National Air Quality Standards; Final Rule	)	
	)	[RIN-2060-AM04]
and	)	Docket No. OAR -2003-0061
	)	
Air Quality Designations for the Fine Particles (PM2.5) National Ambient Air Quality Standards - Supplemental Notice; Final Rule – Supplemental Amendments	)	

PETITION OF DYNEGY MIDWEST GENERATION, INC. FOR RECONSIDERATION OF EPA'S PM-2.5 NON-ATTAINMENT DESIGNATION FOR BALDWIN TOWNSHIP, ILLINOIS

Pursuant to Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553(e), Dynegy Midwest Generation, Inc. ("DMG") respectfully submits this Petition for Reconsideration with respect to specific portions of the Environmental Protection Agency's ("EPA's") final rule published January 5, 2005, 70 Fed Reg. 944, as modified by the supplemental notice published April 14, 2005, 70 Fed. Reg. 19843. These two notices, in combination, purport to designate Baldwin Township as a nonattainment area for $PM_{2.5}$.[1]

For the reasons specified below, EPA incorrectly designates Baldwin Township as a non-attainment area for $PM_{2.5}$ and should issue a revised designation finding the Township to be in attainment. Such a revised designation is warranted based upon the correct application of EPA's

[1] DMG filed a Petition for Review of the January 5 Rulemaking, which designated Baldwin Village as being in nonattainment, in both the 7th Circuit and the District of Columbia Circuit Courts of Appeals on March 3, 2005. By Order dated May 26, 2005, the 7th Circuit transferred the case before it to the D.C. Circuit. The Supplemental Notice contained a "technical correction" that revised the nonattainment designation boundary to cover Baldwin Township instead of Baldwin Village. 70 Fed. Reg. 19843, 19848. For the reasons contained herein, this petition seeks reconsideration of the nonattainment designation of Baldwin Township.

own designation guidance (both as published and as applied to other similarly situated counties) and is supported by a recent Consent Decree between EPA and DMG that materially and permanently reduces emissions from the Township. In the alternative, DMG respectfully requests that EPA issue a revised designation for Baldwin Township as unclassifiable pending completion of additional analysis of transport resulting from the Township's emissions.

I. EPA'S INITIAL DESIGNATION OF BALDWIN TOWNSHIP AS NONATTAINMENT WARRANTS REVIEW AS IT RELIED UPON THE APPLICATION OF NINE CRITERIA PUBLISHED WITHOUT NOTICE OR COMMENT TO INADEQUATE AND INCORRECT DATA.

Under the Clean Air Act, EPA maintains two avenues through which to designate an area as nonattainment for a specific criteria pollutant. The Agency can make such a designation based on either (1) a failure of the area *itself* to meet the applicable NAAQS standards; or (2) the area's *contribution to ambient air quality in another area* that fails to meet the NAAQS.[2] In this case, EPA relies upon the second ground to support designating a portion of Randolph County as nonattainment for $PM_{2.5}$.

In so doing, EPA ostensibly relied upon nine criteria for determining whether one area "contributes" to nonattainment in nearby areas:

1. Emissions in areas potentially included versus excluded from the nonattainment area;
2. Air quality;
3. Population density and degree of urbanization;
4. Traffic and commuting patterns;
5. Expected growth (including extent, pattern and rate of growth);
6. Meteorology (weather/transport patterns);

[2] *Id.* at § 7407(d)(1)(A).

7. Geography/topography (mountain ranges or other air basin boundaries);

8. Jurisdictional boundaries (e.g., counties, air districts, Reservations, etc.); and

9. Level of control of emission sources.[3]

Despite its widespread use of these criteria, EPA has never undertaken notice and comment rulemaking that would test their validity, relying merely instead on several guidance documents. Moreover, EPA's January 5, 2005, rule acknowledges that the specific weighting of these factors remains a black box to which only EPA holds the key.[4] In short, EPA guidance does not provide any reliable indication for states, regulated parties, or reviewing courts of how the Agency applies the factors. Not surprisingly then, and for the reasons delineated below, EPA's specific application of the factors to Baldwin Township appears arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law.

In such circumstances, Section 553 of the Administrative Procedure Act ("APA") provides that "[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule."[5] Pursuant to that requirement:

> EPA is required to give reasoned responses to all significant comments in a rulemaking proceeding. This requirement is all the more urgent when an agency has perforce not followed usual "notice and comment" rulemaking procedures, but has promulgated "final" rules without a prior period for taking comments from interested parties.[6]

EPA is required to provide the public with an opportunity for public comment on actions it takes under the Clean Air Act ("CAA" or the "Act") such as those at issue here. Moreover, to make

---

[3] *See* EPA Memorandum dated April 1, 2003 from Jeffrey Holmstead to Regional Administrators, *Designations for the Fine Particle National Ambient Air Quality Standards, Attachment 2: Guidance on Nonattainment Area Designations for PM2.5* ("Nonattainment Boundary Guidance"), at 7 (April 1, 2003), *available at*: http://www.epa.gov/pmdesignations/documents/pm25_desig_guidance_final.pdf.

[4] 70 Fed. Reg. at 947-948.

[5] 5 U.S.C. § 553(e).

[6] *PPG Industries, Inc. v. Costle*, 630 F.2d 462, 466 (6th Cir., 1980) (internal citations omitted).

such public comment meaningful, EPA must not only review such comments, but it also must act on data provided therein in revising its previously-promulgated rulemakings. Absent such a commitment, the review process would be an empty exercise.[7] As DMG shows below, EPA cannot designate any portion of Randolph County as nonattainment consistent with the locally-applicable facts and EPA's own guidance, and so must revise its previously promulgated designation of the Baldwin Township.

II. A REVIEW OF EPA'S INITIAL NONATTAINMENT DESIGNATION SHOWS RANDOLPH COUNTY, AND THUS BALDWIN TOWNSHIP, SHOULD NOT BE INCLUDED IN THE ST. LOUIS NONATTAINMENT AREA.

A. Federally-Enforceable Emissions and Emissions Rates Limits Filed by EPA and DMG Place Baldwin Township in Attainment, and It Should Be Classified as Such.

Before EPA made its initial nonattainment designation, DMG presented to EPA existing data showing that Randolph County (or Baldwin Township) was not a contributing area under EPA's 9-factor criteria, largely as a result of, among other factors, a 90% reduction in SO2 emissions and a 65% reduction in NOx emissions from Baldwin Township between 1999 and 2000.[8] Viewing the emissions data as a whole, EPA conceded that the "the Baldwin plant [had] recently reduced its emissions significantly" and that emissions from Baldwin were only "moderately high."[9] Nevertheless, EPA determined that Baldwin Township should be classified

[7] Indeed, EPA's Supplemental Notice acknowledges that the Agency can withdraw its initial designation and issue a revised initial designation, even after the promulgation of the rule, where EPA determines, as the result of additional data or information provided through a petition for rehearing filed during the rulemaking process, that there may be grounds for revising the initial designation. *See* 70 Fed Reg. 944, 969.

[8] *See* Letter from G. Hickey, DMG, to B. Mathhur, EPA, Region V ("DMG Comments") (Aug. 25, 2004) (Exhibit A). DMG also demonstrated, citing EPA's own data, that the specific species of pollutants originating from Baldwin Township were distinguishable from the vast majority of urban excess $PM_{2.5}$ in the metropolitan St. Louis area. For the Agency's reference, DMG has enclosed an updated version of this analysis using 2004 data ("DMG Updated Comment Analysis")(Exhibit B).

[9] EPA, Technical Support Document for State and Tribal Air Quality Fine Particle ("$PM_{2.5}$) Designations, ("TSD"), at 6-257 (Dec. 2004). Indeed, EPA had given credence to these same significant reductions in its

as nonattainment despite this record, largely ignoring the nine criteria EPA had established for making these determinations, because DMG "did not indicate whether these emission reductions are enforceable or how much potential exists for further emission reductions at this facility such as annual operation of its NOx emission controls."[10]

Since EPA's initial determination, however, both seemingly dispositive (from EPA's perspective) criticisms have been resolved – all the emissions decreases DMG urged EPA to consider, along with ***further systemwide*** decreases, are now embodied in a federally-enforceable consent decree that requires DMG to seek to have these requirements included in the Title V permit for the Baldwin plant. In addition, DMG is demonstrating through its actions its commitment to continue investment in state-of-the-art pollution control technology at Baldwin and its other energy facilities.

On May 27, 2005, the United States District Court for the Southern District of Illinois entered a consent decree between DMG and the United States that makes *federally enforceable* the emission limits for the precursors of $PM_{2.5}$ emitted by the Baldwin plant.[11] The Consent Decree provides for extensive emissions rate reductions at the Baldwin Energy Complex as well as region-wide emissions caps applicable to the Baldwin Energy Complex and other DMG power facilities in Southern Illinois.[12] In entering the decree, the Court specifically found that it

---

determination that the entirety of Randolph County, including Baldwin Township, be designated attainment for 8-hour ozone. *See* EPA, Office of Air Quality Planning and Standards, *Technical Support for State and Tribal Air Quality Designations and Classifications*, at 3-94 (April 2004) ("Randolph County's 59,710 tpy NOx represents the county's 1999 base year inventory. The vast majority of NOx emissions in Randolph County come from the Baldwin power plant, which, as of 2001, has reduced NOx emissions to 29,389 tpy by installing controls.").

[10] *Id.*

[11] *See United States v. Illinois Power Company*, No. 99-833-MJR, Consent Decree ("Consent Decree") (S.D. Il., lodged March 7, 2005) (Exhibit C).

[12] DMG operates five coal-fired power plants in the Southern Illinois area, including the Baldwin Energy Complex in Randolph County, the Havana Generating Station in Putman County, the Hennepin Generating Station

"serves the public interest in achieving substantial environmental benefits and amelioration of the harmful effects of air pollution."[13] Some of the primary terms of the decree are summarized below:

- **SO_2 Controls.** DMG will install flue gas desulfurization devices ("FGDs") on the three Baldwin Units as well as Unit 6 of its Havana facility. Together, the units receiving these state-of-the-art controls account for 70 percent of DMG's coal-fired system capacity. DMG will also limit SO_2 emissions from its other six units so as to maintain a 30-day rolling average emission rate of not greater than 1.2 lb/mmBTU SO2 on each unit. Finally, DMG will adhere to a system-wide tonnage cap for SO2 that ratchets down over time and will surrender certain SO_2 allowances from its annual allocation under the Clean Air Act's Title IV Acid Rain Program. In total, DMG has committed to reduce SO_2 emissions by approximately 39,500 tons per year from 2003 levels on a system-wide basis.[14]

- **NO_X Controls.** DMG will operate selective catalytic reduction devices ("SCRs") on Baldwin Units 1 and 2 on a year-round basis and ensure that the Complex as a whole meets an emission rate of 1.00 lb/mm (the emission rate that corresponds with operation of SCR-controlled units). By 2007, DMG will also trend down its system-wide NO_X emissions to meet system-wide caps set by the Consent Decree and maintain those levels thereafter. In total, the Government has estimated that the enforceable Consent Decree will reduce NO_X emissions by 14,835 tons per year from 2003 levels.

- **PM Controls.** DMG will install a baghouse on all three Baldwin Units and comply with strict emissions limits of .015 lb/mmBTU PM. DMG will also install a baghouse at its Havana Unit 6 and make additional capital improvements at other facilities in its Southern Illinois system to bring PM emission levels to .30 lb/mmBTU, a level EPA "considers to be a good level of control."[15]

---

in Vermillion County, and the Wood River Generating Station in Madison County. Together, these facilities provide 3,375 MW of production capacity. While some of the provisions of the Consent Decree involve potential emissions reductions to other facilities besides the Baldwin Energy Complex, DMG would expect that even these investments have the potential to improve air quality in St. Clair County and other areas of the St. Louis nonattainment area by reducing the impact of regional emissions.

[13] *United States v. Illinois Power Company*, No. 99-833-MJR, Memorandum and Order (S.D. Il. May 27, 2005) at 4-5 (Exhibit D).

[14] These estimates are those calculated by the United States in its motion to enter the decree filed with the Court.

[15] *See United States v. Illinois Power Company*, No. 99-833-MJR, U.S. Motion for Entry of Consent Decree (S.D. Il. filed April 27, 2005), at 8 (Exhibit E).

- **Supplemental Environmental Projects.** DMG is also funding, as part of the enforceable consent decree, several supplemental environmental projects aimed at improving energy efficiency, reducing energy demand, or reducing fine particulate matter within the St. Louis metropolitan areas.

These provisions of the Consent Decree vitiate completely the basis on which EPA determined that a portion of Randolph County contributed to nonattainment in the St. Louis metropolitan area. DMG's commitment to make major investments in pollution control equipment at the three Baldwin units also addresses any concern EPA may have had that DMG may not yet have taken best efforts to minimize its emissions. Given this fundamental change of circumstances, EPA should acknowledge that the primary basis on which it designated Baldwin Township as being nonattainment has been removed and that the St. Louis nonattainment area designation should be revised to exclude Baldwin Township.

B. Even in the Absence of the Federally-Enforceable Emissions and Emissions Rate Limits, Application of the Nine Factors Does Not Support a Nonattainment Designation for Baldwin Township.

1) EPA Applied Only Three of the Nine Factors, and Applied Those Factors Incorrectly, Resulting in an Unlawful Designation of Nonattainment for Baldwin Township.

Even assuming, *arguendo*, the validity of the nine factors put forth by EPA as relevant to making boundary determinations, EPA cites only three to support extending the Metro East/St. Louis nonattainment area boundary to include portions of Randolph County.[16] As described below, however, EPA's analysis of even these factors fails to support its designation of Nonattainment for the Baldwin Township, and EPA should now revise that classification to "Attainment."

[16] These include EPA's contentions that: 1) the County's emissions were "moderately high;" 2) the County's emissions were "located where winds would commonly blow the emissions toward the observed violations;" and 3) the State failed to indicate whether DMG's "significant" emissions reductions were enforceable or whether there existed potential for further reductions at the Baldwin Energy Complex. *Id.*

The first factor EPA applied (Factor 1) required the Agency to examine "emissions in areas potentially included versus excluded from the nonattainment area." To compare the impact or contribution of a given area's emissions, EPA develops a standardized number referred to as the "composite emission score" or weighted emissions score.[17] In theory, such a weighting process should increase the consistency and rationality of EPA's decisionmaking. In this case, however, EPA's determination with respect to Randolph County is facially inconsistent with determinations made in many other counties similarly situated adjacent to nonattainment areas. EPA's inconsistency in its analysis renders its nonattainment designation invalid, as described herein.

EPA calculated that Randolph County's composite emissions score was 8.9.[18] In the case of Randolph County, EPA determined that such a score constituted "moderately high emissions" adequate to "contribute" to the ambient air quality in the St. Louis metropolitan area and render Randolph County a nonattainment area.[19] As shown in Table 1 below, however, out of sixteen other counties bordering a nonattainment area, EPA declined to find a similar "contribution " despite the fact that eight had *higher* composite emissions scores than Randolph County. EPA designated these sixteen counties, all of which included a power plant, as attainment, despite the fact that of the sixteen, seven released more SO_2, five contributed more particulate matter, and twelve contributed larger quantities of organic carbon emissions than Randolph County.[20]

---

[17] TSD at 5-1.

[18] TSD at 6-258.

[19] *See id.* at 6-257.

[20] *Id.* The inconsistency of Randolph County's nonattainment designation with EPA's designations of other similarly situated Counties is not limited to EPA's treatment of emissions data. Of the sixteen other power-plant-containing border counties listed in Table 1, all designated as attainment, eight had larger population impacts, fifteen had higher projected population growth patterns, twelve counties had higher impacts from vehicle miles traveled, and six had higher numbers of out-of-county commuters. *Id.*

Table 1 – Comparison of Randolph County with Other Counties Adjacent or Near to Nonattainment Areas.[21]

	MSA/Region	Design Value	Emission Score	SO2	PM2.5	NOx	Carbon	Pop./ Grpwth	Commu. #/Percent	VMT
Randolph County, IL	St. Louis	12.4	8.9	23984	2677	33,023	559	33641 -2%	2738 20%	278
Sangamon County, IL	St. Louis	13.3	8.7	16411	3837	19,811	900	190630 +6%	231 0%	1738
Montgomery County, IL	St. Louis	No monitor	7.6	38079	3133	18,254	625	30528 0%	610 5%	277
St. Genevieve County, MO	St. Louis	13.6	2.7	3666	1308	7315	255	487 +3%	N/A	1748
Daviess County, KY	Evansville	14.9	24.2	9134	2179	21627	666	91694 +5%	1567/ 4%	813
Webster County, KY	Evansville	20.8	N/A	19021	2976	15934	551	14079 +1%	1653/ 27%	119
Preston County, WV	Marion	No monitor	17.4	21864	1715	6528	465	29460 -5%	177/ 1%	294
Etowah County, AL	Birmingham	14.8	9.9	11,850	2193	8487	767	103105 +4%	42636/ 25%	1235
Carroll County, KY	Cincinnati-Hamilton	No monitor	10.3	53086	3547	26269	821	10223 12%	327 7%	213
Mason County, KY	Cincinnati-Hamilton	No monitor	7.0	38142	2316	16071	562	16916 0%	757 10%	178
Pulaski County, KY	Lexington	No monitor	56.8	24156	2403	10996	732	57160 +11%	429 2%	661
Cleveland County, NC	Hickory-Morgantown-Lexington	No monitor	11	1261	1258	4875	585	97960 +9%	1395 3%	1125
Rutherford, County, NC	Hickory-Morgantown-Lexington	No monitor	17	30023	2332	12135	786	63287 +8%	1327 5%	606
Jasper County, IN	Chicago-Gary-Lake County	No monitor	5.2	34435	2744	23020	668	30815 +6%	3985 29%	722
La Porte County, IN	Chicago-Gary-Lake County	No monitor	3.3	10974	2670	19681	826	110364 +2%	7657 15%	1536
Kenosha County, WI	Chicago-Gary-Lake County	11.9	5.4	33122	2209	27469	770	154433 -1%	20506 28%	1228
Henderson County, KY	Evansville	14.8	10.7	6308	1518	8075	418	44995 +3%	3794 18%	510

EPA cannot reasonably implement its guidance in such a way that counties with similar emissions impacts trigger diametrically opposite contribution determinations. Such inconsistency is particularly problematic where, as with Randolph County, the emissions levels and impacts are the primary basis by which EPA supports its decision.

[21] Data drawn from EPA, *PM2.5 Designations Data Spreadsheet*, June 14, 2004, Docket No. OAR-2003-0061-524.

The second factor EPA applied (Factor 6) required the Agency to examine "meteorology (weather/transport patterns)." In so doing, EPA ignored the explicit, region-specific counsel of the State of Illinois, which advises that meteorological factors are not a reliable mechanism for designating outlying counties for purposes of classifying the Chicago or St. Louis metropolitan areas.[22] Even if meteorology in the area were a reliable tool, however, EPA misapplies it with respect to the Baldwin Township.

EPA suggested that winds "commonly blow" toward the observed violation in the adjacent St. Clair County, situated Northwest of the facility, in making its nonattainment designation.[23] Yet, EPA's own analysis demonstrates that for both St. Clair County (the closest nonattainment monitor) and Randolph County, the wind is no more likely to blow towards the Northwest than it is to blow to the Southwest or Northeast.[24]

EPA measures the likelihood of the wind blowing in any particular direction using a spread of ranges, as shown in Table 2. For Randolph County, EPA estimated that the likelihood of the wind blowing into any given quadrant ranged from 15% to 29%. Notwithstanding the relatively small, statistically insignificant probabilities, EPA concluded that these data sufficed to show a pattern. As shown in Table 2, moreover, EPA failed to see a similar pattern (and thus labeled as "attainment") the nearby air shed of Chicago-Northwest Indiana despite the much higher likelihood of wind blowing in any given quadrant (ranging from 17% to 38%).[25] There,

[22] State of Illinois Submission to EPA at 3.

[23] *See* TSD at 6-257.

[24] *See id.* at 6-260.

[25] TSD at 6-268.

EPA concluded that "[t]he wind data presented . . . shows no dominant wind direction for Northwest Indiana."[26]

Table 2 - Examples of EPA's Inconsistent Interpretation of Meteorological Data					
	NW	SW	SE	NE	EPA's Interpretation of the Data
Randolph County, IL	28%	28%	29%	15%	"Emissions are located where winds would commonly blow the emissions toward the observed violations." [27]
Lake County, IN	25%	38%	17%	19%	"The wind data presented below shows no dominant wind direction for Northwest Indiana."[28]
Porter County, IN	25%	38%	18%	19%	

EPA's interpretation of weather data for Lake and Porter Counties cannot be reconciled with its treatment of weather data in Randolph County. If anything, based on the wind data cited by EPA for the designation rule, the wind patterns in and around Randolph and St. Clair County show ***less***, not more, of a dominant wind direction than do the wind patterns in Northwest Indiana. Just as EPA declined to draw inferences from wind patterns in Northwest Indiana, it should decline to do so in the St. Louis metropolitan area.

The third and final factor EPA applied (Factor 9) requires the Agency to examine the "level of control of emission sources." Notwithstanding the significant emissions reductions DMG had made during the recent past, and ignoring the federally-enforceable limits described above, EPA argued in designating Baldwin Township as nonattainment that the Agency lacked evidence as to whether and to what extent further emissions control reductions were possible at the facility.[29] EPA's reliance on this factor is misplaced. Even before EPA and DMG entered into the Consent Decree, DMG had made dramatic improvements in the emissions from the

[26] *Id.* at 6-263.

[27] *Id.* at 6-257.

[28] *Id.* at 6-263.

[29] *Id.* at 6-257.

Baldwin Energy Complex, including investments in additional pollution control technology to reduce NOx emissions.[30]

Specifically, during the final quarter of 1999 and the end of the first quarter of 2000, the Baldwin Energy Complex transitioned from high-sulfur coal to an alternative fuel, Powder River Basin ("PRB") Coal. DMG also installed additional equipment for the control of nitrogen oxides emissions at the facility, including Overfire Air systems on Baldwin Units 1, 2, and 3, and Selective Catalytic Reduction ("SCR") Systems on Baldwin Units 1 and 2. These changes led to significant emissions reductions at Baldwin for both SO_2 and NO_X.[31] EPA itself has acknowledged that the changes had produced significant reductions in these pollutants.[32] This acknowledgement of the facility's 65-90 percent reduction in emissions should translate to a finding of reduced contribution and a designation of attainment.[33]

2) Correctly Applying the Remaining Factors Confirms That the Proper Designation of Baldwin Township Is Attainment.

It is not surprising that EPA's justification for the Randolph County designation relied so heavily on only three of EPA's criteria. A balanced application of all nine of the EPA's criteria, however, shows that the County's partial nonattainment designation should be revised to be attainment.

---

[30] *See* Consent Decree at 3.

[31] *See id.*

[32] Indeed, if, as EPA asserts, the Baldwin Energy Complex was contributing significantly to $PM_{2.5}$ NAAQS violations, the ambient monitors in the supposedly affected areas would be expected to show analogous reductions in $PM_{2.5}$ as a result of the "significant reductions" Baldwin had made. In fact, ambient air quality monitors within St. Clair County and elsewhere failed to register any significant change in measured PM-related pollutant levels. Similarly, between 2000 and 2003, during a period when emission levels for PM and PM precursors at the Baldwin Energy Facility remained steady, $PM_{2.5}$ concentrations steadily fell at many of the closest monitors. *See* DMG Comments at Attachment 2; see also DMG Updated Comment Analysis at 3.

[33] *See* Consent Decree at 3. Indeed, EPA's only guidance regarding what it means by "level of emission control" is a circular reference to "[t]he level of control analysis looks at the emission controls currently implemented in each area." TSD at 5-3.

i) Air Quality Monitoring Trends in Randolph County Place It Well Below the NAAQS and the Design Values of Other Counties In or Around the St. Louis Metropolitan Area.

"Air quality in potentially included versus excluded areas" is one relevant factor cited by EPA.[34] EPA measures this metric using each area's "design value," a statistic that describes the air quality status of a given area relative to the level of the NAAQS.[35] Design values above 15 indicate that the 3-year average of a monitoring site's annual mean concentration exceeds the 15.0 µg/m3 (micrograms per cubic meter) NAAQS.[36]

EPA measured the design value for the Randolph County monitoring site as 12.4 µg/m3, well below the 15.0 µg/m3 $PM_{2.5}$ NAAQS standard and the design values of other areas within the actual St. Louis metropolitan area.[37] The Randolph County design value is also considerably lower than that of the two attainment counties cited by EPA that are near or adjacent to the St. Louis SMA.[38] Not only has Randolph County consistently met EPA's NAAQS for $PM_{2.5}$, IEPA's monitoring site in Randolph County has the *lowest PM2.5* design value of any monitor in all of Illinois.[39]

---

[34] Nonattainment Boundary Guidance at 7.

[35] TSD at 5-1. *See also* EPA, *Design Values*, *available at* http://www.epa.gov/airtrends/values.html.

[36] EPA, *Air Quality Data Update, 2001-2003 PM2.5 Air Quality Data (2/1/2005),* available at http://www.epa.gov/airtrends/pdfs/pm25aqupdate2005feb03.pdf.

[37] *See* TSD at 6-258 (citing the following design values for counties within the 2003 St. Louis SMSA: Madison - 17.5 µg/m3; St. Clair - 16.2 µg/m3; Jefferson -14.5 µg/m3; St. Charles - 14.3 µg/m3; St. Louis - 14.0 µg/m3; and St. Louis (City) - 15.2 µg/m3).

[38] *See id* at 6-259. (*citing* the Sangamon, Illinois' design value at 13.3 µg/m3 and St. Genevieve, Missouri's design value at 13.6 µg/m3.) EPA did not provide design values for Counties that do not contain a monitor, and more generally declined to offer detailed statistics on many other adjacent counties, despite, in some cases, the presence of power plants therein. *See id.* at 6-257 ("Besides Randolph County, Illinois also recommended a designation of unclassifiable for Jersey County, and recommended attainment for all other counties in the state that are not part of the recommended Saint Louis or Chicago nonattainment areas. EPA is designating as attainment/ unclassifiable all counties that are not part of the Saint Louis or Chicago nonattainment areas."). For that reason, DMG is unable to provide detailed comparisons with other similarly situated adjacent counties for most of the EPA's nine criteria.

[39] *See* EPA, *Air Quality Data Update, 2001-2003 PM2.5 Air Quality Data (2/1//2005).*

ii) The Relative Population Density and Degree of Urbanization in Randolph County Are Among the Lowest in the Region.

The third factor EPA cites in its guidance is population and urban density of each area.[40] EPA's rationale for including this factor is that "Population data indicate the likelihood of population-based emissions that might contribute to violations."[41] Randolph County's population and urban density are well below those of the other counties included in the St. Louis metropolitan area and below other adjacent counties designated as attainment by EPA. In fact, of the counties for which EPA lists population data, Randolph County is lowest on both counts.[42]

iii) Traffic and Commuting Patterns in Randolph County Suggest Unusually Low Miles Traveled and Contribution to St. Louis.

EPA's fourth factor in determining an area's contribution is traffic and commuting patterns.[43] In support of this factor, EPA explains that:

> The traffic and commuting analysis looks at the number of commuters in each county who drive to another county within the metropolitan area ("Number"), the percent of total commuters in each county who commute to other counties within the metropolitan area ("percent"), as well as the total Vehicle Miles Traveled (VMT) for each county in thousands of miles. A county with numerous commuters is generally an integral part of the area and would be an appropriate part of the domain of some mobile source emission control strategies, thus warranting inclusion in the nonattainment area.[44]

Randolph County scores well below the counties included in the St. Louis metropolitan area and below other adjacent counties designated as attainment by EPA. Of the counties for which EPA lists transportation data, Randolph County is lowest on both counts, with only 2,798 travelers or 20 percent of the County commuting to other counties within the metropolitan area

[40] TSD at 5-2.

[41] *Id.*

[42] *Id.* at 6-258-59.

[43] *Id.* at 5-2.

[44] *Id.*

for a total of 278,000 vehicle miles traveled.[45] In contrast, the county with the next lowest figures for commuting residents is Clinton County, Illinois, designated as attainment, with more than twice the number of commuters traveling a total of 370,000 vehicle miles per year.[46] A more notable statistic is the comparison of transportation statistics for commuters in Randolph versus commuters in the adjacent St. Clair County, Illinois. St. Clair County drivers logged over 2,850,000 vehicle miles traveled during the sample year, more than 10 times the number logged by Randolph County commuters.[47] By all three of EPA's measures for transportation impacts, Randolph had the smallest, or next-to-smallest, impacts of any nearby county evaluated.[48]

iv) The Growth Projections for Randolph County Are Among the Lowest in the Region.

EPA also considers the impact of expected growth within a county as a factor in determining the area's future impact on air quality levels.[49] The expected growth factor helps identify the extent to which future sources of PM fostered by increased economic activity within an area may increase its $PM_{2.5}$ impacts. Of the 13 areas EPA considered, Randolph County had the third lowest expected growth estimate, at -2 percent.[50]

v) EPA Acknowledges that There Are No Geographic or Topographical Factors that Support Designating Randolph County as Nonattainment and Ignores Evidence that Randolph County Emissions are Not Affecting Adjacent Areas.

---

[45] *Id.* at 6-259.

[46] *Id.*

[47] *Id.*

[48] *See id.*

[49] *See id.* at 5-2.

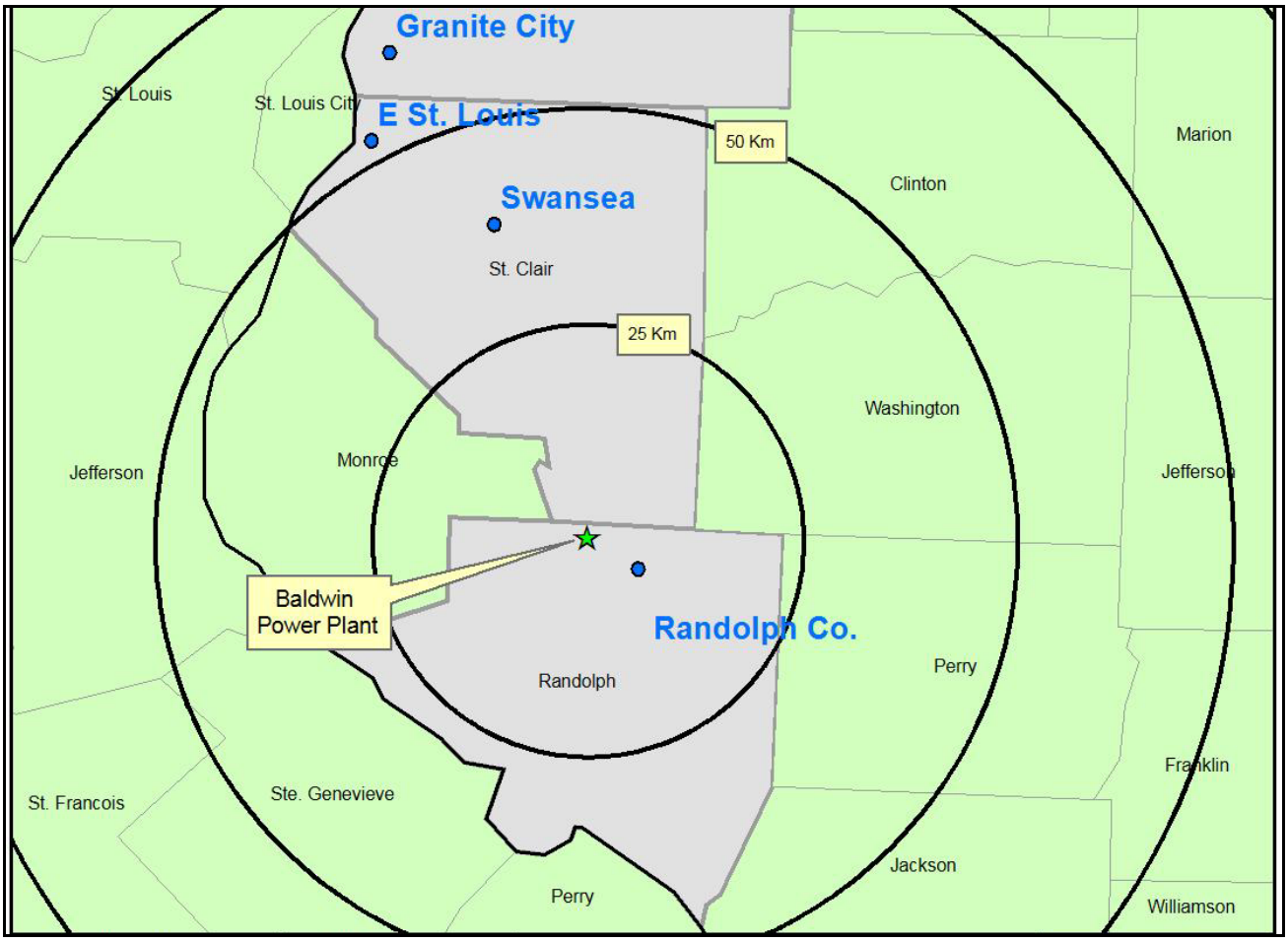
[50] *See id.* at 6-260. It is notable that, in light of the considerable emissions reductions DMG has already committed to under the new Consent Decree, combined with the various additional regulatory restrictions that will apply to the Baldwin Energy Complex during the next decade (CAIR Rule, etc.), there is nothing to suggest that the Growth in Baldwin Township will be greater than the pessimistic projections EPA itself has already accepted.

EPA's geography/topography criterion looks at physical features of the land that might have an effect on the airshed and, therefore, on the distribution of particulate matter over an area.[51] EPA's analysis acknowledges that "the State of Illinois has no features that significantly influenced EPA's intended nonattainment areas."[52] At worst then, it appears the topography has no effect and does not include any features that require expanding the boundary. To the contrary, the lack of an impact from the topography argues for Baldwin Township sharing the same attainment status as nearby monitoring facilities. While it goes unmentioned in EPA's analysis, between the Baldwin Township and the St. Clair (nonattainment) monitoring facility is a second monitoring facility. *See* figure 1. That monitor, identified as Swansea, has consistently been in attainment for $PM_{2.5}$ during the time period EPA relies upon in its analysis. That monitor's status as attainment, combined with the lack of any topography in between that monitor and Baldwin Township that would influence attainment, offers support for an attainment designation at Baldwin.

[51] *See id* at 5-2.

[52] *See id.* at 6-256.

Figure 1 - Monitor Locations in Relation to the Baldwin Energy Facility



EPA has held in other Counties that, in making contribution determinations for the purposes of setting nonattainment area boundaries, the presence of an attainment monitor between a source and the nonattainment area provides a basis for discounting the source's contribution.[53] Just as EPA has cited such intervening attainment monitors to dismiss contribution findings in other adjacent counties, EPA should apply its policies consistently and do so here as well.

vi) Randolph County Falls Outside of the Jurisdictional Boundaries for the St. Louis Metropolitan Area under OMB Guidelines and EPA's 8-Hour Ozone Nonattainment Designation Precedent.

Consistency with jurisdictional boundaries is another factor EPA purports to use in determining whether an expansion or contraction of an urban nonattainment area might be appropriate. Explaining this factor, EPA's Technical Support Document states, "[t]he analysis of jurisdictional boundaries looks at the planning and organizational structure of an area to determine if the implementation of controls in a potential nonattainment area can be carried out in a cohesive manner."[54] Absent extenuating circumstances, EPA's guidance suggests that:

> The metropolitan area, as delineated by the Office of Management and Budget (OMB), provides a presumptive definition of the populated area associated with a core urban area. Accordingly, EPA believes that the metropolitan area provides a presumptive definition of the source area that contributes to a $PM_{2.5}$ nonattainment problem. For this reason, EPA believes that the Metropolitan Area

[53] *See, e.g.*, TSD at 6-224 (stating, in support of an attainment designation for powerplant-containing counties adjacent to the Greensboro-Winston-Salem-High Point nonattainment area, that "there is one or more attaining monitors between the major emissions sources in these counties and the violating monitor, *indicating no contribution.*" (emphasis added)); *Id.* at 6-338 (finding Kenosha, Wisconsin to be in attainment despite its significant emissions levels and proximity to the Chicago-Gary-Kenosha nonattainment area where, *inter alia* "[a]t 11.7 µg/m3, the design value for the Kenosha County monitor is well below the 15 µg/m3 standard, as is the design value for Lake County, Illinois, which is between the Kenosha County monitor and the violating monitor in Cook County, Illinois."

[54] *See* TSD at 5-3.

> should serve as the presumptive boundary for urban $PM_{2.5}$ NAAQS nonattainment areas."[55]

EPA failed to identify any jurisdictional boundary or other organizational structure that would make any portion of Randolph County a logical portion of the nonattainment area. Randolph County is ***not*** part of the St. Louis Metropolitan Statistical Area under either the 1999 or the 2003 OMB definitions and neither the state nor EPA identified anything about the planning or organizational structure of Baldwin Township that would suggest that including it in the nonattainment boundary would add to the cohesion of the area. To the contrary, the recent Consent Decree with DMG creates a much more logical and cohesive planning and organization link between Baldwin Township and the four other counties containing DMG energy facilities throughout Southern Illinois, three of which are excluded from the nonattainment area.

EPA's inclusion of Baldwin Township in the St. Louis nonattainment area is also inconsistent with the Agency's designation with respect to the 8-hour ozone nonattainment designation. EPA's guidance for establishing $PM_{2.5}$ nonattainment boundaries notes that:

> Boundaries used for implementation of the 8-hour ozone standard may also be an important factor in determining boundaries for $PM_{2.5}$ nonattainment areas. Indeed, there are many areas that violate both the 8-hour ozone and the $PM_{2.5}$ standards, and States and Tribes may wish the nonattainment boundaries for the two pollutants to be identical *in order to coordinate air quality planning, control strategy development, and the implementation of the transportation conformity program.*[56]

Nevertheless, EPA did not include Randolph County as part of the 8-hour ozone nonattainment area. Rather, EPA's Technical Support Document for the ozone designations, prepared only a few months before EPA's $PM_{2.5}$ designation analysis, highlights EPA's inconsistent treatment of Randolph County. In that document, EPA states:

---

[55] *See Designation Boundary Guidance* at 5.

> Randolph County is adjacent to the St. Louis C/MSA, and 1-hour nonattainment area, located to the southeast of the C/MSA. The monitor in Randolph County shows a 2002 design value of 79 ppb. The population of the county is small when compared with the St. Louis C/MSA (33,893 versus 2,698,687). The expected population growth is 0.5% through 2010. VOC emissions from the county are small compared to the VOC emissions from the St. Louis C/MSA (2,425 tpy versus 156,100 tpy). Although it is a larger amount, Randolph County's 59,710 tpy NOx represents the county's 1999 base year inventory. The vast majority of NOx emissions in Randolph County come from the Baldwin power plant, which, as of 2001, has reduced NOx emissions to 29,389 tpy by installing controls. Wind rose data suggests that winds come primarily from the south and southwest. *Based on the data, we believe Randolph County does not contribute to ozone violations in St. Louis.*[57]

EPA's analyses for the two pollutants, as applied to Randolph County, are fundamentally at odds with each other. The solution is simple: the nonattainment boundaries for $PM_{2.5}$ should be consistent with the nonattainment boundaries for 8-hour ozone. It should not include Baldwin Township.

In summary, upon application of all nine factors, EPA should designate Baldwin Township as attainment. Such a designation would comport with EPA's own actions in similarly situated counties around the country. For example, in response to a comment on Kentucky's proposed attainment classification for two counties adjacent to the Cincinnati-Hamilton nonattainment area, EPA ruled "the adjacent counties of Carroll and Mason should be designated attainment/classifiable [sic] for the $PM_{2.5}$ standard, *although they have significant emissions due to power plants*. These counties have relatively low populations, low population growth, and low VMT. Further, their commuting patterns and distance from the violating monitors indicate that

---

[56] *Id*. at 6 (emphasis added).

[57] EPA, Office of Air Quality Planning and Standards, *Technical Support for State and Tribal Air Quality Designations and Classifications at 3-94* (April 2004) .

these counties do not contribute to the violations in the area."[58] EPA made a similar determination with respect to Pulaski County adjacent to the Louisville, Kentucky nonattainment area. Once again, despite the County's *weighted composite emission score of 56.8 (six times the emissions score EPA assigned to Randolph County*), EPA determined that "the adjacent County of Pulaski should be designated attainment/unclassifiable for the $PM_{2.5}$ standard, although it has significant emissions due to a power plant. This county has relatively low population, low population growth, and low VMT. Further, the commuting patterns and distance from the violating monitors indicate that this county does not contribute to the violations in the area."[59]

Randolph County indisputably has a small population, low population growth, low VMT, and modest commuting patterns. While Baldwin Township is located in a county adjacent to St. Clair County, which registered a monitoring violation, the violating monitor is on the far side of the County surrounded by other industrial sources and at least one attainment monitor sits directly between the Baldwin facility and the violating monitor. Neither the state nor EPA provided data suggesting that emissions from Baldwin Township would be any more likely to contribute to violations in St. Clair County than Carroll, Mason, or Pulaski Counties were with respect to their adjacent nonattainment areas. To the contrary, the available data supports only the conclusion that Baldwin Township is not likely to contribute to nonattainment levels in the St. Louis metropolitan area.

[58] *See* RTC at 4-28.

[59] *See* RTC at 4-33.

3) Even if EPA Cannot, Upon Correct Application of the Nine Factors, Designate Baldwin Township As Attainment, the Proper Designation Must Be Unclassifiable, not Nonattainment.

DMG shows above the EPA lacked a sufficient basis to conclude, for the purposes of an initial determination, that the Agency should designate Baldwin Township as nonattainment. Indeed, DMG further shows that if any designation is appropriate for the Township at this time, it is "attainment." If EPA disagrees with the factual background provided above, however, DMG respectfully requests that the Agency enter an initial designation of "unclassifiable."

While the CAA requires EPA to apply a specific initial designation of attainment or not to all areas following promulgation of a new national ambient air quality standard ("NAAQS"), it recognizes that in some cases, neither the State nor EPA may have the data necessary to make such a determination.[60] In such circumstances, the Act authorizes States and EPA to consider an alternative designation of "unclassifiable" for "any area that cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant."[61]

To the extent that EPA believes there may be remaining data gaps or questions that prevent the Agency from designating the entire County as attainment, DMG requests that EPA initially designate Baldwin Township as unclassifiable out of an abundance of caution pending development of a factual record to support the nonattainment designation. Such an initial designation will avoid the additional procedural and substantive requirements under Section 107(d)(3) of the Act if the future factual development convinced EPA to change its designation to "attainment." Most notably, once an area has been designated either "attainment" or

[60] 42 U.S.C. § 7407(d)(1)(A)-(B).

[61] *Id*. at § 7407(d)(1)(A).

"nonattainment," neither the State nor EPA can seek redesignation of that area to "unclassifiable."[62] EPA apparently recognizes the benefits of an initial designation of "unclassifiable," and admits in the preamble to the rule that it has, in some cases, designated areas as unclassifiable despite the actual presence of violative monitors within an area. If DMG did not convince EPA to apply an attainment designation, it urges such a result here.

In conclusion, and for the reasons cited above, DMG respectfully requests that EPA withdraw its nonattainment designation for Baldwin Township and reissue revised initial designation finding Baldwin Township to be an attainment area. To the extent that EPA continues to believe that there may be uncertainties about the impact from Baldwin Township or the Baldwin Energy Complex, DMG respectfully requests that, consistent with the State of Illinois recommendation, EPA issue a revised designation for Baldwin Township as "unclassifiable" and that EPA identify the additional data it would require to resolve any outstanding questions it may have as to the Township's attainment status.

Respectfully submitted,

/s/

Paul E. Gutermann
David H. Quigley
Charles L. Franklin
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 887-4000

Counsel for Petitioner,
Dynegy Midwest Generation, Inc.

June 13, 2005

[62] *Id.* at § 7407(d)(3)(E).

Exhibit A

Dynegy Midwest Generation, Inc.
2828 North Monroe Street
Decatur, Illinois 62526-3269

DYNEGY

August 25, 2004

Mr. Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Dear Mr. Mathur:

Re: Proposed PM2.5 Designation of Randolph County

This letter responds to, and provides comments on the United States Environmental Protection Agency (USEPA) proposal to reject the designation of Randolph County as attainment for fine particulate matter ($PM_{2.5}$) submitted by Director Cipriano of the Illinois Environmental Protection Agency. USEPA erred when it proposed to classify Randolph County as nonattainment. USEPA's nonattainment proposal for Randolph County is based almost entirely on the presence of the Baldwin Energy Complex in the county and an arbitrary assumption that its emissions of SO_2 and NO_X contribute to $PM_{2.5}$ nonattainment in the St. Louis metropolitan area. Rather than considering the recommendations of the Illinois EPA or the actual monitored $PM_{2.5}$ air quality, USEPA decided arbitrarily, and without supporting analysis, that counties with a power plant would be classified as nonattainment if they were physically adjacent to a nonattainment county. This arbitrary approach ignores the key factors USEPA itself established to evaluate individual counties. Attached is a more detailed discussion of how USEPA erred, and why it should accept the recommendation of Illinois EPA and designate Randolph County attainment for $PM_{2.5}$.

USEPA gave Illinois EPA until September 1, 2004, to provide additional information on why Randolph County should be designated as attainment with regard to $PM_{2.5}$. In deciding whether to accept the Illinois EPA recommendation to classify Randolph County as attainment, USEPA must (1) fully consider the Illinois EPA's attainment recommendation of March 5, 2004, (2) consider the additional information provided in this letter and its enclosures, and (3) employ reasonable and objective scientific criteria for classifying Randolph County based on county-specific information rather than applying a simplistic litmus test that ignores compelling evidence that the Baldwin

Energy Complex is not significantly contributing to $PM_{2.5}$ nonattainment in the St. Louis metropolitan area.

The classification of Randolph County as nonattaiment for $PM_{2.5}$ would have serious adverse impacts on its citizens, on local government and on businesses. It would seriously increase administrative burdens for Randolph County administrators and could adversely impact the potential growth of a county already projected to have negative growth. Dynegy strongly urges the USEPA classify Randolph County attainment in accordance with the March 5, 2004 recommendations of the Illinois EPA.

You may reach me at 217-872-2345 if you have questions or comments.

Sincerely,
Dynegy Midwest Generation, Inc.

Gary L. Hickey
Vice President

Attachments

cc: Jeff Holmstead, USEPA
Renee Cipriano, Director – IEPA
David Kolaz, Air Bureau Chief – IEPA
The Honorable Rod Blagojevich, Governor of Illinois
The Honorable John Shimkus, House of Representatives
The Honorable Jerry Costello, House of Representatives
The Honorable Dan Reitz, Member of the Assembly
The Honorable David Luechtefeld, The State Senate of Illinois
Julie Curry, Deputy Chief of Staff, Economic Development and Labor
Terry Luehr, Randolph County Board Chairman

ATTACHMENT 1

EPA Improperly Applied Its Own Classification Criteria

Attached to the June 29, 2004, letter to Governor Blagojevich were nine factors USEPA purported to use in determining the $PM_{2.5}$ classification of Randolph County. USEPA misapplied these factors in proposing to reject the recommendation of the Illinois EPA and instead designate Randolph County nonattainment.

Factor 1. Emissions in areas potentially included versus excluded from the nonattainment area:

USEPA used outdated Baldwin Energy Complex emission data and failed to analyze the relationship (or lack thereof) between recent SO_2 and NO_X emissions at the Baldwin Energy Complex and measured ambient $PM_{2.5}$ levels in the St. Louis metropolitan area. (See Attachments 2 and 4)

Factor 2. Air quality in potentially included versus excluded areas:

The $PM_{2.5}$ concentrations in Randolph County have never exceeded the annual National Ambient Air Quality Standard notwithstanding the emissions from the Baldwin Energy Complex. In fact, it typically has the lowest $PM_{2.5}$ levels in Illinois. USEPA acknowledged the attainment of the $PM_{2.5}$ standard in Randolph County in its analysis of this factor, but then wholly ignored this factor in its decision to designate the county nonattainment.

Factor 3. Population density and degree of urbanization including commercial development in included versus excluded areas:

The Randolph County population density is significantly lower than most other areas considered in attainment, and much lower than the other counties included in the St. Louis nonattainment area. Again, USEPA acknowledged the low population density in Randolph County in its analysis of this factor, but wholly ignored this factor in its decision to designate the county nonattainment.

Factor 4. Traffic and commuting patterns:

The traffic and commuting patterns of Randolph County are much lower than other areas considered attainment, and much lower than the other areas included in the St. Louis nonattainment area. Again, USEPA acknowledged the low traffic and commuting patterns in Randolph County in its analysis of this factor, but wholly ignored this factor in its decision to designate the county nonattainment.

Factor 5. Expected growth:

Randolph County has a negative expected growth factor significantly below the expected growth of areas considered attainment and below several of the other areas included in the St. Louis nonattainment area. Again, USEPA acknowledged the low expected growth in Randolph County in its analysis of this factor, but wholly ignored this factor in its decision to designate the county nonattainment.

Factor 6. Meteorology:

The meteorological characteristics of Randolph County analyzed by USEPA are typical of the region. USEPA provided no correlation between the measured nonattainment occurrences in the St. Louis metropolitan area and the meteorological conditions in Randolph County. USEPA limited its discussion of this factor to a conclusory statement that winds would commonly blow the Baldwin Energy Complex emissions toward the observed violations. The agency provided no modeling or other analysis indicating that the surface level measurements were in any way related to the emissions from the Baldwin Energy Complex emitted from the top of a 605-foot high stack.

Factor 7. Geography and topography:

USEPA concluded Illinois, including Randolph County, has no geographic features that influenced its intended nonattainment designations. Again, EPA provided no modeling or analysis of the Illinois geography or topography relative to Baldwin emissions as a basis to reject the Illinois EPA's recommendation for Randolph County.

Factor 8. Jurisdictional Boundaries:

USEPA acknowledges that the East-West Gateway Council of Governments (EWGCC) is the Metropolitan Planning Organization (MPO) for the bi-state St. Louis Area. Randolph County is not a member of the EWGCC. USEPA excluded Randolph County from Saint Louis ozone nonattainment area and for consistency should have excluded it from the Saint Louis $PM_{2.5}$ nonattainment area. USEPA wholly ignored this factor in its decision to designate the county nonattainment.

Level of control of emission sources:

The Baldwin Energy Complex has been converted to low sulfur Powder River Basin Coal to control its SO_2 emissions. NO_X emissions are controlled with a combination of overfire air, low NOx burners and the use of Selective Catalytic Reduction. Electrostatic precipitators control particulate matter emissions from all three units. These facts, well known to USEPA, are ignored in EPA's analysis of this factor. Moreover, as demonstrated in Attachment 2, there is no correlation between emissions from the Baldwin Energy Complex and $PM_{2.5}$ levels in the St. Louis metropolitan area. The "permanence" of Baldwin's dramatic emission reductions (i.e. 90% reduction in SO_2

emissions and over 60% reduction in NO_X emissions) is shown in Attachment 2 to have no effect on the measured nonattainment in the St. Louis metropolitan area.

USEPA Failed to Implement Illinois' Recommendations

In its letter dated June 2, 2003, USEPA asked the Illinois EPA to provide its recommendations for $PM_{2.5}$ designations for the State of Illinois. The USEPA sought this input since the Illinois EPA could consider each county individually and since the Illinois EPA was more familiar with its monitoring data. Illinois provided those recommendations to USEPA on March 5, 2004. The Illinois EPA based its analysis on measured ambient air quality data, and recommended Randolph County be designated as attainment for $PM_{2.5}$ and that Baldwin Township be designated as unclassified.

Instead of following Illinois EPA's county-specific recommendations, USEPA applied a litmus test unrelated to the actual air quality in Randolph County, and without any analytical study of the effect of Randolph County emissions on $PM_{2.5}$ concentrations in the St. Louis metropolitan area and rejected the Illinois EPA's recommendations. EPA's litmus test included only two arbitrary criteria; (1) does the county contain a power plant? and (2) is the county physically adjacent to a nonattainment county? Even though USEPA's June 29th letter has asked the Illinois EPA to provide additional information by September 1, 2004, this will be a useless exercise if USEPA intends to once again ignore the State's guidance and apply its new arbitrary criteria to the exclusion of the many factors that have an attainment designation. The location of the Baldwin Energy Complex will not change. Similarly, the designation of the St. Louis metropolitan area as nonattainment for $PM_{2.5}$ will not change.

Conduct Receptor Modeling Study

It is apparent that USEPA adopted "power plant/adjacent county" litmus test criteria in order to force lower emission limits on power plant emissions without going through required rulemaking. USEPA has made no effort to establish a link between the reduced emissions that a nonattainment designation would mandate and an improvement of air quality in the St. Louis nonattainment area.

Instead of basing its $PM_{2.5}$ designation for Randolph County on speculation, USEPA should use the available air quality modeling tools, emissions information, and ambient air quality information to determine the effect of Randolph County emissions on $PM_{2.5}$ levels in the St. Louis metropolitan area. Such tools include receptor models such as the Chemical Mass Balance Model Version 8 capable of identifying the contributions of the various source categories to the monitored $PM_{2.5}$ levels. With this information USEPA could determine whether mobile sources, rather than the Baldwin Energy Complex are the prime contributors to $PM_{2.5}$ levels in Monroe and St. Clair counties.

A comparison between the Illinois EPA's VOC emission data and the $PM_{2.5}$ nonattainment monitors shows the areas exceeding the $PM_{2.5}$ annual standard are only within the high VOC emission areas (Attachment 3). The VOC emission pattern should

replicate the mobile source emission pattern for Total Carbonaceous Material (TCM). The $PM_{2.5}$ concentrations decrease rapidly from the high VOC/TCM emission area. This suggests that ground level area and mobile sources may be strong contributors to the urban $PM_{2.5}$ levels rather than distant elevated sources. This data also shows $PM_{2.5}$ levels are far below the $PM_{2.5}$ standard in Randolph County where VOC/TCM emissions are low.

USEPA should also consider the constituents of $PM_{2.5}$ in the St. Louis metropolitan area before arbitrarily designating Randolph County as nonattainment based on assumptions about power plant emissions. Illinois EPA $PM_{2.5}$ monitor data shows that VOC and total carbonaceous particles (i.e. emissions from mobile sources) make up a significant portion of the urban nonattainment concentration and that sulfate and nitrate emissions (i.e. emissions from industrial sources) make up a much smaller portion of the measured $PM_{2.5}$.

Since there are no link between the Baldwin Energy Complex emissions and $PM_{2.5}$ levels in Monroe and St. Clair counties (see Attachment 4), forcing a further reduction in those emissions through designation of Randolph County as nonattainment for $PM_{2.5}$ will not improve $PM_{2.5}$ air quality levels in this region.

This type of information is critical for the Illinois EPA to be able to develop an attainment plan for this area. This information should also be considered by USEPA and weighted more heavily than its litmus test in determining the appropriate designation for Randolph County.

Until USEPA can conduct a thorough receptor modeling analysis, the Illinois EPA's recommendation of designating Randolph County as attainment is a reasonable approach. This approach avoids penalizing Randolph County based on incomplete analyses and maintains the option of re-designating Baldwin Township as nonclassified or nonattainment if warranted by any future receptor modeling analysis.

<u>No Correlation Between SO_2 & NO_X Reductions at Baldwin and $PM_{2.5}$ Levels in the St. Louis Metropolitan Area</u>

From 1999 to 2002, major SO_2 and NO_X reductions have been realized in Randolph County. Since 1999, annual SO_2 emissions have been reduced by 90 percent. Annual NO_X emissions have been reduced over 60%. However, annual $PM_{2.5}$ concentrations in Madison and St. Clair counties over this same time period did not change.

$PM_{2.5}$ levels in these counties did drop slightly in 2003 even though power plant emissions were stable from 2002 to 2003.

Attachment 2 is a memorandum prepared by ENSR that illustrates the lack of correlation between SO_2 and NO_X reductions in Randolph County and urban concentrations of $PM_{2.5}$.

The ENSR analysis shows that the $PM_{2.5}$ attainment problems in the St. Louis metropolitan area are more significantly affected by local, urban sources of carbonaceous particles (i.e. mobile sources) than power plant emissions. Recent reductions in $PM_{2.5}$ monitor levels in these counties (i.e. only one monitor out of five exceeded the $PM_{2.5}$ standard in 2003) along with upcoming improvements in mobile source fuels (i.e. limits on sulfur in diesel fuels) may be sufficient to bring all $PM_{2.5}$ monitors into attainment.

USEPA should conduct receptor type modeling (e.g. the REMSAD Model used by USEPA in its proposed Clean Air Interstate Rule) to determine the significant contributors to the nonattainment concentrations before arbitrarily designating Randolph County as nonattainment.

ATTACHMENT 2

Memorandum

To:	Rick Diericx Dynegy	**Date:**	August 25, 2004
From:	Jeff Connors and Bob Paine ENSR International	**File:**	
RE:	$PM_{2.5}$ Study	**CC:**	Starla Lacey Dynegy

Introduction

In response to EPA's recommendation to classify all of Randolph County as non-attainment for $PM_{2.5}$, ENSR has formulated this response at Dynegy's request.

$PM_{2.5}$ monitoring has been ongoing since 1999 at several monitors in the greater St. Louis area. At five monitors in the Illinois portion of this area, the arithmetic average of the annual monitored values for 2000-2002 is higher than the National Ambient Air Quality Standard (NAAQS) of 15.0 $\mu g/m^3$. On March 5, 2004, Illinois Environmental Protection Agency (IEPA) submitted recommendations for dealing with the $PM_{2.5}$ non-attainment areas (near Chicago and St. Louis) in Illinois. The Illinois EPA's recommendation was to consider the Baldwin Township as unclassifiable in Randolph County, and all Townships within the county as attainment. IEPA cited several reasons for these recommendations:

1. Randolph County is not part of the Metro-East/St. Louis MSA as defined by the U.S. Census Bureau, and was not recommended for inclusion in the 8-hour ozone non-attainment area.
2. This rural county has low population and population density, low urban land cover, and low population and employment growth rates.
3. Randolph County has moderately high levels of $PM_{2.5}$ emissions and high precursor emissions, especially SO_2 and NO_X, virtually all of which are emitted from an existing, stationary emission source, the Baldwin Power Station. Because of the high levels of precursor emissions, and because of the close proximity of the Baldwin facility to the southern edge of St. Clair County (recommended non-attainment), the IEPA has carefully considered whether to recommend that a portion of Randolph County be designated as attainment for $PM_{2.5}$.
4. Due to the significant recent reductions of SO2 emissions from the Baldwin Plant (as of 2000), and the possibility of additional emission reductions, IEPA did not recommend that Baldwin Township, where the Baldwin plant is located, be designated as *non-attainment* at this time. Rather, IEPA recommended that Baldwin Township be designated as *unclassifiable* for the $PM_{2.5}$ standards, and the remainder of Randolph County should be designated as attainment.

On June 29, 2004 EPA Region V commented on IEPA's recommendations. Specifically, EPA disagreed with the recommendations made for Randolph County, stating that IEPA did not provide adequate information of less than full non-attainment designation for the entire county. EPA concludes that emissions in Randolph County are sufficient to contribute to violations in the Saint Louis area. EPA backs this claim with the following points:

1. EPA notes that the Baldwin plant has recently reduced its emissions significantly. However, Illinois' submittal did not indicate whether these emission reductions are enforceable or how much potential exists for further emission reductions at this facility (e.g., through annual operation of NOX emission controls). Even after the recent reductions, Baldwin's emissions are moderately high.
2. Randolph County adjoins a county that is monitoring a violation of the standard, and the most significant emissions are located in the portion of the county closest to the violation. These emissions are located where winds would commonly blow the emissions toward the observed violations.

Overview of Analysis

There are three items of supporting evidence that would lead to the conclusion that the Baldwin Plant is not significantly affecting the monitored $PM_{2.5}$ concentrations, and even additional emission reductions beyond those that have already occurred at the Plant would not affect the $PM_{2.5}$ attainment status. The following points will be discussed to support this conclusion:

1. Comparison of monitoring trends to Baldwin Plant emissions (1999-2003).
2. Use of more recent monitoring data than used in the IEPA study.
3. Examination of the particulate speciation for the monitored $PM_{2.5}$ concentrations.

Monitors Evaluated

Monitored concentrations in exceedance of the annual $PM_{2.5}$ standard of 15 $\mu g/m^3$ have occurred at five Illinois monitors in the Metro-East/St. Louis area during the three year (2000-2002) period which IEPA conducted their study for recommending non-attainment areas. Figure 1 shows the location of these monitors in relation to the Baldwin Plant. Table 1 lists the monitors and their associated concentrations during 1999-2003. The actual compliance status of a given monitor is based upon the arithmetic average of three consecutive years of data, so that one annual average exceedance (measurement above 15 $\mu g/m^3$) at a monitor does not necessarily indicate a violation of the NAAQS.

Table 1 $PM_{2.5}$ Annual Monitored Concentrations (1999-2003)

Monitor Location	$PM_{2.5}$ Annual Monitored Concentration ($\mu g/m^3$)				
	1999	2000	2001	2002	2003
Swansea	N/A	15.0	15.5	15.1	14.3
East St. Louis	17.9	17.4	17.0	16.7	14.9
Wood River	15.7	15.9	15.0	15.1	14.0
Alton	N/A	16.0	15.8	14.7	14.0
Granite City	17.2	17.4	17.3	17.7	17.5

Monitored Exceedance

Monitor Trends versus Baldwin Emissions (Including More Recent Data)

In the final quarter of 1999, the Baldwin Power Plant began a switch to an alternative fuel, Powder River Basin (PRB) Coal. The alternative fuel led to significant emission reduction of SO_2 and NO_X, both of which are considered precursors to $PM_{2.5}$. By the end of the first quarter in 2000, all three units at Baldwin were burning PRB Coal. Given the timing of these emissions reductions as seen in Figure 2, it could be assumed that if the Baldwin Power Plant was significantly affecting the monitored $PM_{2.5}$ concentrations in the St. Louis area, then reductions in the $PM_{2.5}$ monitored concentrations would appear in the 2000 monitoring data as compared to 1999, when Baldwin was still burning their primary fuel, high-sulfur Illinois coal. Figure 2 shows a plot of the monitoring concentration trends from 1999 to 2003 versus SO_2 and NO_X emissions from the Baldwin Plant from 1999 to 2003.

Figure 2 shows that the annual $PM_{2.5}$ monitored concentrations at two (Granite City and Wood River) of three monitors in operation in 1999 increased slightly in 2000. The third monitor, East St. Louis, showed a slight decrease in 2000 as compared to 1999. These monitor trends coupled with the emission reductions at Baldwin clearly show that the Baldwin Plant is *not* significantly contributing to the monitored exceedances of the annual $PM_{2.5}$ standard in the Metro-East/St. Louis area.

Figure 2 also shows that after 2000, Baldwin's emissions have remained relatively stable while monitored concentrations have generally been decreasing at most monitors, with Granite City the exception. This is another factor that leads to the conclusion that emissions from the Baldwin Plant are not correlated with the

monitored $PM_{2.5}$ concentrations. In fact, four of the five monitors did not monitor an annual exceedance in 2003, with the closest monitor to Baldwin, Swansea, being a full microgram per cubic meter below the standard, and Baldwin's emissions have generally remained the same after 1999. The most recent 2003 data should be considered in determining those counties that will be deemed non-attainment, since the 3-year annual averages drop below the NAAQS at several of the monitors when 2003 data is included in the average.

$PM_{2.5}$ Speciation

The National Air Quality and Emissions Trends Report from 2003 (this is available on the Internet at (www.epa.gov/air/airtrends/chem_spec_of_pm2.5_b.pdf) provides evidence that in the St. Louis area, a majority and the urban excess over rural $PM_{2.5}$ measurements (which are in attainment of the NAAQS) is due to carbonaceous particulates rather than sulfates and nitrates The carbonaceous particles would typically be emitted from mobile sources and the sulfates and nitrates would be emitted from combustion sources . Figure 3, which is an excerpt of a figure from the Emissions Trends Report, showing the significant contribution of Total Carbonaceous Material (TCM) to the $PM_{2.5}$ measurements. It is evident from this figure and from the data in Table 1 that the urban excess due to TCM constitutes the difference between attainment and non-attainment of the $PM_{2.5}$ NAAQS. Since the Baldwin Power Plant would be expected to contribute very little to the TCM concentration in St. Louis, it is not expected to be a significant factor in the $PM_{2.5}$ attainment strategy for this region.

Conclusions

The analysis presented here indicates that the $PM_{2.5}$ attainment problems in the St. Louis area, which are most acute in urban areas, are significantly affected by total carbonaceous matter that is locally emitted from mobile sources. The urban excess from sulfates and nitrates that would be contributed by the Baldwin Power Plant is not a significant component $PM_{2.5}$.

The multi-year trend in Baldwin's emissions and the monitored $PM_{2.5}$ concentrations at the Illinois monitors showing violations near St. Louis indicates no correlation in the monitored trends versus the emission trends from the Baldwin Power Plant.

We conclude that the emissions from the Baldwin Power Plant are not significantly contributing to the monitored $PM_{2.5}$ violations in the St. Louis area.

Figure 1 Monitor Locations in Relation to the Baldwin Plant

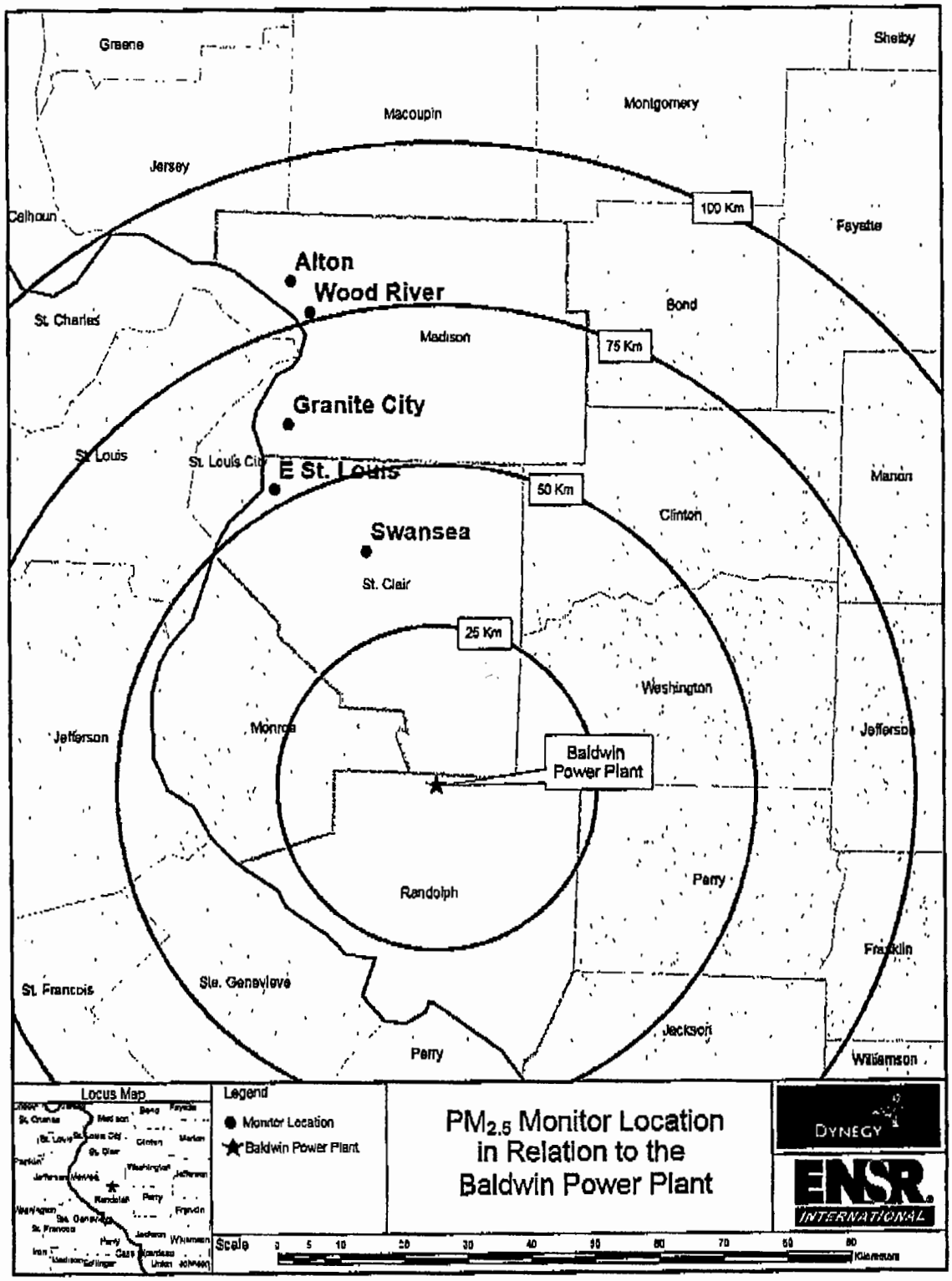


Figure 2 Monitoring Concentration Trends versus Baldwin SO_2 and NO_X Emissions (1999 to 2003)

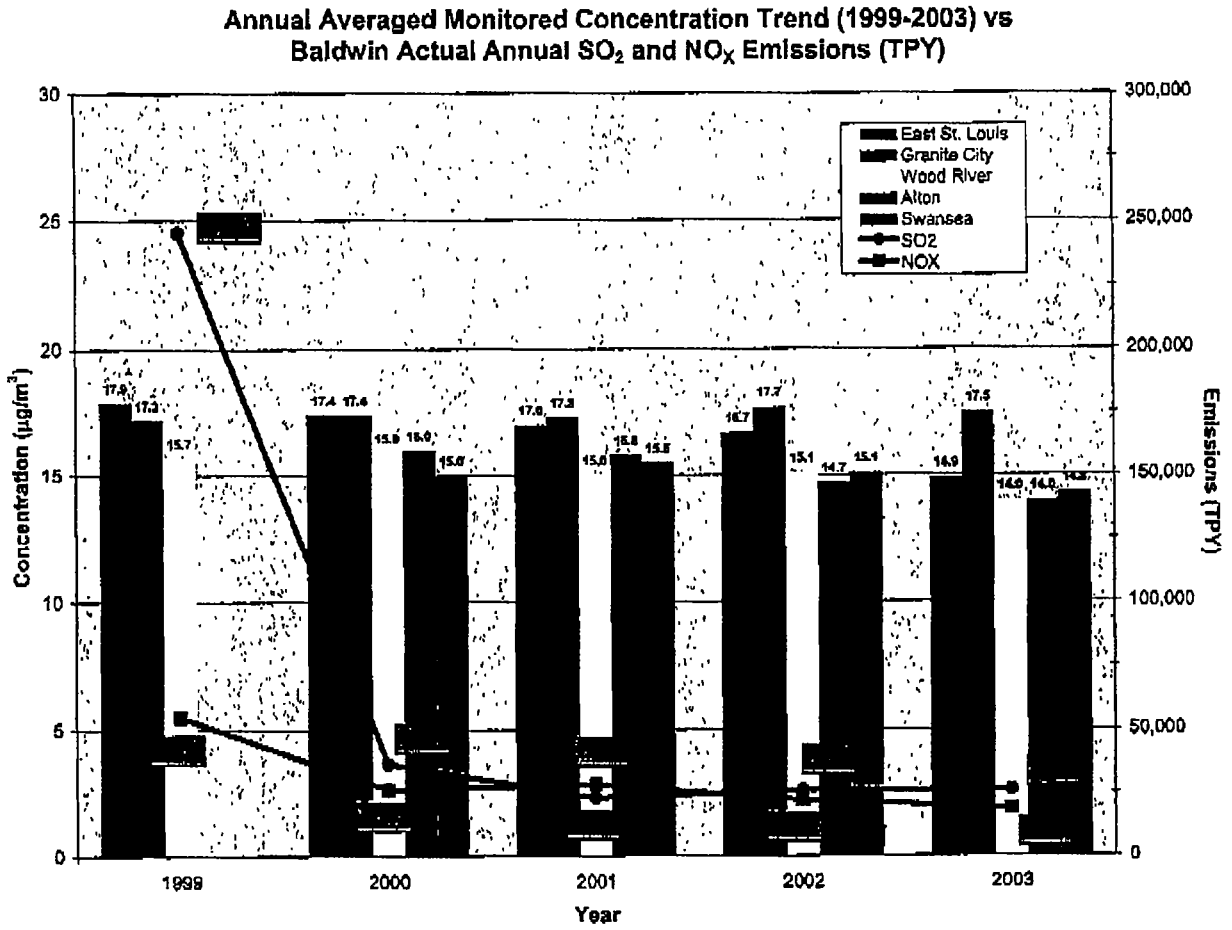


Figure 3 Urban Excess at St. Louis $PM_{2.5}$ Supersite Monitor

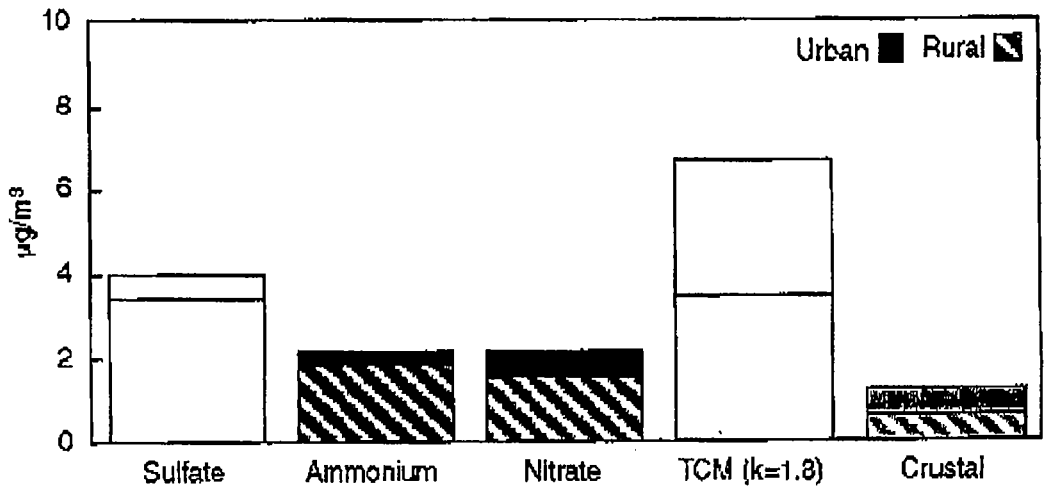


Exhibit B

Memorandum

To:	Jim Ingram Dynegy	**Date:**	March 1, 2005
From:	Jeff Connors and Bob Paine ENSR International	**File:**	
RE:	$PM_{2.5}$ Study	**CC:**	Starla Lacy, Rick Diericx Dynegy

Introduction

In response to EPA's recommendation to classify all of Randolph County as non-attainment for $PM_{2.5}$, ENSR has formulated this response at Dynegy's request.

$PM_{2.5}$ monitoring has been ongoing since 1999 at several monitors in the greater St. Louis area. At five monitors in the Illinois portion of this area, the arithmetic average of the annual monitored values for 2000-2002 is higher than the National Ambient Air Quality Standard (NAAQS) of 15.0 $\mu g/m^3$. On March 5, 2004, Illinois Environmental Protection Agency (IEPA) submitted recommendations for dealing with the $PM_{2.5}$ non-attainment areas (near Chicago and St. Louis) in Illinois. The Illinois EPA's recommendation was to consider the Baldwin Township as unclassifiable in Randolph County, and all Townships within the county as attainment. IEPA cited several reasons for these recommendations:

1. Randolph County is not part of the Metro-East/St. Louis MSA as defined by the U.S. Census Bureau, and was not recommended for inclusion in the 8-hour ozone non-attainment area.

2. This rural county has low population and population density, low urban land cover, and low population and employment growth rates.

3. Randolph County has moderately high levels of $PM_{2.5}$ emissions and high precursor emissions, especially SO_2 and NO_X, virtually all of which are emitted from an existing, stationary emission source, the Baldwin Power Station. Because of the high levels of precursor emissions, and because of the close proximity of the Baldwin facility to the southern edge of St. Clair County (recommended non-attainment), the IEPA has carefully considered whether to recommend that a portion of Randolph County be designated as attainment for $PM_{2.5}$.

4. Due to the significant recent reductions of SO_2 emissions from the Baldwin Plant (as of 2000), and the possibility of additional emission reductions, IEPA did not recommend that Baldwin Township, where the Baldwin plant is located, be designated as *non-attainment* at this time. Rather, IEPA recommended that Baldwin Township be designated as *unclassifiable* for the $PM_{2.5}$ standards, and the remainder of Randolph County should be designated as attainment.

On June 29, 2004 EPA Region V commented on IEPA's recommendations. Specifically, EPA disagreed with the recommendations made for Randolph County, stating that IEPA did not provide adequate information of less than full non-attainment designation for the entire county. EPA concludes that emissions in Randolph County are sufficient to contribute to violations in the Saint Louis area. EPA backs this claim with the following points:

1. EPA notes that the Baldwin plant has recently reduced its emissions significantly. However, Illinois' submittal did not indicate whether these emission reductions are enforceable or how much potential exists for further emission reductions at this facility (e.g., through annual operation of NOX emission controls). Even after the recent reductions, Baldwin's emissions are moderately high.

2. Randolph County adjoins a county that is monitoring a violation of the standard, and the most significant emissions are located in the portion of the county closest to the violation. These emissions are located where winds would commonly blow the emissions toward the observed violations.

Overview of Analysis

There are three items of supporting evidence that would lead to the conclusion that the Baldwin Plant is not significantly affecting the monitored $PM_{2.5}$ concentrations, and even additional emission reductions beyond those that have already occurred at the Plant would not affect the $PM_{2.5}$ attainment status. The following points will be discussed to support this conclusion:

1. Comparison of monitoring trends to Baldwin Plant emissions (1999-2004).
2. Use of more recent monitoring data than used in the IEPA study.
3. Examination of the particulate speciation for the monitored $PM_{2.5}$ concentrations.

Monitors Evaluated

Monitored concentrations in exceedance of the annual $PM_{2.5}$ standard of 15 $\mu g/m^3$ have occurred at five Illinois monitors in the Metro-East/St. Louis area during the three year (2000-2002) period which IEPA conducted their study for recommending non-attainment areas. Those monitors include (1) Swansea, (2) East St. Louis, (3) Wood River, (4) Alton, and (5) Granite City. The Randolph County monitor was also included to show representative air quality in the immediate vicinity of the Baldwin Plant. Figure 1 shows the location of these monitors in relation to the Baldwin Plant. Table 1 lists the monitors and their associated concentrations during 1999-2004. The actual compliance status of a given monitor is based upon the arithmetic average of three consecutive years of data, so that one annual average exceedance (measurement above 15 $\mu g/m^3$) at a monitor does not necessarily indicate a violation of the NAAQS. It is notable that for 2004, none of these monitors recorded an exceedance of the annual $PM_{2.5}$ standard.

Table 1 $PM_{2.5}$ Annual Monitored Concentrations (1999-2004)

Monitor Location	$PM_{2.5}$ Annual Monitored Concentration ($\mu g/m^3$)					
	1999	2000	2001	2002	2003	2004
Swansea	N/A	15.0	15.5	15.1	14.3	12.9
East St. Louis	17.9	17.4	17.0	16.7	14.9	14.6
Wood River	15.7	15.9	15.0	15.1	14.0	13.3
Alton	N/A	16.0	15.8	14.7	14.0	11.1
Granite City	17.2	17.4	17.3	17.7	17.5	15.0
Randolph Co.	14.5	15.2	12.1	11.6	13.4	10.9

Monitored Exceedance

Monitor Trends versus Baldwin Emissions (Including More Recent Data)

In the final quarter of 1999, the Baldwin Power Plant began a switch to an alternative fuel, Powder River Basin (PRB) Coal. The alternative fuel led to significant emission reduction of SO_2 and NO_X, both of which are considered precursors to $PM_{2.5}$. By the end of the first quarter in 2000, all three units at Baldwin were burning PRB Coal. Given the timing of these emissions reductions as seen in Figure 2, it could be assumed that if the Baldwin Power Plant was significantly affecting the monitored $PM_{2.5}$ concentrations in the St. Louis area, then reductions in the $PM_{2.5}$ monitored concentrations would appear in the 2000 monitoring data as compared to 1999, when Baldwin was still burning their primary fuel, high-sulfur Illinois coal. Figure 2 shows a plot of the monitoring concentration trends from 1999 to 2004 versus SO_2 and NO_X emissions from the Baldwin Plant from 1999 to 2004.

Figure 2 shows that the annual $PM_{2.5}$ monitored concentrations at two (Granite City and Wood River) of three monitors in operation in 1999 increased slightly in 2000. The third monitor, East St. Louis, showed a slight decrease in 2000 as compared to 1999. These monitor trends coupled with the emission reductions at Baldwin

clearly show that the Baldwin Plant is *not* significantly contributing to the monitored exceedances of the annual $PM_{2.5}$ standard in the Metro-East/St. Louis area. In fact, there appears to be no correlation whatsoever between the monitored $PM_{2.5}$ values in the Metro-East/St. Louis area and the Baldwin plant emissions.

Figure 2 also shows that after 2000, Baldwin's emissions have remained relatively stable while monitored concentrations have generally been decreasing at most monitors, even at Granite City when the 2003 and 2004 monitored values are considered. Additionally, even with the drastic decrease in emission at Baldwin from 1999 to 2000 the closest monitor, Randolph Co, had a slight increase in the annual concentration. These are additional factors that lead to the conclusion that emissions from the Baldwin Plant are not correlated with the monitored $PM_{2.5}$ concentrations. In fact, four of the five monitors did not monitor an annual exceedance in 2003 and none had an exceedance of the annual standard in 2004. The closest monitor to Baldwin, Swansea, is more than 2 full micrograms per cubic meter below the standard, and Baldwin's emissions have generally remained the same after 1999. The most recent 2003-2004 data should be considered in determining those counties that will be deemed non-attainment, since the 3-year (2002-2004) annual averages drop below the NAAQS at all but two of the monitors when 2003 and 2004 data is included in the average. The only monitors that have a 3-year (2002-2004) annual average that remains above the NAAQS are Granite City and East St. Louis. The East St. Louis monitor has measured annual concentrations below the standard for the past two years. Granite City actually shows a 1.5 microgram per cubic meter drop from 2003 to 2004 and did not have a monitored exceedance in 2004. Additionally, as shown in Figures 4 and 5, both the East St. Louis and Granite City monitors are located near industrial facilities that likely have a significant local effects on the monitored concentrations.

$PM_{2.5}$ Speciation

The National Air Quality and Emissions Trends Report from 2003 (this is available on the Internet at (www.epa.gov/air/airtrends/chem_spec_of_pm2.5_b.pdf) provides evidence that in the St. Louis area, a majority of the urban excess over rural $PM_{2.5}$ measurements (which are in attainment of the NAAQS) is due to carbonaceous particulates rather than sulfates and nitrates The carbonaceous particles would typically be emitted from mobile sources and the sulfates and nitrates would be emitted from combustion sources . Figure 5, which is an excerpt of a figure from the Emissions Trends Report, showing the significant contribution of Total Carbonaceous Material (TCM) to the $PM_{2.5}$ measurements. It is evident from this figure and from the data in Table 1 that the urban excess due to TCM constitutes the difference between attainment and non-attainment of the $PM_{2.5}$ NAAQS. Since the Baldwin Power Plant would be expected to contribute very little to the TCM concentration in St. Louis, it is not expected to be a significant factor in the $PM_{2.5}$ attainment strategy for this region.

Conclusions

The analysis presented here indicates that the $PM_{2.5}$ attainment problems in the St. Louis area, which are most acute in urban areas, are significantly affected by total carbonaceous matter that is locally emitted from mobile sources. The urban excess from sulfates and nitrates that would be contributed by the Baldwin Power Plant is not a significant component $PM_{2.5}$.

The multi-year trend in Baldwin's emissions and the monitored $PM_{2.5}$ concentrations at the Illinois monitors showing violations near St. Louis indicates no correlation in the monitored trends versus the emission trends from the Baldwin Power Plant.

We conclude that the emissions from the Baldwin Power Plant are uncorrelated with, and are not significantly contributing to, the monitored $PM_{2.5}$ violations in the St. Louis area.

Figure 1 Monitor Locations in Relation to the Baldwin Plant

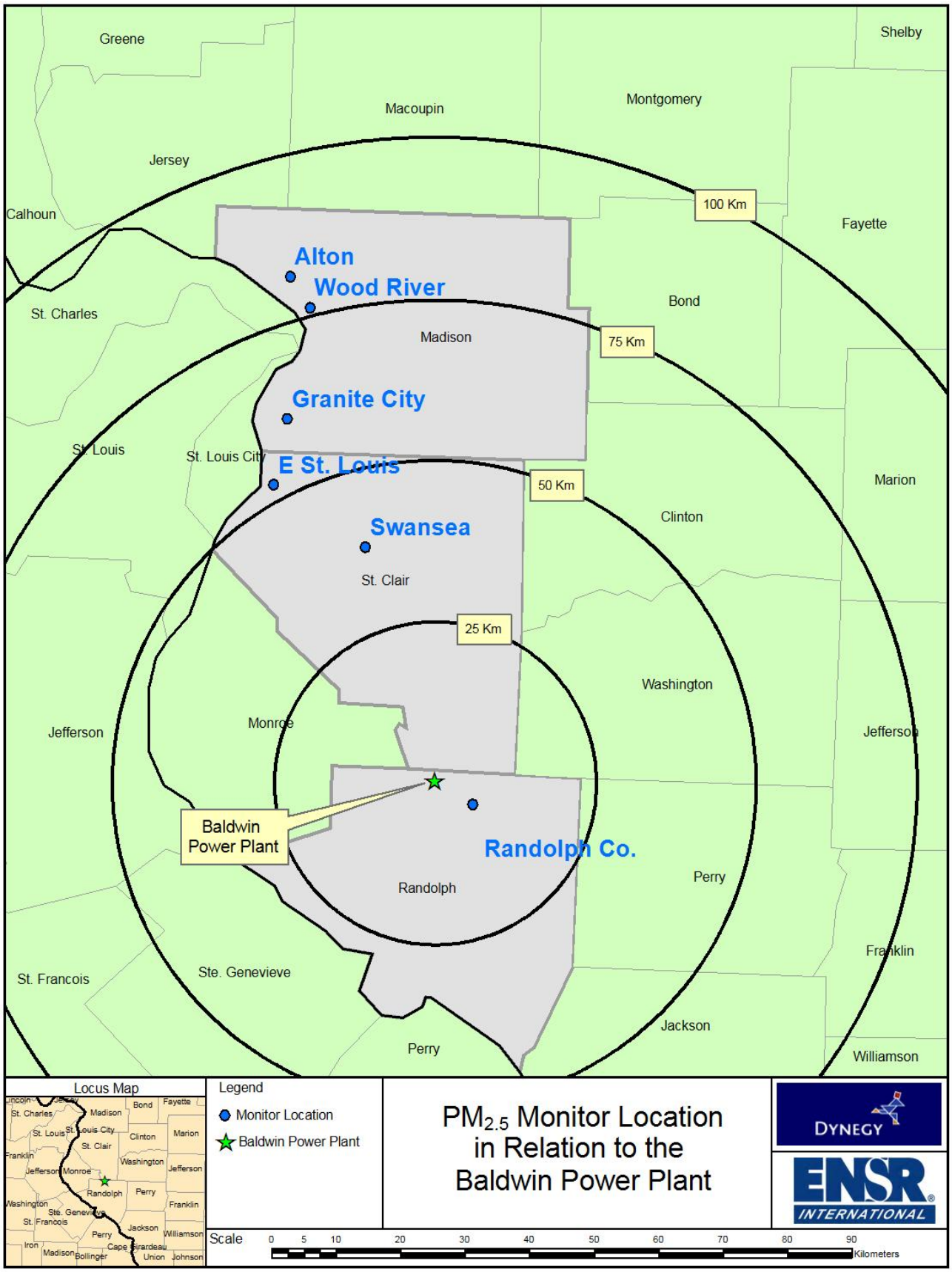


Figure 2 Monitoring Concentration Trends versus Baldwin SO_2 and NO_X Emissions (1999 to 2004)

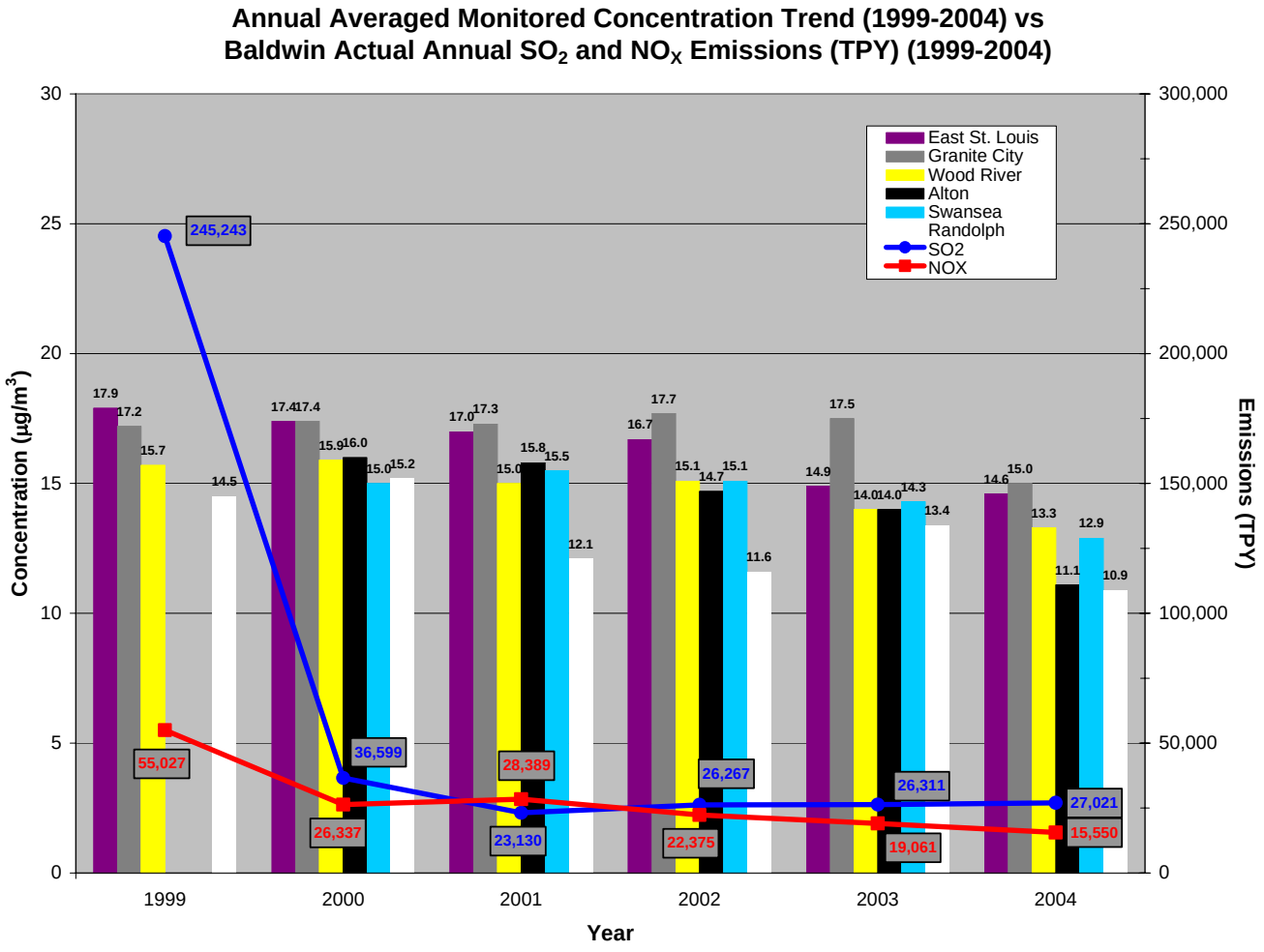


Figure 3 Urban Excess at St. Louis $PM_{2.5}$ Supersite Monitor

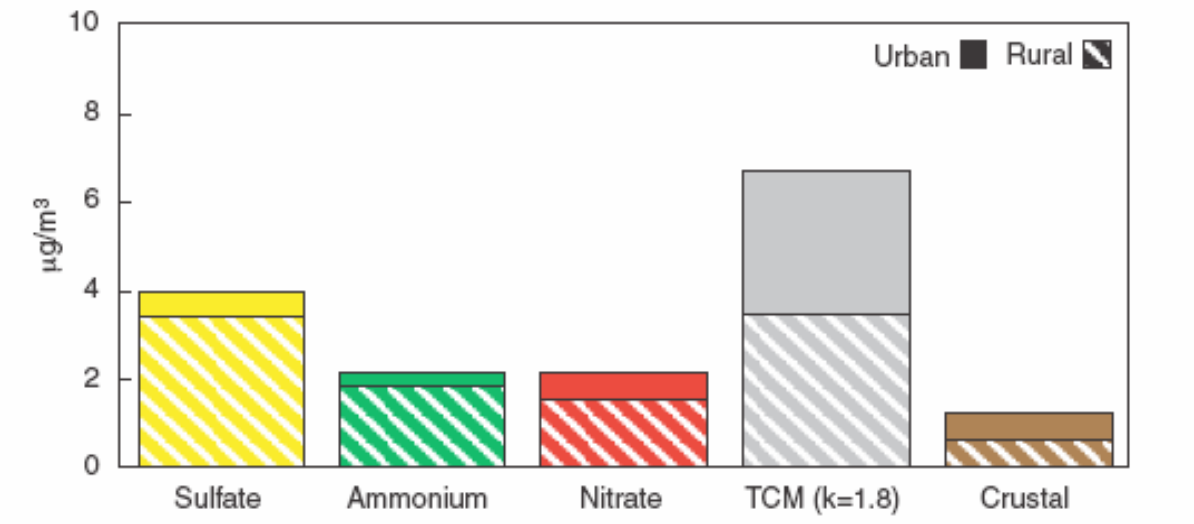


Figure 4 Aerial Photograph of Area Surrounding Granite City Monitor

Figure 5 Aerial Photograph of Area Surrounding East St. Louis Monitor

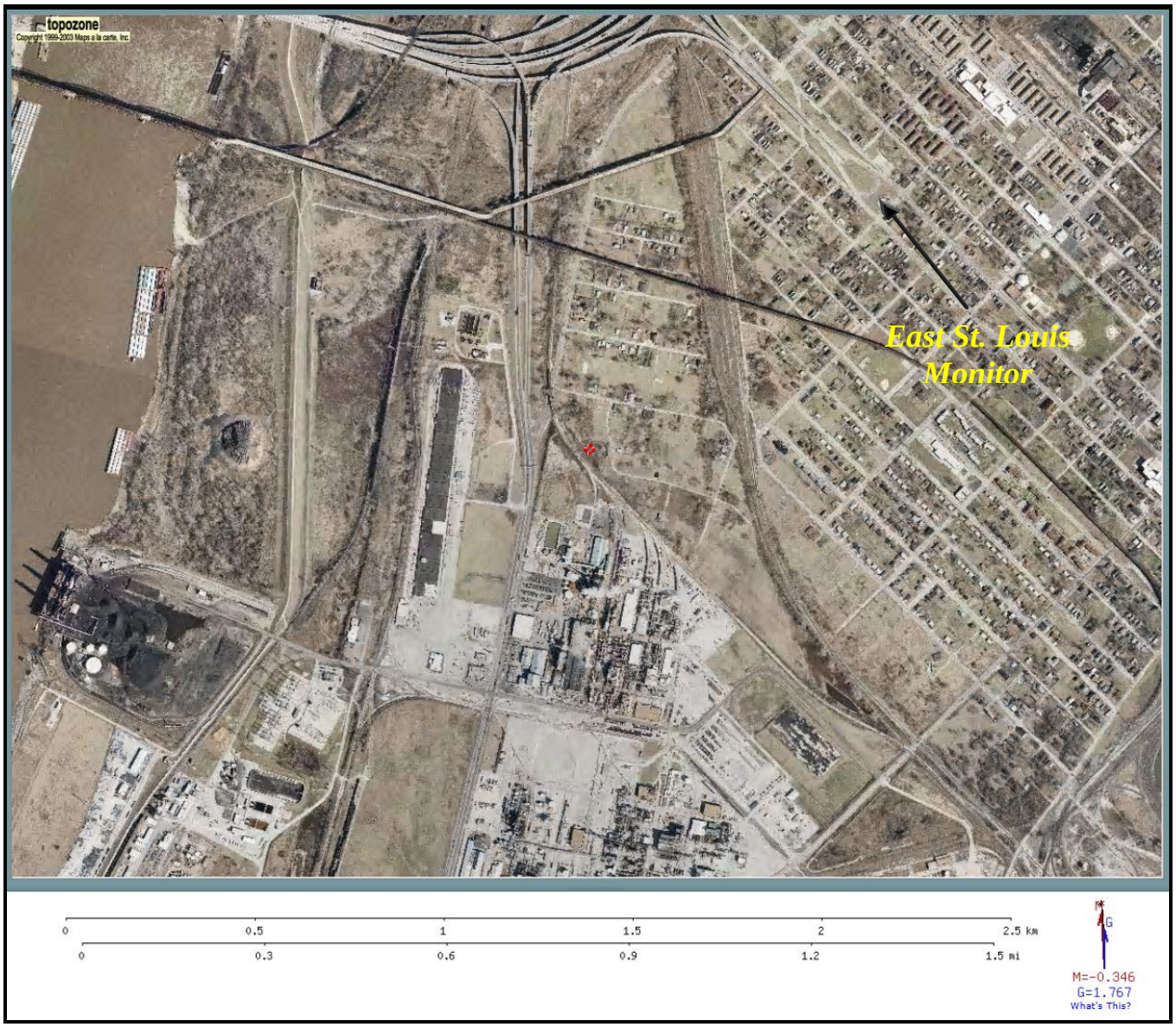


Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA Plaintiff, and THE STATE OF ILLINOIS, AMERICAN BOTTOM CONSERVANCY, HEALTH AND ENVIRONMENTAL JUSTICE – ST. LOUIS, INC., ILLINOIS STEWARDSHIP ALLIANCE, and PRAIRIE RIVERS NETWORK Plaintiff - Intervenors, v. ILLINOIS POWER COMPANY and DYNEGY MIDWEST GENERATION, INC., Defendants.	)	Civil Action No. 99-833-MJR

CONSENT DECREE

TABLE OF CONTENTS

WHEREAS, the United States of America ("the United States"), on behalf of the United States Environmental Protection Agency ("EPA") filed a Complaint against Illinois Power Company ("Illinois Power") on November 3, 1999, and Amended Complaints against Illinois Power Company and Dynegy Midwest Generation, Inc. ("DMG") on January 19, 2000, March 14, 2001, and March 7, 2003, pursuant to Sections 113(b) and 167 of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7413(b) and 7477, for injunctive relief and the assessment of civil penalties for alleged violations at the Baldwin Generating Station of:

(a) the Prevention of Significant Deterioration provisions in Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-92;

(b) the federally enforceable State Implementation Plan developed by the State of Illinois (the "Illinois SIP"); and

(c) the New Source Performance Standard provisions in Part A of Subchapter I of the Act, 42 U.S.C. § 7411.

WHEREAS, EPA issued Notices of Violation with respect to such allegations to Illinois Power on November 3, 1999 and November 26, 2000;

WHEREAS, EPA provided Illinois Power, DMG, and the State of Illinois actual notice of violations pertaining to its alleged violations, in accordance with Section 113(a)(1) and (b) of the Act, 42 U.S.C. § 7413(a)(1) and (b);

WHEREAS, Illinois Power was the owner and operator of the Baldwin Facility from 1970 to October 1999. On October 1, 1999, Illinois Power transferred the Baldwin Facility to Illinova Corporation. Illinova Corporation then contributed the Baldwin Facility to Illinova

Power Marketing, Inc., after which time Illinois Power no longer owned or operated the Baldwin Facility.

WHEREAS, beginning on October 1, 1999 and continuing through the date of lodging of this Consent Decree, Illinois Power has been neither the owner nor the operator of the Baldwin Facility or of any of the Units in the DMG System which are affected by this Consent Decree;

WHEREAS, in February 2000, Illinova Corporation merged with Dynegy Holdings Inc. and became a wholly owned subsidiary of Dynegy Inc. (referred to herein as "Dynegy"). Thereafter, Illinova Power Marketing, Inc., the owner of the Baldwin Facility, changed its name to Dynegy Midwest Generation, Inc. (referred to herein as "DMG"). On September 30, 2004, Dynegy, through Illinova, sold Illinois Power to Ameren Corporation.

WHEREAS, Ameren and Illinova Corporation, a subsidiary of Dynegy, have entered into an agreement which provides for the escrow of certain funds, the release of which funds is related to the resolution of certain contingent environmental liabilities that were alleged in the above-referenced Amended Complaints against Illinois Power and DMG.

WHEREAS, Plaintiff-Intervenors – the American Bottom Conservancy, Health and Environmental Justice - St. Louis, Inc., Illinois Stewardship Alliance, the Prairie Rivers Network, and the State of Illinois – moved to intervene on September 25, 2003 and filed Complaints in Intervention. The Court granted intervention to all movants on October 23, 2003.

WHEREAS, in their Complaints, Plaintiff United States and Plaintiff Intervenors (collectively "Plaintiffs") allege, *inter alia,* that Illinois Power and DMG 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 that such emissions can damage human health and the environment;

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

WHEREAS, DMG and Illinois Power have denied and continue to deny the violations alleged in the Complaints, maintain that they have been and remain in compliance with the Act and are not liable for civil penalties or injunctive relief, and DMG is agreeing to the obligations imposed by this Consent Decree solely to avoid further costs and uncertainty;

WHEREAS, DMG has installed equipment for the control of nitrogen oxides emissions at the Baldwin Facility, including Overfire Air systems on Baldwin Units 1, 2, and 3, Low NO_X Burners on Baldwin Unit 3 and Selective Catalytic Reduction ("SCR") Systems on Baldwin Units 1 and 2, resulting in a reduction in emissions of nitrogen oxides from the Baldwin Plant of approximately 65% below 1999 levels from 55,026 tons in 1999 to 19,061 tons in 2003;

WHEREAS, DMG switched from use of high sulfur coal to low sulfur Powder River Basin coal at Baldwin Units 1, 2 and 3 in 1999 and 2000, resulting in a reduction in emissions of sulfur dioxide from the Baldwin Plant of approximately 90% below 1999 levels from 245,243 tons in 1999 to 26,311 tons in 2003;

WHEREAS, the Parties anticipate that the installation and operation of pollution control equipment pursuant to this Consent Decree will achieve significant additional reductions of SO_2, NO_x, and PM emissions and thereby further improve air quality;

WHEREAS, in June of 2003, the liability stage of the litigation resulting from the United States' claims was tried to the Court and no decision has yet been rendered; and

WHEREAS, the Plaintiffs, DMG and Illinois Power have agreed, and the Court by entering this Consent Decree finds: that this Consent Decree has been negotiated in good faith and at arms length; that this settlement is fair, reasonable, in the best interest of the Parties 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 the Defendants, and without adjudication of the violations alleged in the Complaints or the NOVs, 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 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477, and Section 42(e) of the Illinois Environmental Protection Act, 415 ILCS 5/42(e). 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 the 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 purposes of the Complaints filed by the Plaintiffs in this matter and resolved by the Consent Decree, for 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 the Defendants. Except as provided in Section XXVI (Public Comment) of this Consent Decree, the Parties consent to entry of this Consent Decree without further notice.

II. APPLICABILITY

2. Upon entry, the provisions of the Consent Decree shall apply to and be binding upon and inure to the benefit of the Citizen Plaintiffs and DMG, and their respective successors and assigns, officers, employees and agents, solely in their capacities as such, and the State of Illinois and the United States. Illinois Power is a Party to this Consent Decree, is the beneficiary of Section X of this Consent Decree (Release and Covenant Not to Sue for Illinois Power Company), and is subject to Paragraph 171 and the other applicable provisions of the Consent Decree as specified in such Paragraph in the event it acquires an Ownership Interest in, or becomes an operator (as that term is used and interpreted under the Clean Air Act) of, any DMG System Unit, but otherwise has no other obligations under this Consent Decree except as expressly specified herein.

3. DMG 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, DMG shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree,

DMG shall not assert as a defense the failure of its officers, directors, employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree, unless DMG establishes that such failure resulted from a Force Majeure Event, as defined in Paragraph 137 of this Consent Decree.

III. DEFINITIONS

4. A "30-Day Rolling Average Emission Rate" for a Unit shall be expressed as 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 DMG provides notice of the Malfunction to EPA and the State in accordance with Paragraph 138 in Section XV (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 DMG has 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 transmission 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 a Unit that has ceased firing Fossil Fuel, emissions of SO_2 and Btu inputs that occur during any period, not to exceed two (2) hours, from the restart of the Unit to the time the Unit is fired with any coal, shall be excluded from the calculation of the 30-Day Rolling Average Emission Rate.

5. "Baghouse" means a fullstream (fabric filter) particulate emission control device.

6. "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.

7. "Capital Expenditure" means all capital expenditures, as defined by Generally Accepted Accounting Principles ("GAAP"), as those principles exist at the date of entry of this Consent Decree, excluding the cost of installing or upgrading pollution control devices.

8. "CEMS" or "Continuous Emission Monitoring System" means, for obligations involving NO_x and SO_2 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.

9. "Citizen Plaintiffs" means, collectively, the American Bottom Conservancy, Health and Environmental Justice - St. Louis, Inc., Illinois Stewardship Alliance, and the Prairie Rivers Network.

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

11. "Consent Decree" or "Decree" means this Consent Decree and the Appendix hereto, which is incorporated into this Consent Decree.

12. "Defendants" means Dynegy Midwest Generation, Inc. and Illinois Power Company.

13. "DMG" means Dynegy Midwest Generation, Inc.

14. "DMG System" means, solely for purposes of this Consent Decree, the following ten (10) listed coal-fired, electric steam generating Units (with the rated gross MW capacity of each Unit, reported to Mid-America Interconnected Network ("MAIN") in 2003, noted in parentheses), located at the following plants:

- Baldwin Generating Station in Baldwin, Illinois: Unit 1 (624 MW), 2 (629 MW), 3 (629 MW);

- Havana Generating Station in Havana, Illinois: Unit 6 (487 MW);
- Hennepin Generating Station in Hennepin, Illinois: Unit 1 (81 MW), Unit 2 (240 MW);
- Vermilion Generating Station in Oakwood, Illinois: Unit1 (84 MW), Unit 2 (113 MW);
- Wood River Generating Station in Alton, Illinois: Unit 4 (105 MW), Unit 5 (383 MW).

15. "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.

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

17. "ESP" means electrostatic precipitator, a pollution control device for the reduction of PM.

18. "Existing Units" means those Units included in the DMG System.

19. "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 sulfur dioxide.

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

21. "Illinois Environmental Protection Act" means the Illinois Environmental Protection Act, 415 ILCS 5/1 et. seq., and its implementing regulations.

22. "Illinois Power" means the Illinois Power Company.

23. "Improved Unit" means, in the case of NO_x, a DMG System Unit equipped with or scheduled under this Consent Decree to be equipped with an SCR, or, in the case of SO_2, a DMG System Unit scheduled under this Consent Decree to be equipped with an FGD (or equivalent SO_2 control technology approved pursuant to Paragraph 68). A Unit may be an Improved Unit for one pollutant without being an Improved Unit for the other. Any Other Unit can become an Improved Unit if (a) in the case of NO_x, it is equipped with an SCR (or equivalent NOx control technology approved pursuant to Paragraph 64) and has become subject to a federally enforceable 0.100 lb/mmBTU NO_x 30-Day Rolling Average Emission Rate, or (b) in the case of SO_2, it is equipped with an FGD (or equivalent SO_2 control technology approved pursuant to Paragraph 68) and has become subject to a federally enforceable 0.100 lb/mmBTU SO_2 30-Day Rolling Average Emission Rate, and (c) in the case of NO_x or SO_2, the requirement to achieve and maintain a 0.100 lb/mmBTU 30-Day Rolling Average Emission Rate is incorporated into the Title V Permit applicable to that Unit or, if no Title V Permit exists, a modification to this Consent Decree that is agreed to by the Plaintiffs and DMG and approved by this Court.

24. "lb/mmBTU" means one pound per million British thermal units.

25. "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.

26. "MW" means a megawatt or one million Watts.

27. "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.

28. "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, 40 C.F.R. Part 51.

29. "NO_x" means oxides of nitrogen.

30. "NO_x Allowance" means an authorization or credit 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.

31. "Operating Day" means any calendar day on which a Unit fires Fossil Fuel; provided, however, that exclusively for purposes of Paragraph 36, "Operating Day" means any calendar day on which both Baldwin Unit 1 and Baldwin Unit 2 fire Fossil Fuel.

32. "Other Unit" means any Unit of the DMG System that is not an Improved Unit for the pollutant in question.

33. "Ownership Interest" means part or all of DMG's legal or equitable ownership interest in any Unit in the DMG System.

34. "Parties" means the United States, the State of Illinois, the Citizen Plaintiffs, DMG, and Illinois Power.

35. "Plaintiffs" means the United States, the State of Illinois, and the Citizen Plaintiffs.

36. A "Plant-Wide 30-Day Rolling Average Emission Rate" shall be expressed as lb/mmBTU and calculated in accordance with the following procedure: first, sum the total

pounds of the pollutant in question emitted from all three Units at the Baldwin Plant during an Operating Day and the previous twenty-nine (29) Operating Days; second, sum the total heat input to all three Units at the Baldwin Plant 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 from all three Baldwin Units during the thirty (30) Operating Days by the total heat input to all three Baldwin Units during the thirty (30) Operating Days. A new Plant-Wide 30-Day Rolling Average Emission Rate shall be calculated for each new Operating Day. Each Plant-Wide 30-Day Rolling Average Emission Rate shall include all emissions that occur during all periods of startup, shutdown and Malfunction within an Operating Day. A Malfunction shall be excluded from this Emission Rate, however, if DMG satisfies the Force Majeure provisions of this Consent Decree.

37. A "Plant-Wide Annual Tonnage Emission Level" means, for the purposes of Section XI of this Decree, the number of tons of the pollutant in question that may be emitted from the plant at issue during the relevant calendar year (i.e., January 1 through December 31), and shall include all emissions of the pollutant emitted during periods of startup, shutdown, and Malfunction.

38. "Pollution Control Equipment Upgrade Analysis" means the technical study, analysis, review, and selection of control technology recommendations (including an emission rate or removal efficiency) required to be performed in connection with an application for a federal PSD permit, taking into account the characteristics of the existing facility. Except as otherwise provided in this Consent Decree, such study, analysis, review, and selection of recommendations shall be carried out in accordance with applicable federal and state regulations

and guidance describing the process and analysis for determining Best Available Control Technology (BACT), as that term is defined in 40 C.F.R. §52.21(b)(12), including, without limitation, the December 1, 1987 EPA Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, regarding Improving New Source Review (NSR) Implementation. Nothing in this Decree shall be construed either to: (a) alter the force and effect of statements known as or characterized as "guidance" or (b) permit the process or result of a "Pollution Control Equipment Upgrade Analysis" to be considered BACT for any purpose under the Act.

39. "PM Control Device" means any device, including an ESP or a Baghouse, that reduces emissions of particulate matter (PM).

40. "PM" means particulate matter.

41. "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.

42. "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, 40 C.F.R. Part 60, including Appendix A.

43. "Project Dollars" means DMG's 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 DMG's direct payments for

such projects, DMG's external costs for contractors, vendors, and equipment, or DMG's internal costs consisting of employee time, travel, or out-of-pocket expenses specifically attributable to these particular projects and documented in accordance with GAAP.

44. "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 40 C.F.R. Part 52.

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

46. "SO_2" means sulfur dioxide.

47. "SO_2 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."

48. "System-Wide Annual Tonnage Limitation" means the limitation on the number of tons of the pollutant in question that may be emitted from the DMG System during the relevant calendar year (i.e., January 1 through December 31), and shall include all emissions of the pollutant emitted during periods of startup, shutdown, and Malfunction.

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

50. "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. NO_x Emission Controls

51. Beginning 45 days after entry of this Consent Decree, and continuing thereafter, DMG shall commence operation of the SCRs installed at Baldwin Unit 1, Unit 2, and Havana Unit 6 so as to achieve and maintain a 30-Day Rolling Average Emission Rate from each such Unit of not greater than 0.100 lb/mmBTU NO_x.

52. Beginning 45 days after entry of this Consent Decree, and continuing thereafter, DMG shall achieve and maintain a Plant-Wide 30-Day Rolling Average Emission Rate of not greater than 0.100 lb/mmBTU NO_x at the Baldwin Plant.

53. Beginning 45 days after entry of this Consent Decree, and continuing thereafter, subject to paragraph 54 below, DMG shall achieve and maintain a 30-Day Rolling Average Emission Rate of not greater than 0.120 lb/mmBTU NO_x at Baldwin Unit 3.

54. Beginning on December 31, 2012, and continuing thereafter, DMG shall maintain a 30-Day Rolling Average Emission Rate of not greater than 0.100 lb/mmBTU NO_x at Baldwin Unit 3.

55. Beginning 30 days after entry of this Consent Decree, and continuing thereafter, DMG shall operate each SCR in the DMG System at all times when the Unit it serves is in operation, provided that such operation of the SCR is consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for the SCR. During any such period in which the SCR is not operational, DMG will minimize emissions to the extent reasonably practicable.

56. Beginning 45 days from entry of this Consent Decree, DMG shall operate low NO_x burners ("LNB") and/or Overfire Air Technology ("OFA") on the DMG System Units listed in the table below at all times that the Units are in operation, consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for the LNB and/or the Overfire Air Technology, so as to minimize emissions to the extent reasonably practicable.

DMG System Unit	**NOx Control Technology**
Baldwin Unit 1	OFA
Baldwin Unit 2	OFA
Baldwin Unit 3	LNB, OFA
Havana Unit 6	LNB, OFA
Hennepin Unit 1	LNB, OFA
Hennepin Unit 2	LNB, OFA
Vermilion Unit 2	LNB, OFA
Wood River Unit 4	LNB, OFA
Wood River Unit 5	LNB, OFA

B. System-Wide Annual Tonnage Limitations for NO_x

57. During each calendar year specified in the Table below, all Units in the DMG System, collectively, shall not emit NO_x in excess of the following System-Wide Annual Tonnage Limitations:

Applicable Calendar Year	System-Wide Annual Tonnage Limitations for NO_x
2005	15,000 tons
2006	14,000 tons
2007 and each year thereafter	13,800 tons

C. Use of NO_x Allowances

58. Except as provided in this Consent Decree, DMG shall not sell or trade any NO_x Allowances allocated to the DMG System that would otherwise be available for sale or trade as a result of the actions taken by DMG to comply with the requirements of this Consent Decree.

59. Except as may be necessary to comply with Section XIV (Stipulated Penalties), DMG may not use NO_x Allowances to comply with any requirement of this Consent Decree, including by claiming compliance with any emission limitation required by this Decree by using, tendering, or otherwise applying NO_x Allowances to offset any excess emissions (i.e., emissions above the limits specified in Paragraph 57).

60. NO_x Allowances allocated to the DMG System may be used by DMG only to meet its own federal and/or state Clean Air Act regulatory requirements, except as provided in Paragraph 61.

61. Provided that DMG is in compliance with the System-Wide Annual Tonnage Limitations for NO_x set forth in this Consent Decree, nothing in this Consent Decree shall preclude DMG from selling or transferring NO_x Allowances allocated to the DMG System that become available for sale or trade solely as a result of:

a. activities that reduced NO_x emissions at any Unit within the DMG System prior to the date of entry of this Consent Decree;

b. the installation and operation of any NO_x pollution control technology or technique that is not otherwise required by this Consent Decree; or

c. achievement and maintenance of NO_x emission rates below a 30-Day Rolling Average Emission Rate of 0.100 lb/mmBTU at Baldwin Units 1, 2 or 3, or at Havana Unit 6,

so long as DMG timely reports the generation of such surplus NO_x Allowances in accordance with Section XII (Periodic Reporting) of this Consent Decree. DMG shall be allowed to sell or transfer NO_x Allowances equal to the NO_x emissions reductions achieved for any given year by any of the actions specified in Subparagraphs 61.b or 61.c. only to the extent that, and in the amount that, the total NO_x emissions from all Units within the DMG System are below the System-Wide Annual Tonnage Limitation specified in Paragraph 57 for that year.

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

D. NO_x Provisions - Improving Other Units

63. Any Other Unit can become an Improved Unit for NO_x if (a) it is equipped with an SCR (or equivalent NOx control technology approved pursuant to Paragraph 64), and (b) has become subject to a federally enforceable 0.100 lb/mmBTU NO_x 30-Day Rolling Average Emission Rate.

64. With prior written notice to the Plaintiffs and written approval from EPA (after consultation with the State of Illinois and the Citizen Plaintiffs), an Other Unit in the DMG System may be considered an Improved Unit under this Consent Decree if DMG installs and

operates NO_x control technology, other than an SCR, that has been demonstrated to be capable of achieving and maintaining a 30-Day Rolling Average Emission Rate not greater than 0.100 lb/mmBTU NO_x and if such unit has become subject to a federally enforceable 0.100 lb/mmBTU NO_x 30-Day Rolling Average Emission Rate.

E. General NO_x Provisions

65. In determining Emission Rates for NO_x, DMG shall use CEMS in accordance with the reference methods specified in 40 C.F.R. Part 75.

V. SO_2 EMISSION REDUCTIONS AND CONTROLS

A. SO_2 Emission Limitations and Control Requirements

66. No later than the dates set forth in the Table below for each of the three Units at Baldwin and Havana Unit 6, and continuing thereafter, DMG shall not operate the specified Unit unless and until it has installed and commenced operation of, on a year-round basis, an FGD (or equivalent SO_2 control technology approved pursuant to Paragraph 68) on each such Unit, so as to achieve and maintain a 30-Day Rolling Average Emission Rate of not greater than 0.100 lb/mmBTU SO_2.

UNIT	**DATE**
First Baldwin Unit (i.e., any of the Baldwin Units 1, 2 or 3)	December 31, 2010
Second Baldwin Unit (i.e., either of the 2 remaining Baldwin Units)	December 31, 2011
Third Baldwin Unit (i.e., the remaining Baldwin Unit)	December 31, 2012
Havana Unit 6	December 31, 2012

67. Any FGD required to be installed under this Consent Decree may be a wet FGD or a dry FGD at DMG's option.

68. With prior written notice to the Plaintiffs and written approval from EPA (after consultation by EPA with the State of Illinois and the Citizen Plaintiffs), DMG may, in lieu of installing and operating an FGD at any of the Units specified in Paragraph 66, install and operate equivalent SO_2 control technology so long as such equivalent SO_2 control technology has been demonstrated to be capable of achieving and maintaining a 30-Day Rolling Average Emission Rate of not greater than 0.100 lb/mmBTU SO_2.

69. Beginning on the later of the date specified in Paragraph 66 or the first Operating Day of each Unit thereafter, and continuing thereafter, DMG shall operate each FGD (or equivalent SO_2 control technology approved pursuant to Paragraph 68) required by this Consent Decree at all times that the Unit it serves is in operation, provided that such operation of the FGD or equivalent technology is consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for the FGD or equivalent technology. During any such period in which the FGD or equivalent technology is not operational, DMG will minimize emissions to the extent reasonably practicable.

70. No later than 30 Operating Days after entry of this Consent Decree, and continuing thereafter, DMG shall operate Hennepin Units 1 and 2 and Wood River Units 4 and 5 so as to achieve and maintain a 30-Day Rolling Average Emission Rate from each of the stacks serving such Units of not greater than 1.200 lb/mmBtu SO_2.

71. DMG shall operate Vermilion Units 1 and 2 so that no later than 30 Operating Days after January 1, 2007, DMG shall achieve and maintain a 30-Day Rolling Average Emission Rate from the stack serving such Units of not greater than 1.200 lb/mmBtu SO_2.

72. No later than 30 Operating Days after entry of this Consent Decree and continuing until December 31, 2012, DMG shall operate Havana Unit 6 so as to achieve and maintain a 30-Day Rolling Average Emission Rate from the stack serving such Unit of not greater than 1.200 lb/mmBtu SO_2 .

B. System-Wide Annual Tonnage Limitations for SO_2

73. During each calendar year specified in the Table below, all Units in the DMG System, collectively, shall not emit SO_2 in excess of the following System-Wide Annual Tonnage Limitations:

Applicable Calendar Year	**System-Wide Annual Tonnage Limitations for SO_2**
2005	66,300 tons
2006	66,300 tons
2007	65,000 tons
2008	62,000 tons
2009	62,000 tons
2010	62,000 tons
2011	57,000 tons
2012	49,500 tons
2013 and each year thereafter	29,000 tons

74. Except as may be necessary to comply with Section XIV (Stipulated Penalties), DMG may not use SO_2 Allowances to comply with any requirement of this Consent Decree,

including by claiming compliance with any emission limitation required by this Decree by using, tendering, or otherwise applying SO_2 Allowances to offset any excess emissions (i.e., emissions above the limits specified in Paragraph 73).

C. Surrender of SO_2 Allowances

75. For each year specified below, DMG shall surrender to EPA, or transfer to a non-profit third party selected by DMG for surrender, SO_2 Allowances that have been allocated to DMG for the specified calendar year by the Administrator of EPA under the Act or by any State under its State Implementation Plan, in the amounts specified below, subject to Paragraph 76:

Calendar Year	**Amount**
2008	12,000 Allowances
2009	18,000 Allowances
2010	24,000 Allowances
2011, and each year thereafter	30,000 Allowances

DMG shall make the surrender of SO_2 Allowances required by this Paragraph by December 31 of each specified calendar year.

76. If the surrender of SO_2 allowances required by Paragraph 75 would result in an insufficient number of allowances being available from those allocated to the Units comprising the DMG System to meet the requirements of any Federal and/or State requirements for any DMG System unit, DMG must provide notice to the Plaintiffs of such insufficiency, including documentation of the number of SO_2 allowances so required and the Federal and/or State requirement involved. Unless EPA objects, in writing, to the amounts surrendered or to be

surrendered, the basis of the amounts surrendered or to be surrendered, or the adequacy of the documentation, DMG may reduce the number of SO_2 allowances to be surrendered under Paragraph 75 to the extent necessary to allow such DMG System Unit to satisfy the specified Federal and/or State requirement(s). If DMG has sold or traded SO_2 allowances allocated by the Administrator of EPA or a State for the year in which the surrender of allowances under Paragraph 75 would result in an insufficient number of allowances, all sold or traded allowances must be restored to DMG's account through DMG's purchase or transfer of allowances before DMG may reduce the surrender requirements of Paragraph 75 as described above.

77. Nothing in this Consent Decree is intended to preclude DMG from using SO_2 Allowances allocated to the DMG System by the Administrator of EPA under the Act, or by any State under its State Implementation Plan, to meet its own Federal and/or State Clean Air Act regulatory requirements for any Unit in the DMG System.

78. For purposes of this Subsection, the "surrender of allowances" means permanently surrendering allowances from the accounts administered by EPA for all Units in the DMG System, so that such allowances can never be used thereafter to meet any compliance requirement under the Clean Air Act, the Illinois State Implementation Plan, or this Consent Decree.

79. If any allowances required to be surrendered under this Consent Decree are transferred directly to a non-profit third party, DMG shall include a description of such transfer in the next report submitted to EPA pursuant to Section XII (Periodic Reporting) of this Consent Decree. Such report shall: (i) identify the non-profit third-party recipient(s) of the SO_2 Allowances and list the serial numbers of the transferred SO_2 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 SO_2 Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any SO_2 Allowances, DMG shall include a statement that the third-party recipient(s) surrendered the SO_2 Allowances for permanent surrender to EPA in accordance with the provisions of Paragraph 80 within one (1) year after DMG transferred the SO_2 Allowances to them. DMG shall not have complied with the SO_2 Allowance surrender requirements of this Paragraph until all third-party recipient(s) shall have actually surrendered the transferred SO_2 Allowances to EPA.

80. For all SO_2 Allowances surrendered to EPA, DMG or the third-party recipient(s) (as the case may be) shall first submit an SO_2 Allowance transfer request form to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such SO_2 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, DMG or the third-party recipient(s) shall irrevocably authorize the transfer of these SO_2 Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the SO_2 Allowances being surrendered.

81. The requirements in Paragraphs 75 and 76 of this Decree pertaining to DMG's surrender of SO_2 Allowances are permanent injunctions not subject to any termination provision of this Decree.

E. General SO_2 Provisions

82. In determining Emission Rates for SO_2, DMG shall use CEMS in accordance with those reference methods specified in 40 C.F.R. Part 75.

VI. PM EMISSION REDUCTIONS AND CONTROLS

A. Optimization of PM Emission Controls

83. Beginning ninety (90) days after entry of this Consent Decree, and continuing thereafter, DMG shall operate each PM Control Device on each Unit within the DMG System to maximize PM emission reductions at all times when the Unit is in operation, provided that such operation of the PM Control Device is consistent with the technological limitations, manufacturer's specifications and good engineering and maintenance practices for the PM Control Device. During any periods when any section or compartment of the PM control device is not operational, DMG will minimize emissions to the extent reasonably practicable. Specifically, DMG shall, at a minimum, to the extent reasonably practicable: (a) energize each section of the ESP for each unit, where applicable, operate each compartment of the Baghouse for each unit, where applicable (regardless of whether those actions are needed to comply with opacity limits), and repair any failed ESP section or Baghouse compartment 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, where applicable; (c) maintain and replace bags on each Baghouse as needed to maximize collection efficiency, where applicable; 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.

84. Within two hundred seventy (270) days after entry of this Consent Decree, for each DMG System Unit served by an ESP or Baghouse, DMG shall complete a PM emission control optimization study which shall recommend: the best available maintenance, repair, and operating practices and a schedule for implementation of such to optimize ESP or Baghouse availability and performance in accordance with manufacturers' specifications, the operational design of the Unit, and good engineering practices. DMG shall retain a qualified contractor to assist in the performance and completion of each study and shall implement the study's recommendations in accordance with the schedule provided for in the study, but in no event later than the next planned Unit outage or 180 days of completion of the optimization study, whichever is later. Thereafter, DMG shall maintain each ESP and Baghouse as required by the study's recommendations or other alternative actions as approved by EPA. These requirements of this Paragraph shall also apply, and these activities shall be repeated, whenever DMG makes a major change to a Unit's ESP, installs a new PM Control Device, or changes the fuel used by a Unit.

B. Installation of New PM Emission Controls

85. No later than the dates set forth in the Table below for Baldwin Units 1, 2 and 3 and Havana Unit 6, and continuing thereafter, DMG shall not operate the specified Unit unless and until it has installed and commenced operation of a Baghouse on each such Unit so as to achieve and maintain a PM emissions rate of not greater than 0.015 lb/mmBTU.

Unit	Date
First Baldwin Unit (i.e., any of Baldwin Units 1, 2 or 3)	December 31, 2010
Second Baldwin Unit (i.e., either of the 2 remaining Baldwin Units)	December 31, 2011
Third Baldwin Unit (i.e., the remaining Baldwin Unit)	December 31, 2012
Havana Unit 6	December 31, 2012

C. Upgrade of Existing PM Emission Controls

86. At each Unit listed below, no later than the dates specified, and continuing thereafter, DMG shall operate ESPs or alternative PM control equipment at the following Units to achieve and maintain a PM emissions rate of not greater than 0.030 lb/mmBTU:

Unit	Date
Havana Unit 6	December 31, 2005
1st Wood River Unit (i.e., either of Wood River Units 4 or 5)	December 31, 2005
1st Hennepin Unit (i.e., either of Hennepin Units 1 or 2)	December 31, 2006
2nd Wood River Unit (i.e., the remaining Wood River Unit)	December 31, 2007
2nd Hennepin Unit (i.e., the remaining Hennepin Unit)	December 31, 2010
1st Vermilion Unit (i.e., either of Vermilion Units 1 or 2)	December 31, 2010
2nd Vermilion Unit (i.e., the remaining Vermilion Unit)	December 31, 2010

In the alternative and in lieu of demonstrating compliance with the PM emission rate applicable under this Paragraph, DMG may elect to undertake an upgrade of the existing PM emissions control equipment for any such Unit based on a Pollution Control Equipment Upgrade Analysis for that Unit. The preparation, submission, and implementation of such Pollution Control Equipment Upgrade Analysis shall be undertaken and completed in accordance with the compliance schedules and procedures as specified in Paragraph 88.

87. DMG shall operate each ESP (on Units without a Baghouse) and each Baghouse in the DMG System at all times when the Unit it serves is in operation, provided that such operation of the ESP or Baghouse is consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for the ESP or Baghouse. During any such period in which the ESP or Baghouse is not operational, DMG will minimize emissions to the extent reasonably practicable. Notwithstanding the foregoing sentence, DMG shall not be required to operate an ESP on any Unit on which a Baghouse is installed and operating, unless DMG operated the ESP during the immediately preceding stack test required by Paragraph 89.

88. For each Unit in the DMG System for which DMG does not elect to meet a PM Emission Rate of 0.030 lb/mmBTU as required by Paragraph 86, DMG shall prepare, submit, and implement a Pollution Control Equipment Upgrade Analysis in accordance with this Paragraph. Such Pollution Control Equipment Upgrade Analysis shall include proposed upgrades to the Unit's existing PM Control Devices and a proposed alternate PM Emission Rate that the Unit shall meet upon completion of such upgrade. DMG shall deliver such Pollution Control Equipment Upgrade Analysis to EPA and the State of Illinois for approval pursuant to

Section XIII (Review and Approval of Submittals) of this Consent Decree at least 24 months prior to the deadlines set forth in Paragraph 86 for each such Unit, unless those deadlines are less than 24 months after the date of entry of this Decree. In those cases only, (a) the Analysis shall be delivered within 180 days of entry of this Decree, and (b) so long as DMG timely submits the Analysis, any deadline for implementing a PM Emission Control Equipment Upgrade may be extended in accordance with the provisions of subparagraph (c) below.

a. In conducting the Pollution Control Equipment Upgrade Analysis for any Unit, DMG shall consider all commercially available control technologies, except that DMG need not consider any of the following PM control measures:

   1. the complete replacement of the existing ESP with a new ESP, FGD, or Baghouse, or

   2. the upgrade of the existing ESP controls through the installation of any supplemental PM pollution control device if the costs of such upgrade are equal to or greater than the costs of a replacement ESP, FGD, or Baghouse (on a total dollar-per-ton-of-pollutant-removed basis).

b. With each Pollution Control Equipment Upgrade Analysis delivered to EPA and the State of Illinois, DMG shall simultaneously deliver all documents that were considered in preparing such Pollution Control Equipment Upgrade Analysis. DMG shall retain a qualified contractor to assist in the performance and completion of each Pollution Control Equipment Upgrade Analysis.

c. Beginning one (1) year after EPA and the State of Illinois approve the recommendation(s) made in a Pollution Control Equipment Upgrade Analysis for

a Unit, DMG shall not operate that Unit unless all equipment called for in the recommendation(s) of the Pollution Control Equipment Upgrade Analysis has been installed. An installation period longer than one year may be allowed if DMG makes such a request in the Pollution Control Equipment Upgrade Analysis and EPA and the State of Illinois determine such additional time is necessary due to factors including but not limited to the magnitude of the PM control project or the need to address reliability concerns that could result from multiple Unit outages within the DMG System. Upon installation of all equipment recommended under an approved Pollution Control Equipment Upgrade Analysis, DMG shall operate such equipment in compliance with the recommendation(s) of the approved Pollution Control Equipment Upgrade Analysis, including compliance with the PM Emission Rate specified by the recommendation(s).

D. PM Emissions Monitoring

1. PM Stack Tests.

89. Beginning in calendar year 2005, and continuing in each calendar year thereafter, DMG shall conduct a PM performance test on each DMG System Unit. The annual stack test requirement imposed on each DMG System Unit by this Paragraph may be satisfied by stack tests conducted by DMG as required by its permits from the State of Illinois for any year that such stack tests are required under the permits. DMG may perform testing every other year, rather than every year, provided that two of the most recently completed test results from tests conducted in accordance with the methods and procedures specified in Paragraph 90 demonstrate that the particulate matter emissions are equal to or less than 0.015 lb/mmBTU. DMG shall

perform testing every year, rather than every other year, beginning in the year immediately following any test result demonstrating that the particulate matter emissions are greater than 0.015 lb/mmBTU.

90. 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, or an alternative method that is promulgated by EPA, requested for use herein by DMG, and approved for use herein by EPA and the State of Illinois. 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. § 60.48a (b) and (e), or any federally approved method contained in the Illinois State Implementation Plan. DMG 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 and the State of Illinois within 45 days of completion of each test.

2. PM CEMS

91. DMG shall install and operate PM CEMS in accordance with Paragraphs 92 through 96. 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. DMG shall maintain, in an electronic database, the hourly average emission values produced by all PM CEMS in lb/mmBTU. DMG shall use reasonable efforts to keep each PM CEMS running and producing data whenever any Unit served by the PM CEMS is operating.

92. Within nine (9) months after entry of this Consent Decree, but in any case no later than June 30, 2006, DMG shall submit to EPA and the State of Illinois for review and

approval pursuant to Section XIII (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, DMG shall use the criteria set forth in EPA's Amendments to Standards of Performance for New Stationary Sources: Monitoring Requirements, 69 Fed. Reg. 1786 (January 12, 2004) ("P.S. 11"). EPA and the State of Illinois shall expeditiously review such submissions. Following approval by EPA and the State of Illinois of the protocol, DMG shall thereafter operate each PM CEMS in accordance with the approved protocol.

93. No later than the dates specified below, DMG shall install, certify, and operate PM CEMS on four (4) Units, stacks or common stacks in accordance with the following schedule:

STACK	**DATE TO COMMENCE OPERATION OF PM CEMS**
1st CEM on any DMG System Unit not scheduled to receive an FGD	December 31, 2006
2nd CEM on any DMG System Unit not scheduled to receive an FGD	December 31, 2007
3rd CEM on any DMG System Unit scheduled to receive an FGD	December 31, 2011
4th CEM on any DMG System Unit scheduled to receive an FGD	December 31, 2012

94. No later than ninety (90) days after DMG begins operation of the PM CEMS, DMG shall conduct tests of each PM CEMS to demonstrate compliance with the PM CEMS installation and certification plan submitted to and approved by EPA and the State of Illinois in accordance with Paragraph 92.

95. DMG shall operate the PM CEMS for at least two (2) years on each of the Units specified in Paragraph 93. After two (2) years of operation, DMG shall not be required to continue operating the PM CEMS on any such Units if EPA determines that operation of the PM CEMS is no longer feasible. 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) DMG demonstrates 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 DMG has demonstrated pursuant to this Paragraph that operation is no longer feasible, DMG shall be entitled to discontinue operation of and remove the PM CEMS.

3. PM Reporting

96. Following the installation of each PM CEMS, DMG shall begin and continue to report to EPA, the State of Illinois, and the Citizen Plaintiffs, pursuant to Section XII (Periodic Reporting), the data recorded by the PM CEMS, expressed in lb/mmBTU on a 3-hour rolling average basis in electronic format, as required by Paragraph 91.

E. General PM Provisions

97. Nothing in this Consent Decree is intended to, or shall, alter or waive any applicable law (including any defenses, entitlements, challenges, or clarifications related to the Credible Evidence Rule, 62 Fed. Reg. 8315 (Feb. 27, 1997)) concerning the use of data for any purpose under the Act.

VII. PROHIBITION ON NETTING CREDITS OR OFFSETS FROM REQUIRED CONTROLS

98. Emission reductions that result from actions to be taken by DMG after 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 under the Clean Air Act's Nonattainment NSR and PSD programs.

99. The limitations on the generation and use of netting credits or offsets set forth in the previous Paragraph 98 do not apply to emission reductions achieved by DMG System Units that are greater than those required under this Consent Decree. For purposes of this Paragraph, emission reductions from a DMG System Unit are greater than those required under this Consent Decree if, for example, they result from DMG compliance with federally enforceable emission limits that are more stringent than those limits imposed on DMG System Units under this Consent Decree and under applicable provisions of the Clean Air Act or the Illinois State Implementation Plan.

100. Nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by the State of Illinois 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

101. DMG shall implement the Environmental Mitigation Projects ("Projects") described in Appendix A to this Decree in compliance with the approved plans and schedules for such Projects and other terms of this Consent Decree. DMG shall submit plans for the Projects to the Plaintiffs for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree in accordance with the schedules set forth in Appendix A. In implementing the Projects, DMG shall spend no less than $15 million in Project Dollars on or before December 31, 2007. DMG shall maintain, and present to the Plaintiffs upon request, all documents to substantiate the Project Dollars expended and shall provide these documents to the Plaintiffs within thirty (30) days of a request by any of the Plaintiffs for the documents.

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

103. DMG shall certify, as part of each plan submitted to the Plaintiffs for any Project, that DMG is not otherwise required by law to perform the Project described in the plan, that DMG is unaware of any other person who is required by law to perform the Project, and that DMG 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.

104. DMG 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.

105. If DMG 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 DMG, but not including DMG'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 DMG contributes the funds. Regardless of whether DMG 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, DMG acknowledges that it will receive credit for the expenditure of such funds as Project Dollars only if DMG demonstrates that the funds have been actually spent by either DMG or by the person or instrumentality receiving them (or, in the case of internal costs, have actually been incurred by DMG), and that such expenditures met all requirements of this Consent Decree.

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

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

IX. CIVIL PENALTY

108. Within thirty (30) calendar days after entry of this Consent Decree, DMG shall pay to the United States a civil penalty in the amount of $9,000,000. 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 1999V00379 and DOJ Case Number 90-5-2-1-06837 and the civil action case name and case number of this action. The costs of such EFT shall be DMG's responsibility. Payment shall be made in accordance with instructions provided to DMG by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Illinois. Any funds received after 2:00 p.m. EDT shall be credited on the next business day. At the time of payment, DMG shall provide notice of payment, referencing the USAO File Number, the DOJ Case Number, and the civil action case name and case number, to the Department of Justice and to EPA in accordance with Section XIX (Notices) of this Consent Decree.

109. Failure to timely pay the civil penalty shall subject DMG 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 DMG 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.

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

X. RELEASE AND COVENANT NOT TO SUE FOR ILLINOIS POWER COMPANY

111. Upon entry of this Decree, each of the Plaintiffs hereby forever releases Illinois Power Company from, and covenants not to sue Illinois Power Company for, any and all civil claims, causes of action, and liability under the Clean Air Act and/or the Illinois Environmental Protection Act that such Plaintiffs could assert (whether such claims, causes of action, and liability are, were, or ever will be characterized as known or unknown, asserted or unasserted, liquidated or contingent, accrued or unaccrued), where such claims, causes of action, and liability are based on any modification, within the meaning of the Clean Air Act and/or the Illinois Environmental Protection Act, undertaken at any time before lodging of this Decree at any DMG System Unit, including and without limitation all such claims, causes of action, and liability asserted, or that could have been asserted, against Illinois Power Company by the United States, the State of Illinois and/or the Citizen Plaintiffs in the lawsuit styled United States of America, et al. v. Illinois Power Company and Dynegy Midwest Generation, Inc., Civil Action No. 99-833-MJR and all such civil claims, causes of action, and liability asserted or that could have been or could be asserted under any or all of the following statutory and/or regulatory provisions:

a. Parts C or D of Subchapter I of the Clean Air Act,

b. Section 111 of the Clean Air Act and 40 C.F.R. Section 60.14,

c. The federally approved and enforceable Illinois State Implementation Plan, but only insofar as such claims were alleged in the third amended complaint filed in the lawsuit so styled,

d. Sections 502(a) and 504(a) of the Clean Air Act, but only to the extent that such claims are based on Illinois Power's 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,

e. Sections 9 and 9.1 of the Illinois Environmental Protection Act, 415 ILCS 5/9 and 9.1, all applicable regulations promulgated thereunder, and all relevant prior versions of such statute and regulations, and

f. Section 39.5 of the Illinois Environmental Protection Act, 415 ILCS 5/39.5, and all applicable regulations promulgated thereunder, and all relevant prior versions of such statutes and regulations, but only to the extent that such claims are based on Illinois Power's failure to obtain an operating permit that reflects applicable requirements imposed under Sections 9 and 9.1 of the Illinois Environmental Protection Act, 415 ILCS 5/9 and 9.1,

where such claims, causes of actions and liability are based on any modification, within the meaning of the Clean Air Act and/or the Illinois Environmental Protection Act, undertaken at any time before lodging of this Decree at any DMG System Unit. As to Illinois Power Company, such resolved claims shall not be subject to the Bases for Pursuing Resolved Claims set forth in Section XI, Subsection B, of this Consent Decree.

112. In accordance with Paragraph 171 of this Decree, in the event that Illinois Power acquires an Ownership Interest in, or becomes an operator (as that term is used and interpreted under the Clean Air Act) of, any DMG System Unit, this release shall become void with respect

to the Unit(s) to which the Ownership Interest applies when and to the extent specified in Paragraph 171.

XI. RESOLUTION OF PLAINTIFFS' CIVIL CLAIMS AGAINST DMG

A. RESOLUTION OF PLAINTIFFS' CIVIL CLAIMS

113. Claims Based on Modifications Occurring Before the Lodging of Decree. Entry of this Decree shall resolve all civil claims of the Plaintiffs against DMG under any or all of:

a. Parts C or D of Subchapter I of the Clean Air Act,

b. Section 111 of the Clean Air Act and 40 C.F.R. Section 60.14,

c. The federally approved and enforceable Illinois State Implementation Plan, but only insofar as such claims were alleged in the third amended complaint filed in the lawsuit styled United States of America, et al. v. Illinois Power Company and Dynegy Midwest Generation, Inc., Civil Action No. 99-833-MJR,

d. Sections 502(a) and 504(a) of the Clean Air Act, but only to the extent that such claims are based on DMG's or Illinois Power's 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,

e. Sections 9 and 9.1 of the Illinois Environmental Protection Act, 415 ILCS 5/9 and 9.1, all applicable regulations promulgated thereunder, and all relevant prior versions of such statute and regulations, and

f. Section 39.5 of the Illinois Environmental Protection Act, 415 ILCS 5/39.5, and all applicable regulations promulgated thereunder, and all relevant prior versions

of such statutes and regulations, but only to the extent that such claims are based on Illinois Power's failure to obtain an operating permit that reflects applicable requirements imposed under Sections 9 and 9.1 of the Illinois Environmental Protection Act, 415 ILCS 5/9 and 9.1,

that arose from any modifications commenced at any DMG System Unit prior to the date of lodging of this Decree, including but not limited to those modifications alleged in the Complaints filed in this civil action.

114. Claims Based on Modifications After the Lodging of Decree.

As to DMG, entry of this Decree also shall resolve all civil claims of the Plaintiffs against DMG for pollutants 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 Decree, where such claims are based on a modification completed before December 31, 2015 and:

a. commenced at any DMG System unit after lodging of this Decree; or

b. that this Consent Decree expressly directs DMG to undertake.

The term "modification" as used in this Paragraph 114 shall have the meaning that term is given under the Clean Air Act and under the regulations promulgated thereunder as of July 31, 2003.

115. Reopeners. The Resolution of the Plaintiffs' Civil Claims against DMG, as provided by this Subsection A, is subject to the provisions of Subsection B of this Section.

B. PURSUIT OF PLAINTIFFS' CIVIL CLAIMS OTHERWISE RESOLVED

116. Bases for Pursuing Resolved Claims Across DMG System. If DMG violates System-Wide Annual Tonnage Limitations for NO_x required pursuant to Paragraph 57, the System-Wide Annual Tonnage Limitations for SO_2 required pursuant to Paragraph 73, or

operates a Unit more than ninety days past an installation date without completing the required installation or upgrade and commencing operation of any emission control device required pursuant to Paragraphs 51, 54, 66, or 85, then the Plaintiffs may pursue any claim at any DMG System Unit that is otherwise resolved under Subsection A (Resolution of Plaintiffs' Civil Claims), subject to (a) and (b) below.

a. For any claims based on modifications undertaken at an Other Unit (i.e., any Unit of the DMG 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 lodging of the Consent Decree and (2) within the five years preceding the violation or failure specified in this Paragraph.

117. Additional Bases for Pursuing Resolved Claims for Modifications at an Improved Unit. Solely with respect to Improved Units, the Plaintiffs may also pursue claims arising from a modification (or collection of modifications) at an Improved Unit that have otherwise been resolved under Subsection A (Resolution of Plaintiffs' Civil Claims), if the modification (or collection of modifications) at the Improved Unit on which such claims are based (a) was commenced after lodging of this Consent Decree, and (b) individually (or collectively) increased the maximum hourly emission rate of that Unit for NO_x or SO_2 (as measured by 40 C.F.R. § 60.14 (b) and (h)) by more than ten percent (10%).

118. Additional Bases for Pursuing Resolved Claims for Modifications at an Other Unit. a. Solely with respect to Other Units, the Plaintiffs may also pursue claims arising from a modification (or collection of modifications) at an Other Unit that have otherwise been resolved under Subsection A (Resolution of Plaintiffs' 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 lodging of this Consent Decree increases the maximum hourly emission rate for such Other Unit for the relevant pollutant (NO_x or SO_2) (as measured by 40 C.F.R. § 60.14(b) and (h));

2. the aggregate of all Capital Expenditures made at such Other Unit (a) exceed $150/KW on the Unit's Boiler Island (based on the generating capacities identified in Paragraph 14) during the period from the date of lodging of this Decree through December 31, 2010, provided that Capital Expenditures made solely for the conversion of Vermilion Units 1 and 2 to low sulfur coal through the earlier of entry of this Consent Decree or September 30, 2005, shall be excluded; or (b) exceed $125/KW on the Unit's Boiler Island (based on the generating capacities identified in Paragraph 14) during the period from January 1, 2011 through December 31, 2015. (Capital Expenditures shall be measured in calendar year 2004

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 lodging of this Consent Decree results in an emissions increase of NO_x and/or SO_2 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.

4. The introduction of any new or changed NAAQS shall not, standing alone, provide the showing needed under Paragraph 113, Subparagraphs (3)(ii) or (3)(iii), to pursue any claim for a modification at an Other Unit resolved under Subsection B of this Section.

b. Solely with respect to Other Units at the plants listed below, the Plaintiffs may also pursue claims arising from a modification (or collection of modifications) at such Other Unit commenced after lodging of this Consent Decree if such modification (or collection of modifications) results in an emissions increase of

NO_x and/or SO_2 at such Other Unit, and such increase causes the emissions at the Plant at issue to exceed the Plant-Wide Annual Tonnage Emission Levels listed below:

Unit	**SO_2 Tons Limit**	**NO_X Tons Limit**
Hennepin	9,050	2,650
Vermillion	17,370 (in 2005) 5,650 (in 2006 and thereafter)	3,360
Wood River	13,700	3,100

XII. PERIODIC REPORTING

119. Within one hundred eighty (180) days after each date established by this Consent Decree for DMG to achieve and maintain a certain PM Emission Rate at any DMG System Unit, DMG shall conduct a performance test for PM that demonstrates compliance with the Emission Rate required by this Consent Decree. Within forty-five (45) days of each such performance test, DMG shall submit the results of the performance test to EPA, the State of Illinois, and the Citizen Plaintiffs at the addresses specified in Section XIX (Notices) of this Consent Decree.

120. Beginning thirty (30) days after the end of the second full calendar quarter following the entry of this Consent Decree, and continuing on a semi-annual basis until December 31, 2015, and in addition to any other express reporting requirement in this Consent Decree, DMG shall submit to EPA, the State of Illinois, and the Citizen Plaintiffs a progress report.

121. The progress report shall contain the following information:

a. all information necessary to determine compliance with the requirements of the following Paragraphs of this Consent Decree: Paragraphs 51, 52, 53, 54, and 57 concerning NO_x emissions; Paragraphs 66, 70, 71, 72 and 73 concerning SO_2 emissions; Paragraphs 83, 84, 85, 86, 88 (if applicable), 89, 91, 93, and 94 concerning PM emissions;

b. documentation of any Capital Expenditures made, during the period covered by the progress report, solely for the conversion of Vermilion Units 1 and 2 to low sulfur coal, but excluded from the aggregate of Capital Expenditures pursuant to Paragraph 118(a)(2);

c. all information relating to emission allowances and credits that DMG claims to have generated in accordance with Paragraph 61 through compliance beyond the requirements of this Consent Decree; and

d. all information indicating that the installation and commencement of operation for a pollution control device may be delayed, including the nature and cause of the delay, and any steps taken by DMG to mitigate such delay.

122. In any periodic progress report submitted pursuant to this Section, DMG may incorporate by reference information previously submitted under its Title V permitting requirements, provided that DMG attaches the Title V permit report, or the relevant portion thereof, and provides a specific reference to the provisions of the Title V permit report that are responsive to the information required in the periodic progress report.

123. In addition to the progress reports required pursuant to this Section, DMG shall provide a written report to EPA, the State of Illinois, and the Citizen Plaintiffs of any violation of

the requirements of this Consent Decree within fifteen (15) calendar days of when DMG knew or should have known of any such violation. In this report, DMG shall explain the cause or causes of the violation and all measures taken or to be taken by DMG to prevent such violations in the future.

124. Each DMG report shall be signed by DMG's Vice President of Environmental Services or his or her equivalent or designee of at least the rank of Vice President, and shall contain the following certification:

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

125. If any SO_2 Allowances are surrendered to any third party pursuant to this Consent Decree, the third party's certification pursuant to Paragraph 79 shall be signed by a managing officer of the third party and shall contain the following language:

> I certify under penalty of law that,_____ [name of third party] will not sell, trade, or otherwise exchange any of the allowances and will not use any of the allowances to meet any obligation imposed by any environmental law. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

XIII. REVIEW AND APPROVAL OF SUBMITTALS

126. DMG shall submit each plan, report, or other submission required by this Decree to the Plaintiff(s) specified whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. The Plaintiff(s) to whom the report is submitted, as required, may approve the submittal or decline to approve it and provide written comments

explaining the bases for declining such approval. Such Plaintiff(s) will endeavor to coordinate their comments into one document when explaining their bases for declining such approval. Within sixty (60) days of receiving written comments from any of the Plaintiffs, DMG shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal to the Plaintiffs; or (b) submit the matter for dispute resolution, including the period of informal negotiations, under Section XVI (Dispute Resolution) of this Consent Decree.

127. Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, DMG shall implement the approved submittal in accordance with the schedule specified therein or another EPA-approved schedule.

XIV. STIPULATED PENALTIES

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

Consent Decree Violation	**Stipulated Penalty**
a. Failure to pay the civil penalty as specified in Section IX (Civil Penalty) of this Consent Decree	$10,000 per day
b. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO_x or SO_2 or Emission Rate for PM, where the violation is less than 5% in excess of the limits set forth in this Consent Decree	$2,500 per day per violation
c. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO_x or SO_2 or Emission Rate for PM, where the violation is equal to or greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree	$5,000 per day per violation

d. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO_x or SO_2 or Emission Rate for PM, where the violation is equal to or greater than 10% in excess of the limits set forth in this Consent Decree	$10,000 per day per violation
e. Failure to comply with the System-Wide Annual Tonnage Limits for SO_2, where the violation is less than 100 tons in excess of the limits set forth in this Consent Decree	$60,000 per calendar year, plus the surrender, pursuant to the procedures set forth in Paragraphs 79 and 80 of this Consent Decree, of SO_2 Allowances in an amount equal to two times the number of tons by which the limitation was exceeded
f. Failure to comply with the System-Wide Annual Tonnage Limits for SO_2, where the violation is equal to or greater than 100 tons in excess of the limits set forth in this Consent Decree	$120,000 per calendar year, plus the surrender, pursuant to the procedures set forth in Paragraphs 79 and 80 of this Consent Decree, of SO_2 Allowances in an amount equal to two times the number of tons by which the limitation was exceeded
g. Failure to comply with the System-Wide Annual Tonnage Limits for NO_x, where the violation is less than 100 tons in excess of the limits set forth in this Consent Decree	$60,000 per calendar year, plus the surrender of NO_x Allowances in an amount equal to two times the number of tons by which the limitation was exceeded
h. Failure to comply with the System-Wide Annual Tonnage Limits for NO_x, where the violation is equal to or greater than 100 tons in excess of the limits set forth in this Consent Decree	$120,000 per calendar year, plus the surrender of NO_x Allowances in an amount equal to two times the number of tons by which the limitation was exceeded
i. Operation of a Unit required under this Consent Decree to be equipped with any NO_x, SO_2, or PM control device without the operation of such device, as required under this Consent Decree	$10,000 per day per violation during the first 30 days, $27,500 per day per violation thereafter
j. Failure to install or operate CEMS as required in this Consent Decree	$1,000 per day per violation

k. Failure to conduct performance tests of PM emissions, as required in this Consent Decree	$1,000 per day per violation
l. Failure to apply for any permit required by Section XVII	$1,000 per day per violation
m. Failure to timely submit, modify, or implement, as approved, the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree	$750 per day per violation during the first ten days, $1,000 per day per violation thereafter
n. Using, selling or transferring NO_x Allowances except as permitted by Paragraphs 60 and 61	the surrender of NO_x Allowances in an amount equal to four times the number of NO_x Allowances used, sold, or transferred in violation of this Consent Decree
o. Failure to surrender SO_2 Allowances as required by Paragraph 75	(a) $27,500 per day plus (b) $1,000 per SO_2 Allowance not surrendered
p. Failure to demonstrate the third-party surrender of an SO_2 Allowance in accordance with Paragraph 79 and 80	$2,500 per day per violation
q. Failure to undertake and complete any of the Environmental Mitigation Projects in compliance with Section VIII (Environmental Mitigation Projects) of this Consent Decree	$1,000 per day per violation during the first 30 days, $5,000 per day per violation thereafter
r. Any other violation of this Consent Decree	$1,000 per day per violation

129. Violation of an Emission Rate that is based on a 30-Day Rolling Average is a violation on every day on which the average is based. Where a violation of a 30-Day Rolling Average Emission Rate (for the same pollutant and from the same source) recurs within periods of less than thirty (30) days, DMG shall not pay a daily stipulated penalty for any day of the recurrence for which a stipulated penalty has already been paid.

130. In any case in which the payment of a stipulated penalty includes the surrender of SO_2 Allowances, the provisions of Paragraph 76 shall not apply.

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

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

133. Stipulated penalties shall continue to accrue as provided in accordance with Paragraph 128 during any dispute, with interest on accrued stipulated penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement, or by a decision of Plaintiffs pursuant to Section XVI (Dispute Resolution) of this Consent Decree that is not appealed to the Court, accrued stipulated penalties agreed or determined to be owing, together with accrued interest, shall be paid within thirty (30) days of the effective date of the agreement or of the receipt of Plaintiffs' decision;

b. If the dispute is appealed to the Court and Plaintiffs prevail in whole or in part, DMG shall, within sixty (60) days of receipt of the Court's decision or order, pay

all accrued stipulated penalties determined by the Court to be owing, together with interest accrued on such penalties determined by the Court to be owing, except as provided in Subparagraph c, below;

c. If the Court's decision is appealed by any Party, DMG shall, within fifteen (15) days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined to be owing, together with interest accrued on such stipulated penalties determined to be owing by the appellate court.

Notwithstanding any other provision of this Consent Decree, the accrued stipulated penalties agreed by the Plaintiffs and DMG, or determined by the Plaintiffs through Dispute Resolution, to be owing may be less than the stipulated penalty amounts set forth in Paragraph 128.

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

135. Should DMG fail to pay stipulated penalties in compliance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961.

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

XV. FORCE MAJEURE

137. For purposes of this Consent Decree, a "Force Majeure Event" shall mean an event that has been or will be caused by circumstances beyond the control of DMG, its contractors, or any entity controlled by DMG that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite DMG's best efforts to fulfill the obligation. "Best efforts to fulfill the obligation" include using best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay or violation is minimized to the greatest extent possible.

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

139. Failure to Give Notice. If DMG fails to comply with the notice requirements of this Section, EPA (after consultation with the State of Illinois and the Citizen Plaintiffs) may void DMG's claim for Force Majeure as to the specific event for which DMG has failed to comply with such notice requirement.

140. Plaintiffs' Response. EPA shall notify DMG in writing regarding DMG's claim of Force Majeure within twenty (20) business days of receipt of the notice provided under Paragraph 138. If EPA (after consultation with the State of Illinois and the Citizen Plaintiffs) agrees that a delay in performance has been or will be caused by a Force Majeure Event, EPA and DMG shall stipulate to an extension of deadline(s) for performance of the affected compliance requirement(s) by a period equal to the delay actually caused by the event. In such circumstances, an appropriate modification shall be made pursuant to Section XXIII (Modification) of this Consent Decree.

141. Disagreement. If EPA (after consultation with the State of Illinois and the Citizen Plaintiffs) does not accept DMG's claim of Force Majeure, or if EPA and DMG cannot agree on the length of the delay actually caused by the Force Majeure Event, the matter shall be resolved in accordance with Section XVI (Dispute Resolution) of this Consent Decree.

142. Burden of Proof. In any dispute regarding Force Majeure, DMG shall bear the burden of proving that any delay in performance or any other violation of any requirement of this Consent Decree was caused by or will be caused by a Force Majeure Event. DMG shall also bear the burden of proving that DMG gave the notice required by this Section and the burden of proving the anticipated duration and extent of any delay(s) attributable to a Force Majeure Event.

An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.

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

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

145. As part of the resolution of any matter submitted to this Court under Section XVI (Dispute Resolution) of this Consent Decree regarding a claim of Force Majeure, the Plaintiffs

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

XVI. DISPUTE RESOLUTION

146. 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.

147. 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 fourteen (14) days following receipt of such notice.

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

149. If the disputing Parties are unable to reach agreement during the informal negotiation period, the Plaintiffs shall provide DMG with a written summary of their position regarding the dispute. The written position provided by Plaintiffs shall be considered binding unless, within forty-five (45) calendar days thereafter, DMG seeks judicial resolution of the dispute by filing a petition with this Court. The Plaintiffs may respond to the petition within forty-five (45) calendar days of filing. In their initial filings with the Court under this Paragraph, the disputing Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

150. 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.

151. This 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.

152. As part of the resolution of any dispute under this Section, in appropriate circumstances the disputing Parties may agree, or this Court may order, an extension or modification of the schedule for the completion of the activities required under this Consent Decree to account for the delay that occurred as a result of dispute resolution. DMG shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with

the extended or modified schedule, provided that DMG shall 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.

153. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their initial filings with the Court under Paragraph 149, the disputing Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

XVII. PERMITS

154. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires DMG 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, DMG shall make such application in a timely manner. EPA and the State of Illinois shall use their best efforts to review expeditiously all permit applications submitted by DMG to meet the requirements of this Consent Decree.

155. Notwithstanding the previous Paragraph, nothing in this Consent Decree shall be construed to require DMG to apply for or obtain a PSD or Nonattainment NSR permit for physical changes in, or changes in the method of operation of, any DMG System Unit that would give rise to claims resolved by Section XI. A. (Resolution of Plaintiffs' Civil Claims) of this Consent Decree.

156. When permits are required as described in Paragraph 154, DMG 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 DMG to submit a timely permit application for any Unit in the DMG System shall bar any use by DMG of Section XV (Force Majeure) of this Consent Decree, where a Force Majeure claim is based on permitting delays.

157. Notwithstanding the reference to Title V permits in this Consent Decree, the enforcement of such permits shall be in accordance with their own terms and the Act. The Title V permits shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of a Title V permit, subject to the terms of Section XXVII (Conditional Termination of Enforcement Under Decree) of this Consent Decree.

158. Within one hundred eighty (180) days after entry of this Consent Decree, DMG shall amend any applicable Title V permit application, or apply for amendments of its Title V permits, to include a schedule for all Unit-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, required emission rates and the requirement in Paragraph 75 pertaining to the surrender of SO_2 Allowances.

159. Within one (1) year from the commencement of operation of each pollution control device to be installed, upgraded, or operated under this Consent Decree, DMG shall apply to amend its Title V permit for the generating plant where such device is installed to reflect all new requirements applicable to that plant, including, but not limited to, any applicable 30-Day Rolling Average Emission Rate.

160. Prior to January 1, 2015, DMG shall either: (a) apply to amend the Title V permit for each plant in the DMG System to include a provision, which shall be identical for each Title V permit, that contains the allowance surrender requirements and the System-Wide Annual Tonnage Limitations set forth in this Consent Decree; or (b) apply for amendments to the Illinois State Implementation Plan to include such requirements and limitations therein.

161. DMG shall provide the Plaintiffs with a copy of each application to amend its Title V permit for a plant within the DMG System, 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.

162. If DMG sells or transfers to an entity unrelated to DMG ("Third Party Purchaser") part or all of its Ownership Interest in a Unit in the DMG System, DMG shall comply with the requirements of Section XX (Sales or Transfers of Ownership Interests) with regard to that Unit prior to any such sale or transfer unless, following any such sale or transfer, DMG remains the holder of the Title V permit for such facility.

XVIII. INFORMATION COLLECTION AND RETENTION

163. Any authorized representative of the United States or the State of Illinois, including their attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the premises of any facility in the DMG System at any reasonable time for the purpose of:

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

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

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

d. assessing DMG's compliance with this Consent Decree.

164. DMG shall retain, and instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records and documents in electronic form) now in its or its contractors' or agents' possession or control, and that directly relate to DMG's performance of its obligations under this Consent Decree for the following periods: (a) until December 31, 2020 for records concerning physical or operational changes undertaken in accordance with Paragraph 114; and (b) until December 31, 2017 for all other records. This record retention requirement shall apply regardless of any corporate document retention policy to the contrary.

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

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

XIX. NOTICES

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

As to the United States of America:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
DJ# 90-5-2-1-06837

and

Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building [2242A]
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

and

Regional Administrator
U.S. EPA- Region 5
77 W. Jackson St.
Chicago, IL 60604

and

George Czerniak, Chief, AECAB
U.S. EPA- Region 5
77 W. Jackson St. - AE-17J
Chicago, IL 60604

As to the State of Illinois:

Bureau Chief
Bureau of Air

Illinois Environmental Protection Agency
1021 North Grand Avenue East, P.O. Box 19276
Springfield, Illinois 62794-9276

and

Bureau Chief
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

As to the Citizen Plaintiffs:

Executive Director
Environmental Law and Policy Center of the Midwest
35 East Wacker Dr. Suite 1300
Chicago, Illinois 60601-2110

As to DMG:

Vice President, Environmental Health & Safety
Dynegy Midwest Generation, Inc.
2828 North Monroe Street
Decatur, Illinois 62526

and

Executive Vice President and General Counsel
Dynegy Inc.
1000 Louisiana Street, Suite 5800
Houston, Texas 77002

As to Illinois Power Company:

Senior Vice President, General Counsel, and Secretary
Illinois Power Company
One Ameren Plaza
1901 Chouteau Avenue
St. Louis, Missouri 63166

168. 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.

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

XX. SALES OR TRANSFERS OF OWNERSHIP INTERESTS

170. If DMG proposes to sell or transfer an Ownership Interest to an entity unrelated to DMG ("Third Party Purchaser"), it 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 Plaintiffs pursuant to Section XIX (Notices) of this Consent Decree at least sixty (60) days before such proposed sale or transfer.

171. No sale or transfer of an Ownership Interest shall take place before the Third Party Purchaser and EPA have executed, and the Court has approved, a modification pursuant to Section XXIII (Modification) of this Consent Decree making the Third Party Purchaser a party to this Consent Decree and jointly and severally liable with DMG for all the requirements of this Decree that may be applicable to the transferred or purchased Ownership Interests. Should Illinois Power (or any successor thereof) become a Third Party Purchaser or an operator (as the term "operator" is used and interpreted under the Clean Air Act) of any DMG System Unit, then

the provisions in Section X of this Consent Decree (Release and Covenant Not to Sue for Illinois Power Company) that apply to Illinois Power shall no longer apply as to the DMG System Unit(s) associated with the transfer, and instead, the Resolution of Plaintiffs' Civil Claims provisions in Section XI that apply to DMG shall apply to Illinois Power with respect to such transferred Unit(s), and such changes shall be reflected in the modification to the Decree reflecting the sale or transfer of an Ownership Interest contemplated by this Paragraph.

172. This Consent Decree shall not be construed to impede the transfer of any Ownership Interests between DMG 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 DMG and any Third Party Purchaser of Ownership Interests – of the burdens of compliance with this Decree, provided that both DMG and such Third Party Purchaser shall remain jointly and severally liable to EPA for the obligations of the Decree applicable to the transferred or purchased Ownership Interests.

173. If EPA agrees, EPA, DMG, and the Third Party Purchaser that has become a party to this Consent Decree pursuant to Paragraph 171, may execute a modification that relieves DMG 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 Ownership Interests. Notwithstanding the foregoing, however, DMG may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Ownership Interests, including the obligations set forth in Sections VIII (Environmental Mitigation Projects) and IX (Civil Penalty). DMG may propose and the EPA 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 Ownership Interests, to the extent such obligations may be adequately separated in an enforceable manner.

174. Paragraphs 170 and 171 of this Consent Decree do not apply if an Ownership Interest is sold or transferred solely as collateral security in order to consummate a financing arrangement (not including a sale-leaseback), so long as DMG: a) remains the operator (as that term is used and interpreted under the Clean Air Act) of the subject DMG System Unit(s); b) remains subject to and liable for all obligations and liabilities of this Consent Decree; and c) supplies Plaintiffs with the following certification within 30 days of the sale or transfer:

> "Certification of Change in Ownership Interest Solely for Purpose of Consummating Financing. We, the Chief Executive Officer and General Counsel of Dynegy Midwest Generation, hereby jointly certify under Title 18 U.S.C. Section 1001, on our own behalf and on behalf of Dynegy Midwest Generation ("DMG"), that any change in DMG's Ownership Interest in any Unit that is caused by the sale or transfer as collateral security of such Ownership Interest in such Unit(s) pursuant to the financing agreement consummated on [insert applicable date] between DMG and [insert applicable entity]: a) is made solely for the purpose of providing collateral security in order to consummate a financing arrangement; b) does not impair DMG's ability, legally or otherwise, to comply timely with all terms and provisions of the Consent Decree entered in *United States of America, et al. v. Illinois Power Company and Dynegy Midwest Generation, Inc.*, Civil Action No. 99-833-MJR; c) does not affect DMG's operational control of any Unit covered by that Consent Decree in a manner that is inconsistent with DMG's performance of its obligations under the Consent Decree; and d) in no way affects the status of DMG's obligations or liabilities under that Consent Decree."

XXI. EFFECTIVE DATE

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

XXII. RETENTION OF JURISDICTION

176. 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.

XXIII. MODIFICATION

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

XXIV. GENERAL PROVISIONS

178. 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. The emission rates set forth herein do not relieve the Defendants from any obligation to comply with other state and federal requirements under the Clean Air Act, including the Defendants' obligation to satisfy any state modeling requirements set forth in the Illinois State Implementation Plan.

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

180. In any subsequent administrative or judicial action initiated by any of the Plaintiffs for injunctive relief or civil penalties relating to the facilities covered by this Consent

Decree, the Defendants shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, or claim splitting, or any other defense based upon the contention that the claims raised by any of the Plaintiffs in the subsequent proceeding were brought, or should have been brought, in the instant case; provided, however, that nothing in this Paragraph is intended to affect the validity of Sections X (Release and Covenant Not to Sue for Illinois Power Company) and XI (Resolution of Plaintiffs' Civil Claims Against DMG).

181. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve the Defendants of their obligation to comply with all applicable federal, state, and local laws and regulations. Subject to the provisions in Sections X (Release and Covenant Not to Sue for Illinois Power Company) and XI (Resolution of Plaintiffs' Civil Claims Against DMG), nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the Plaintiffs to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits.

182. 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 Decree, every other term used in this Decree that is also a term under the Act or the regulations implementing the Act shall mean in this Decree what such term means under the Act or those implementing regulations.

183. Nothing in this Consent Decree is intended to, or shall, alter or waive any applicable law (including but not limited to any defenses, entitlements, challenges, or

clarifications related to the Credible Evidence Rule, 62 Fed. Reg. 8314 (Feb. 24, 1997)) concerning the use of data for any purpose under the Act.

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

185. Performance standards, emissions limits, and other quantitative standards set by or under this Consent Decree must be met to the number of significant digits in which the standard or limit is expressed. For example, an Emission Rate of 0.100 is not met if the actual Emission Rate is 0.101. DMG shall round the fourth significant digit to the nearest third significant digit, or the third significant digit to the nearest second significant digit, depending upon whether the limit is expressed to three or two significant digits. For example, if an actual Emission Rate is 0.1004, that shall be reported as 0.100, and shall be in compliance with an Emission Rate of 0.100, and if an actual Emission Rate is 0.1005, that shall be reported as 0.101, and shall not be in compliance with an Emission Rate of 0.100. DMG shall report data to the number of significant digits in which the standard or limit is expressed.

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

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

188. Each Party to this action shall bear its own costs and attorneys' fees.

XXV. SIGNATORIES AND SERVICE

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

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

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

XXVI. PUBLIC COMMENT

192. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. The Defendants shall not oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified the Defendants, in writing, that the United States no longer supports entry of the Consent Decree.

XXVII. CONDITIONAL TERMINATION OF ENFORCEMENT UNDER DECREE

193. Termination as to Completed Tasks. As soon as DMG completes a construction project or any other requirement of this Consent Decree that is not ongoing or recurring, DMG may, by motion to this Court, seek termination of the provision or provisions of this Consent Decree that imposed the requirement.

194. Conditional Termination of Enforcement Through the Consent Decree. After DMG:

a. has successfully completed construction, and has maintained operation, of all pollution controls as required by this Consent Decree;

b. has obtained final Title V permits (i) as required by the terms of this Consent Decree; (ii) that cover all units in this Consent Decree; and (iii) that include as enforceable permit terms all of the Unit performance and other requirements specified in Section XVII (Permits) of this Consent Decree; and

c. certifies that the date is later than December 31, 2015;

then DMG may so certify these facts to the Plaintiffs and this Court. If the Plaintiffs do not object in writing with specific reasons within forty-five (45) days of receipt of DMG's certification, then, for any Consent Decree violations that occur after the filing of notice, the Plaintiffs shall pursue enforcement of the requirements contained in the Title V permit through the applicable Title V permit and not through this Consent Decree.

195. Resort to Enforcement under this Consent Decree. Notwithstanding Paragraph 194, if enforcement of a provision in this Decree cannot be pursued by a party under the

applicable Title V permit, or if a Decree requirement was intended to be part of a Title V Permit and did not become or remain part of such permit, then such requirement may be enforced under the terms of this Decree at any time.

XXVIII. FINAL JUDGMENT

196. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment among the Plaintiffs, DMG, and Illinois Power.

SO ORDERED, THIS _____ DAY OF _____, 200_.

_____
HONORABLE MICHAEL J. REAGAN
UNITED STATES DISTRICT COURT JUDGE

Signature Page for Consent Decree in:

United States of America
v.
Illinois Power and Dynegy Midwest Generation Inc.

FOR THE UNITED STATES OF AMERICA:

_____
THOMAS L. SANSONETTI
Assistant Attorney General
Environmental and Natural Resources Division
United States Department of Justice

_____
Nicole Veilleux
Trial Attorney
Environmental Enforcement Section
Environmental and Natural Resources Division
United States Department of Justice

_____
William Coonan
Assistant United States Attorney
Southern District of Illinois
United States Department of Justice

Signature Page for Consent Decree in:

United States of America
v.
Illinois Power Company and Dynegy Midwest Generation Inc.

_____

THOMAS V. SKINNER
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

_____

ADAM M. KUSHNER
Acting Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

_____

Edward J. Messina
Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Signature Page for Consent Decree in:

United States of America
v.
Illinois Power Company and Dynegy Midwest Generation Inc.

_____
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

_____
Mark Palermo
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5

Signature Page for Consent Decree in:

United States of America
v.
Illinois Power Company and Dynegy Midwest Generation Inc.

FOR THE STATE OF ILLINOIS
PEOPLE OF THE STATE OF ILLINOIS ex rel:

LISA MADIGAN
Attorney General of the State of Illinois

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

_____

by: Thomas Davis, Chief
Environmental Bureau
Assistant Attorney General

Signature Page for Consent Decree in:

United States of America
v.
Illinois Power Company and Dynegy Midwest Generation Inc.

FOR CITIZEN PLAINTIFFS:

_____
Albert Ettinger
Senior Staff Attorney
Environmental Law and Policy Center of the Midwest

Signature Page for Consent Decree in:

United States of America
v.
Illinois Power Company and Dynegy Midwest Generation Inc.

FOR DYNEGY MIDWEST GENERATION:

_____
Alec G. Dreyer
President
Dynegy Midwest Generation, Inc.

Signature Page for Consent Decree in:

United States of America
v.
Illinois Power Company and Dynegy Midwest Generation Inc.

FOR ILLINOIS POWER COMPANY:

_____
Steven R. Sullivan
Senior Vice President, General Counsel and Secretary
Illinois Power Company

APPENDIX A - MITIGATION PROJECTS REQUIREMENTS

In compliance with and in addition to the requirements in Section VIII of the Consent Decree, DMG shall comply with the requirements of this Appendix to ensure that the benefits of the environmental mitigation projects are achieved.

I. Advanced Truck Stop Electrification Project

A. Within one hundred thirty five (135) days after entry of this Consent Decree, DMG shall submit a plan to the Plaintiffs for review and approval for the completion of the installation of Advanced Truck Stop Electrification, preferably at State of Illinois owned rest areas along Illinois interstate highways in the St. Louis Metro East area (comprised of Madison, St. Clair and Monroe Counties in Illinois) or as nearby as possible. Long-haul truck drivers typically idle their engines at night at rest areas to supply heat or cooling in their sleeper cab compartments, and to maintain vehicle battery charge while electrical appliances such as TVs, computers and microwaves are in use. Modifications to rest areas to provide parking spaces with electrical power, heat and air conditioning will allow truck drivers to turn their engines off. Truck driver utilization of the Advanced Truck Stop Electrification will result in reduced idling time and therefore reduced fuel usage, reduced emissions of PM, NOx, VOCs and toxics, and reduced noise. This Project shall include, where necessary, techniques and infrastructure needed to support such project. DMG shall spend no less than $1.5 million in Project Dollars in performing this Advanced Truck Stop Electrification Project.

B. The proposed plan shall satisfy the following criteria:

1. Describe how the work or project to be performed is consistent with requirements of Section I. A., above.
2. Involve rest areas located in areas that are either in the St. Louis Metro East area (comprised of Madison, St. Clair and Monroe Counties in Illinois) or as nearby as reasonably possible.
3. Provide for the construction of Advanced Truck Stop Electrification stations with established technologies and equipment designed to reduce emissions of particulates and/or ozone precursors.
4. Account for hardware procurement and installation costs at the recipient truck stops.
5. Include a schedule for completing each portion of the project.
6. Describe generally the expected environmental benefits of the project.
7. DMG shall not profit from this project for the first five years of implementation.

C. Performance - Upon approval of plan by the Plaintiffs, DMG shall complete the mitigation project according to the approved plan and schedule, but no later than December 31, 2007.

II. Middle Fork/Vermilion Land Donation

A. Within sixty (60) days after entry of the Consent Decree, DMG shall submit a plan to the Plaintiffs for review and approval for the transfer of ownership to the State of Illinois Department of Natural Resources (IDNR), of an approximately 1135 acre parcel of land along the Middle Fork Vermilion River in Vermilion County identified as the Middle Fork/Vermilion ("Property"). The value of the Property to be donated can be fairly valued at $2.25 million. Accordingly, DMG's full and final transfer of the Property in accordance with the plan shall satisfy its requirement to spend at least $2.25 million Project Dollars to implement this project.

B. The proposed plan shall satisfy the following criteria:

1. Describe how the work or project to be performed is consistent with requirements of Section II. A., above.
2. This project entails the donation of the entire parcel of land owned by DMG (an approximately 1135 acre parcel of land) as of lodging of the Consent Decree along the East side of the Middle Fork Vermilion River in Vermilion County. The Property is located between Kickapoo State Park and the Middle Fork State Fish and Wildlife Area and Kennekuk County Park on the East side of the Middle Fork of the Vermilion River. Ownership of the Property and management of the natural resources thereon shall be transferred to IDNR so as to ensure the continued preservation and public use of the Property.
3. The plan shall include DMG's agreement to convey to IDNR, the Property, the Ancillary Structures and the Personal Property, if any, to the extent located on the Property, and to the extent owned by DMG. The plan shall include steps for resolution of all past liens, payment of all outstanding taxes, title transfer, and other such information as would be necessary to convey the Property to IDNR. In all other respects, the Property will be conveyed subject to the easements, rights-of-way and similar rights of third parties existing as of the date of the conveyance.
4. DMG shall retain its existing right to take and use the water from a stripmine lake located in the NW ¼ of Section 28, T-20_N, R-12-W, 3 P.M. and in the NE ¼ of Section 29, T-20_N, R-12-W, 3rd P.M. of Vermillion County, and an easement to access this water and to provide electrical power to pump the water.
5. DMG agrees to furnish to IDNR a current Alta/ACSM Land Title Survey of the Property prepared and certified by an Illinois registered land surveyor.
6. Describe generally the expected environmental benefit for the project.

C. Performance - Upon approval of plan by the Plaintiffs, DMG shall complete the mitigation project according to the approved plan and schedule, and convey such Property prior to the date 180 days from entry of this Consent Decree or June 30, 2006, whichever is earlier.

III. Metro East Land Acquisition and Preservation and Illinois River Projects

A. Within sixty (60) days after entry of the Consent Decree, and following consultation with Plaintiffs, including on behalf of the State of Illinois, the Illinois Department of Natural Resources, DMG shall submit a plan to the Plaintiffs for review and approval for the transfer of $2.75 million to the Illinois Conservation Foundation, 20 ILCS 880/15 (2004). The funds transferred by DMG to the Illinois Conservation Foundation shall be used for the express purpose of acquiring natural lands and habitat in the St Louis Metro East area, for acquiring and/or restoring endangered habitat along the Illinois River, and for future funding of the Illinois River Sediment Removal and Beneficial Reuse Initiative, administered by the Waste Management Resource Center of IDNR. In addition, to the extent possible, the funding shall be utilized to enhance existing wetlands and create new wetlands restoration projects at sites along the Illinois River between DMG's Havana Station and the Hennepin Station, and provide for public use of acquired areas in a manner consistent with the ecology and historic uses of the area. Further, to the extent possible, the funding shall enable the removal and transport of high quality soil sediments from the Illinois River bottom to end users, including State fish and wildlife areas, a local environmental remediation project, and other projects deemed beneficial by plaintiffs. Any properties acquired through funding of this project shall be placed in the permanent ownership of the State of Illinois and preserved for public use by IDNR.

B. The proposed plan shall satisfy the following criteria:

1. Describe how the work or project to be performed is consistent with requirements of Section III. A., above.
2. Include a schedule for completing the funding of each portion of the project.
3. Describe generally the expected environmental benefit for the project.

C. Performance - Upon approval of plan by the Plaintiffs, DMG shall complete the mitigation project according to the approved plan and schedule, but no later than December 31, 2007.

IV. Vermilion Power Station Mercury Control Project

A. Within sixty (60) days of entry of the Consent Decree, DMG shall submit a plan to the Plaintiffs for review and approval for the performance of the Vermilion Power Station Mercury Control Project. The project will result in the installation of a baghouse, along with a sorbent injection system, to control mercury emissions from Vermilion Units 1 and 2, with a goal of achieving 90% mercury reduction. For purposes of the Consent Decree, of the approximately $26.0 million expected capital cost for construction and installation of the baghouse with a sorbent injection system, DMG shall be deemed to have expended $7.5 million Project Dollars upon commencement of operation of this control technology, provided that DMG continues to operate the control technology for five (5) years and surrenders any mercury allowances and/or mercury reduction credits, as applicable, during the five (5) year period. DMG shall complete

construction and installation of the baghouse with a sorbent injection system, and commence operation of such control device, no later than June 30, 2007.

B. The proposed plan shall satisfy the following criteria:

1. Describe how the work or project to be performed is consistent with requirements of Section IV. A., above.
2. Include a general schedule and budget for completion of the construction of the baghouse and sorbent injection system, along with a plan for the submittal of periodic reports to the Plaintiffs on the progress of the work through completion of the construction and the commencement of operation of the baghouse and sorbent injection system.
3. The sorbent injection system shall be designed to inject sufficient amounts of sorbent to collect (and remove) mercury emissions from the coal-fired boilers and to promote the goal of achieving a total mercury reduction of 90%.
4. DMG shall not be permitted to benefit, under any federal or state mercury cap and trade program, from the operation of this project before June 30, 2012 (if such a cap and trade system is legally in effect at that time). Specifically, DMG shall not be permitted to sell, or use within its system, any mercury allowances and/or mercury reduction credits earned through resulting mercury reductions under any Mercury MACT rule or other state or federal mercury credit/allowance trading program, through June 30, 2012.
5. From July 1, 2007 through June 30, 2012, DMG shall surrender to EPA any and all mercury credits/allowances obtained through mercury reductions resulting from this project.
6. DMG shall provide the Plaintiffs, upon completion of the construction and continuing for five (5) years thereafter, with semi-annual updates documenting: a) the mercury reduction achieved, including summaries of all mercury testing and any available continuous emissions monitoring data; and b) any mercury allowances and/or mercury reduction credits earned through resulting mercury reductions under any Mercury MACT rule or other state or federal mercury credit/allowance trading program, and surrender thereof. DMG also shall make such semi-annual updates concerning the performance of the project available to the public. Such information disclosure shall include, but not be limited to, release of semi-annual progress reports clearly identifying demonstrated removal efficiencies of mercury, sorbent injection rates, and cost effectiveness.
7. Describe generally the expected environmental benefit for the project.

C. Performance - Upon approval of plan by the Plaintiffs, DMG shall complete the mitigation project according to the approved plan and schedule.

V. Municipal and Educational Building Energy Conservation & Energy Efficiency Projects

A. Within one hundred thirty five (135) days after entry of the Consent Decree, DMG shall submit a plan to Plaintiffs for review and approval for the completion of the Municipal and Educational Building Energy Conservation & Energy Efficiency Projects, as described herein. DMG shall spend no less than $1.0 million Project Dollars for the purchase and installation of environmentally beneficial energy technologies for municipal and public educational buildings in the Metro East area or the City of St. Louis.

B. The proposed plan shall satisfy the following criteria:

1. Describe how the work or project to be performed is consistent with requirements of Section V. A., above.
2. Include a general schedule and budget (for $1.0 million) for completion of the projects.
3. Describe generally the expected environmental benefit for the project.

C. Performance - Upon approval of plan by the Plaintiffs, DMG shall complete the mitigation project according to the approved plan and schedule, but no later than December 31, 2007.

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE STATE OF ILLINOIS, AMERICAN BOTTOM CONSERVANCY, HEALTH AND ENVIRONMENTAL JUSTICE-ST. LOUIS, INC., ILLINOIS STEWARDSHIP ALLIANCE and PRAIRIE RIVERS NETWORK,	)	
	)	
Plaintiff-Intervenors,	)	
	)	
v.	)	**3:99-cv-833-MJR**
	)	
ILLINOIS POWER COMPANY and DYNEGY MIDWEST GENERATION, INC.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

REAGAN, District Judge

Before the Court is United States' Motion for Entry of Consent Decree (Doc. 687), filed April 27, 2005. Plaintiff United States moves the Court to enter the Consent Decree lodged in this action on March 7, 2005 (Doc. 684). A hearing was held on this matter on May 26, 2005, at which Plaintiff, United States of America, Plaintiff-Intervenors, State of Illinois, American Bottom Conservancy, Health and Environmental Justice-St. Louis, Inc., Illinois Stewardship Alliance and Prairie Rivers Network (collectively, "the environmental groups") and Defendants Illinois Power Company and Dynegy Midwest Generation, Inc., (collectively, "DMG") were heard.

The Consent Decree resolves the claims of Plaintiff and of Plaintiff-Intervenors

against Defendants for Defendants' alleged past violations at the Baldwin Generating Station in Baldwin, Randolph County, Illinois, of the Prevention of Significant Deterioration provisions in Part C of Subchapter I of the Clean Air Act ("the Act"), **42 U.S.C. §§ 7470-7492**; of the federally enforceable State Implementation Plan developed by the State of Illinois; and of the New Source Performance Standard provisions in Part A of Subchapter I of the Clean Air Act, **42 U.S.C. § 7411**. The Consent Decree further resolves potential, future claims against Defendants for modifications made at four other power plants which were formerly owned and operated by Illinois Power and are presently owned and operated by DMG, subject to limitations and reopeners specified in the Consent Decree.

Analysis

In reviewing the Consent Decree, the Court is guided by the test for evaluating settlements of environmental cases first enunciated in ***U. S. v. Ketchikan Pulp & Paper Co.*, 430 F.Supp. 83 (D. Alaska 1977)**, *i. e.*, "whether the decree adequately protected public interest and was in accord with the dictates of Congress." **430 F.Supp at 86 (citations omitted)**. "Entry of such judgment is judicial act which deserves more than court's rubber stamp on agency's action." ***Id.* *(citing Pope v. U. S.*, 323 U.S. 1, 65 S.Ct. 16 (1944)**. The Court must determine whether the terms of the settlement are fair, adequate and reasonable, consistent with applicable law and furthers the public interest. ***Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 616 F.2d 1006, 1014 (7th Cir. 1980)**.

A. Whether the Consent Decree is Fair

In determining whether the Consent Decree is fair, the Court weighs the length and complexity of the litigation, the amount of opposition to the settlement, and the strength of

Plaintiff's case relative to the proposed terms of the settlement. ***See E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985)**. The Court is well aware of the length and complexity of this litigation, which was filed in November, 1999, comprised thirty volumes of documents filed with the Court, and culminated in a sixteen-day bench trial. The Court believes that the proposed terms of settlement achieve the goal of this litigation: maximizing the reduction of pollutants in the air which adversely affect public health. At the hearing, the State of Illinois approved this settlement, and the environmental groups stated that they are squarely behind it. The only public comment received concerning the Consent Decree did not address the fairness of the Decree. For these reasons, the Court finds that the Consent Decree is fair.

B. Whether the Consent Decree is Adequate and Reasonable

In determining whether the Consent Decree is adequate and reasonable, the Court considers the nature and extent of the potential hazards, the availability and likelihood of alternatives to the Decree, whether the Decree is technically adequate to accomplish the goal of cleaning the environment, the extent to which the Consent Decree furthers the goals of the statutes which form the basis of the litigation, the extent to which the Court's approval of the Consent Decree is in the public interest, and whether the Decree reflects the relative strength or weakness of the Government's case against the Defendants. ***U. S. v. BP Exploration & Oil Co.*, 167 F.Supp.2d 1045, 1053 (N.D.Ind. 2001)**.

At the hearing, the Government's attorney, W. Benjamin Fisherow, estimated that the improvements at the Baldwin Plant would remove 50,000 tons of sulfur dioxide a year from the air. Mr. Fisherow stated that Baldwin Units 1, 2 and 3 would have top of the line pollution controls, including three new scrubbers and three new baghouses, as well as being well-controlled for nitrous

oxide. The Consent Decree's compliance measures will result in a reduction of approximately 39,500 tons per year of sulphur dioxide, 14,835 tons per year of nitrous oxide and a substantial curtailment of particulate matter emissions into the atmosphere. In short, the proposed Consent Decree serves the public interest in that it achieves substantial environmental benefits and the reduction of emissions of harmful air pollutants without the burden and uncertainty of a complex, lengthy remedy trial.

Moreover, the benefits achieved through the Consent Decree exceed any remedy the Court could have fashioned because only alleged violations at the Baldwin Plant were before the Court, but the Consent Decree encompasses emission reductions in all five of the coal-fired plants owned and operated by DMG as well as mitigation projects, such as the Advanced Truck Stop Electrification Project and the Middle Fork/Vermilion Land Donation. Thus, the Court finds that the Decree serves the public interest in achieving substantial environmental benefits and amelioration of the harmful effects of air pollution.

One public comment was received questioning the adequacy of the Consent Decree. The commenter did not believe that a nine million dollar civil penalty was adequate but believed that the penalty "should be $20,000,000.00." Exhibit A. The commenter stated, "One wonders how many others are similarly operating without permits and emitting mercury to cause autism in the children of america [sic]. This kind of pollution is inexcusable." *Id.*

The Government states that the nine million dollar penalty is the highest civil penalty under any settlement that the United States has entered into with owners and operators of coal-fired power plants to resolve similar claims. Moreover, this Court, in its Order of February 19, 2003, limited the penalties that might be obtained in this action based upon the statute of limitations.

Under the terms of this settlement, DMG will be required to instal pollution controls at an estimated cost of half a billion dollars. The cost of the mitigation projects is estimated at fifteen million dollars. To the extent that the comment relates to the issue of deterrence, the Court concludes that the costs to DMG under this Decree will serve to deter other violations of the Clean Air Act. For these reasons, the Court finds that the Consent Decree is adequate and reasonable.

C. Whether the Consent Decree is Consistent with Applicable Law and Serves the Public Interest

In determining whether the proposed Consent Decree is consistent with applicable law and serves the public interest, the Court considers whether the Decree contravenes the statute upon which the initial claims are based, whether it fulfills the purposes of the Act and whether it furthers the public interest. ***See BP Exploration & Oil Co.*, 167 F.Supp.2d at 1054**. The Court finds that ample evidence exists that the proposed Consent Decree is consistent with applicable law and promotes the objectives of both federal and state environmental laws. In this settlement, the parties roughly achieve with certainty the goals of the two overarching federal legislative proposals that deal with coal-fired power plants, Clear Skies and the Clean Air Interstate Rule. The Government achieves the certainty of substantial emissions reductions, and the company achieves repose and clarity. The public interest in encouraging compromise and settlement is furthered, which is particularly valuable in an "area where voluntary compliance by the parties over an extended period will contribute significantly toward ultimate achievement of statutory goals." ***Metropolitan Housing Development Corp.*, 616 F.2d at 1014.** For these reasons, the Court finds that the proposed Consent Decree is consistent with applicable law and the public interest.

Conclusion

Upon consideration of all the evidence, the parties' arguments, the commenter's comments, and the case law, this Court finds the proposed decree is fair, reasonable, adequate, and consistent with the applicable statutes. Accordingly, the United States' Motion for Entry of Consent Decree (Doc. 687) is **GRANTED**. The decree will be entered and effective the date of this order.

IT IS SO ORDERED.

DATED this 27th day of May, 2005.

Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA Plaintiff, and THE STATE OF ILLINOIS, AMERICAN BOTTOM CONSERVANCY, HEALTH AND ENVIRONMENTAL JUSTICE – ST. LOUIS, INC., ILLINOIS STEWARDSHIP ALLIANCE, and PRAIRIE RIVERS NETWORK Plaintiff - Intervenors, v. ILLINOIS POWER COMPANY and DYNEGY MIDWEST GENERATION, INC., Defendants.	)	Civil Action No. 99-833-MJR

UNITED STATES' MOTION FOR ENTRY OF CONSENT DECREE

Plaintiff United States respectfully moves this Court to enter the consent decree lodged in this action on March 7, 2005 (the "Consent Decree") (*see* Doc. 684). The Consent Decree resolves the claims of Plaintiff and of Plaintiff-Intervenors against Defendants Illinois Power Company ("Illinois Power") and Dynegy Midwest Generation, Inc. ("DMG") (collectively, "Defendants") for Defendants' alleged past violations at the Baldwin Generating Station in Baldwin, Randolph County, Illinois ("the Baldwin Plant") of the Prevention of Significant Deterioration ("PSD") provisions in Part C of Subchapter I of the Clean Air Act ("the Act"), 42

U.S.C. §§ 7470-7492; of the federally enforceable State Implementation Plan developed by the State of Illinois (the "Illinois SIP"); and of the New Source Performance Standard ("NSPS") provisions in Part A of Subchapter I of the Act, 42 U.S.C. § 7411. The Consent Decree further resolves potential, future claims against Defendants for modifications made at four other power plants which, like the Baldwin Plant, were formerly owned and operated by Illinois Power and are currently owned and operated by DMG, subject to limitations and reopeners specified in the Consent Decree.

As explained more fully in this Motion, the Court should enter the Consent Decree because the settlement reached by the parties is fair, reasonable, and consistent with the goals of the Clean Air Act. The parties reached this agreement after careful and informed assessment of the merits, costs, risks, and delays that further litigation would entail, as well as the benefits of settlement, including the reduction of risk to human health and the environment. All parties to this action have signed the Consent Decree. Only the United States conditioned its approval of the Consent Decree, and only to allow the public an opportunity to examine the Consent Decree and comment on it, and then for the United States to consider whether any such comment identified considerations that would make approval of the Consent Decree inappropriate (Consent Decree at 70, ¶ 192).

In accordance with 28 C.F.R. § 50.7, the United States provided the opportunity for public comment by publishing a notice of the lodging of the Consent Decree in the Federal Register on March 16, 2005 (70 FR 12898-99). One public comment was received within the thirty-day period provided for submission of comments regarding the Consent Decree, which period expired on April 15, 2005. As explained below, the United States has concluded that the

single public comment received does not warrant rejection or the United States' withdrawal from the Consent Decree. Accordingly, the United States respectfully asks this Court to enter the Consent Decree in this action. Counsel for all parties concur in this request.

I. BACKGROUND

DMG is the current owner and operator of the five coal-fired plants affected by this settlement (listed below), consisting of 10 units and 3,375 MW production capacity. Through a series of transactions, DMG acquired these five coal-fired plants (including the Baldwin Plant), from Illinois Power in 1999. Prior to that time, Illinois Power was the owner and operator of the following coal-fired electricity generating facilities:

- Baldwin Generating Station - located in Baldwin, Randolph County, Illinois, consisting of three coal-fired units: 1 (624 MW), 2 (629 MW), and 3 (629 MW)
- Havana Generating Station - located in Havana, Mason County, Illinois, consisting of one coal-fired unit: 6 (487 MW).
- Hennepin Generating Station - located in Hennepin, Putnam County, Illinois, consisting of two coal-fired units: 1 (81 MW) and 2 (240 MW).
- Vermilion Generating Station - located in Oakwood, Vermilion County, Illinois, consisting of two coal-fired units: 1 (84 MW) and 2 (113 MW).
- Wood River Generating Station - located in Alton, Madison County, Illinois, consisting of two coal-fired units: 4 (105 MW) and 5 (383 MW).

The United States filed a complaint against Illinois Power in this case on November 3, 1999. Thereafter, the United States filed three amended complaints against Illinois Power and DMG on January 19, 2000, March 14, 2001, and March 7, 2003. As amended, the United

States' complaint alleged that Illinois Power performed "major modifications" at the three Baldwin Plant units, within the meaning of the regulations implementing the PSD program, in connection with a series of capital projects involving the replacement of a boiler floor and waterwalls, cold end air heaters, an economizer, a superheater, and a reheater. The United States alleged that these projects resulted in "significant net emission increases," within the meaning of the regulations implementing the PSD program, at each of the three Baldwin Plant units, of nitrogen oxides ("NOx"), sulfur dioxide ("SO_2") and/or particulate matter ("PM"), and that, generally, these pollutants damage human health and the environment.[1] The United States also alleged that these projects violated applicable permit provisions of the Illinois SIP, and that the air heater projects at Units 1 and 2 violated the applicable NSPS. Plaintiff-Intervenors (the State of Illinois, American Bottom Conservancy, Health and Environmental Justice – St. Louis, Inc., Illinois Stewardship Alliance, and Prairie Rivers Network) moved to intervene on September 25, 2003 and filed complaints in intervention asserting claims similar to those asserted by the United States involving the Baldwin Plant.[2] Plaintiff and Plaintiff-Intervenors asked that the Court order Defendants, *inter alia*, to remedy the alleged violations by requiring installation of the best available control technology ("BACT") on Baldwin Units 1, 2 and 3, in order to control and reduce emissions of NOx, SO_2 and PM.

From November 1999 through trial on liability (held in June 2003), post-trial briefing and closing arguments (completed September 29, 2003), the United States actively litigated this case,

---

[1] In briefing submitted following the conclusion of the liability trial in this action, the United States withdrew its claims regarding the Unit 3 superheater addition, and its claim that the Unit 3 reheater project resulted in significant net increase in NOx emissions.

[2] The Court granted intervention to all movants on October 23, 2003.

along with several other cases filed in November 1999 and thereafter that similarly involved emissions from coal-fired power plants. Settlement discussions between Defendants and the United States previously took place but did not yield agreement. The parties (including Plaintiff-Intervenors) renewed settlement discussions in the latter part of 2004 and early 2005, and reached agreement in March 2005 on the terms of settlement embodied in the Consent Decree.

II. TERMS OF SETTLEMENT

As summarized below, the Consent Decree will secure major reductions in PM, NOx and SO_2 emissions and yield substantial benefits to the environment.

A. SO_2 Controls

To control SO_2, Section V of the Consent Decree requires DMG to install flue gas desulfurization devices (also known as "FGDs" or "scrubbers") on Baldwin Units 1, 2 and 3 and on Havana Unit 6. Each FGD must achieve and maintain a 30-day rolling average emission rate of not greater than 0.100 lb/mmBTU SO_2, an emissions rate that the United States Environmental Protection Agency ("EPA") considers very good for units of this kind.

Together, the units that are receiving new FGDs account for 2,369 MW and will represent 70% of DMG's coal-fired system megawatt generating capacity. This percentage of the megawatt generating capacity covered by state-of-the-art controls for SO_2 is consistent with other settlements the United States has entered into with coal-fired power plant owners and operators since 1999.

DMG has agreed to limit the SO_2 emissions from its other six units, which are not scheduled to receive an FGD, so as to achieve and maintain a 30-day rolling average emission rate of not greater than 1.200 lb/mmBTU SO_2 on each unit. In addition, consistent with the United

States' other settlements with coal-fired power plant owners and operators, DMG has agreed to meet a system-wide tonnage cap for SO_2 that declines over time. The system-wide cap and 1.200 lb/mmBTU serve as "backstops" on the system as a whole that will prevent any undermining of the emission reduction objectives of this settlement that might otherwise occur if emissions were to increase at units not scheduled to receive FGDs.

In total, the proposed Consent Decree commitments represent a reduction in SO_2 emissions of approximately 39,500 tons per year ("tpy") from recent emission levels (2003) and a 280,000 tpy reduction from the levels emitted the year the initial complaint was filed (1999). The Consent Decree guarantees these reductions, regardless of changes in fuel type or cost, and even in the face of increasing demand for electricity.

In addition, similar to the United States' other settlements with coal-fired power plant owners and operators, DMG must surrender annually certain SO_2 "Allowances" from the allocation it receives each year under the Act's Title IV Acid Rain program. The effect of this surrender is to ensure that DMG cannot sell these Allowances to someone else after DMG has improved its ability to reduce SO_2 emissions through the new FGDs required under this decree. The Consent Decree requires a set number of Allowances be surrendered each year, starting with 12,000 Allowances in 2008 and increasing to 30,000 Allowances per year in 2011 and thereafter. These levels of Allowance surrenders were agreed to distinguish between DMG's excess Allowances resulting from its decision to convert to low sulfur coal prior to the time the United States instituted this enforcement action (which Allowances DMG will not be required to surrender), and those excess Allowances that will result from the controls the Consent Decree requires DMG to install (which Allowances DMG will be required to surrender).

B. NOx Controls

To control NOx, Section IV of the Consent Decree requires DMG to operate the existing selective catalytic reduction devices ("SCRs") on Baldwin Units 1 and 2 and Havana Unit 6 year-round, which would not otherwise be required by law. The SCRs at Baldwin Units 1 and 2, and Havana Unit 6 must meet an emission rate of 0.100 lb/mmBTU NOx (30-day rolling average basis), which is consistent with the rate the United States has agreed to in our other settlements with coal-fired power plant owners and operators.

Beyond the year-round operation of these SCRs, the Consent Decree also requires DMG to operate Baldwin Unit 3 year-round at an emission rate of 0.120 lb/mmBTU NOx (30-day rolling average basis) until the end of 2012. Beginning December 31, 2012, and thereafter, DMG must operate Baldwin Unit 3 year-round at the same well-controlled emission rate that applies to the SCR-controlled units: 0.100 lb/mmBTU NOx (30-day rolling average basis). In addition, within 45 days of entry, DMG must meet a plant-wide 30-day rolling average emission rate of not greater than 0.100 lb/mmBTU for NOx at Baldwin Units 1, 2, and 3. Collectively, the units that are required to meet this aggressive emission rate for NOx account for 2,369 MW and represent 70% of DMG's coal-fired system megawatt generating capacity. At its remaining units, DMG is required to operate existing low-NOx burners and Overfire Air Technology at all times in a manner to maximize NOx reductions.

Through system-wide tonnage caps set forth in the Consent Decree, DMG's NOx emissions will trend downward through 2007 and are then held at those levels thereafter. As with other settlements the United States has entered into with owners and operators of coal-fired

power plants, the Consent Decree restricts DMG's ability to trade any NOx credits secured by virtue of the Decree-required reductions.

In summary, under the Consent Decree, DMG's NOx emissions will decrease by 14,835 tpy from current levels (2003) and a 58,000 tpy from the levels emitted the year the initial complaint was filed (1999). These reductions are guaranteed regardless of changes in fuel type or cost, and even in the face of increasing demand for electricity.

C. PM Controls

Section VI of the Consent Decree requires DMG to install a baghouse on each Baldwin Unit (Units 1, 2, and 3), and on Havana Unit 6, and to comply with a very stringent unit specific emission limitation of 0.015 lb/mmBTU PM. In addition, the Consent Decree requires optimization of existing electrostatic precipitator controls (ESPs) at the remaining units, more consistent operation of these devices, and some capital improvements on the weaker performing of these devices to result in further PM emission improvements. After the PM improvements on units with an ESP are made, each unit in the system with solely an ESP for PM control is required to emit PM at a rate no greater than 0.030 lb/mmBTU (which EPA considers to be a good level of control), or undergo a BACT-like process to determine a lower emission rate than current operations. This is the same approach we have followed in the United States' other settlements with owners and operators of coal-fired units with existing ESPs.

In addition, the Consent Decree requires DMG to install four PM continuous emission monitoring systems ("CEMS"), which will aid in compliance enforcement and help to demonstrate that monitors of these types are feasible to install and operate.

D. Incorporation of Terms into Enforceable Permits

Under Section XVI of the Consent Decree, all of the Decree requirements – for hardware installations, unit and system-wide performance standards and limits – not only will be enforceable through the decree but also will be made part of DMG's "Title V permit" for each plant under Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e. The incorporation of these requirements into Title V permits is intended to ensure that the improvements secured by the settlement will become an enforceable part of the normal regulatory system under the Clean Air Act and will last indefinitely as enforceable requirements.

E. Civil Penalty

Under Section IX of the Consent Decree, DMG is required to pay a $9 million penalty. Although this penalty would be the highest obtained in any of the settlements the United States has reached with other owners and operators of coal-fired power plants, the figure was reached using an approach consistent with that employed in the other settlements (considering the number and size of units involved and the amount of excess emissions resulting from the alleged violations), while also taking into account both the extra costs (relative to the other cases) incurred by the United States in litigating this action for four years, as well as this Court's February 19, 2003 ruling limiting the penalties that might be obtained in this action based on the statute of limitations.

F. Mitigation Projects

Under Section VIII of the Consent Decree, DMG will provide a total of $15 million to fund the following mitigation projects that are set forth in Appendix A to the Decree:

1. Advanced Truck Stop Electrification Project. DMG will spend approximately $1.5 million for the installation of Advanced Truck Stop Electrification, preferably at State of Illinois owned rest areas, along Illinois interstate highways in the St. Louis Metro East area. Because long-haul truck drivers typically idle their engines at night at rest areas to supply heat or cooling in their sleeper cab compartments, modifications to rest areas to provide parking spaces with electrical power, heat and air conditioning will allow truck drivers to turn their engines off. Truck driver utilization of the Advanced Truck Stop Electrification will result in reduced idling time and therefore reduced fuel usage, reduced emissions of PM, NOx, VOCs and toxics, and reduced noise.

2. Middle Fork/Vermilion Land Donation. DMG will transfer ownership of an approximately 1135-acre parcel of land along the Middle Fork Vermilion River in Vermilion County to the Illinois Department of Natural Resources (IDNR). IDNR estimates the ecological value of this property as very high, and the property is located directly between two state parks and adjacent to the Middle Fork of the Vermilion River, providing IDNR with an opportunity to extend and interconnect existing parkland. The transferred property is valued at approximately $2.25 million.

3. Metro East Land Acquisition and Preservation and Illinois River Projects. DMG has agreed to the transfer of $2.75 million to the Illinois Conservation Foundation for the express purpose of acquiring certain natural lands and habitat in the St. Louis Metro East area, for acquiring and/or restoring endangered habitat along the Illinois River, and for future funding of the Illinois River Sediment Removal and Beneficial Reuse Initiative, administered by the Waste Management Resource Center of the State of Illinois Department of Natural Resources

(IDNR). Specifically, to the extent possible, the funding will be used to enhance existing wetlands and create new wetlands restoration projects at sites along the Illinois River between DMG's Havana Station and the Hennepin Station. Finally, as funding permits, these funds may be used to advance IDNR extant projects involving the removal and transport of high quality soil sediments from the Illinois River bottom to end users, including State fish and wildlife areas, a local environmental remediation project, and other projects deemed beneficial by Plaintiff and Plaintiff-Intervenors (collectively "Plaintiffs").

4. Vermilion Power Station Mercury Control Project. DMG will submit a plan for the installation of a baghouse, along with a sorbent injection system, to control mercury emissions from Vermilion Units 1 and 2, with a goal of achieving 90% mercury reduction, no later than June 30, 2007. For purposes of the Consent Decree, of the approximately $26.0 million expected capital cost for construction and installation of the baghouse with a sorbent injection system, DMG shall be credited with $7.5 million Project Dollars upon commencement of operation of this control technology, provided that DMG continues to operate the control technology for five (5) years and surrenders any mercury allowances and/or mercury reduction credits, as applicable, during the five (5) period.

5. Municipal and Educational Building Energy Conservation & Energy Efficiency Projects. DMG will spend at least $1.0 million for the purchase and installation of environmentally beneficial energy technologies for municipal and public educational buildings in the Metro East area or the City of St. Louis.

G. Resolution of Past Claims and Future Covenant Not to Sue

In addition to resolving the claims asserted by the United States and by the Plaintiff-Intervenors in this action, Section XI of the Consent Decree embodies a resolution of future PSD claims that could arise (until 2015) from "major modifications" at the DMG units and which would otherwise be actionable under New Source Review ("NSR") provisions of the Act. Under these provisions, DMG will be protected -- subject to defined "reopener" conditions and assuming its compliance with the main elements of the decree -- against future NSR claims at all units covered by the Consent Decree, including those that will not receive BACT-level controls under the settlement. This resolution of potential future claims is consistent with similar provisions in the United States' other settlements with owners and operators of coal-fired power plant systems. This broad resolution of future claims is justified by the large percentage of the DMG system on which pollution controls will be installed and operated, the beneficial environmental impact such controls will produce, and the certainty that emission reductions will be realized. And while this system-wide covenant not to sue terminates in 2015, the injunctive requirements of the Consent Decree will continue beyond that time through the required addition of its provisions into applicable Title V permits.

Under Section X of the Consent Decree, Plaintiffs are providing Illinois Power with a resolution of liability for *past* claims only. As noted above, while Illinois Power owned the Baldwin Plant at the time of the alleged violations, and formerly owned the other DMG plants covered by the Consent Decree, Illinois Power currently neither owns nor operates any of the units in the DMG system.

III. ARGUMENT

A. Standard for Approving Consent Decree

The standard the Court should apply in reviewing the Consent Decree is whether the terms of the settlement are fair, adequate and reasonable, and consistent with applicable law. See e.g., Metro. Hous. Dev. Corp. v. Vill.of Arlington Heights, 616 F.2d 1006, 1014 (7th Cir. 1980) (upholding approval of settlement by district court). Indeed, a district court may not deny approval of a consent decree unless the decree is unfair, unreasonable or inadequate. United States v. City of Belleville, 1995 WL 1943014 at *3 (S.D. Ill. 1995), citing E.E.O.C. v. Hiram Walker & Sons, Inc., 768 F.2d 884, 889 (7th Cir. 1985); Ragsdale v. Turnock, 734 F. Supp. 1457, 1459 (N.D. Ill.1990).

To determine whether a proposed consent decree is lawful, fair, reasonable, and adequate, "depends upon (1) comparing the strength of the Plaintiff's case versus the amount of the settlement offer; (2) the likely complexity, length, and expense of the litigation; (3) the amount of opposition to the settlement among affected parties; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery already undertaken at the time of settlement." City of Belleville, 1995 WL 1943014 at *3, citing E.E.O.C. v. Hiram Walker & Sons, 768 F.2d at 889. See also United States v. BP Exploration & Oil Co., 167 F. Supp. 2d 1045, 1049 (N.D. Ind. 2001) (approving consent decree that, like here, results in dramatic reductions in hazardous air pollutants); United States v. Seymour Recycling Corp., 554 F. Supp. 1334, 1337 (S.D. Ind. 1982) (approving consent decree that abates environmental hazards through the cleanup of toxic chemicals). The underlying purpose of the review is to determine

whether the decree adequately protects and is consistent with the public interest. BP Exploration & Oil Co., 167 F. Supp. 2d at 1049; Seymour Recycling Corp., 554 F. Supp. at 1337.

In reviewing a consent decree, the court need not inquire into the precise legal rights of the parties, nor reach and resolve the merits of the parties' claims; rather, it is sufficient if the court determines whether the consent decree is appropriate under the particular facts of the case. Metro. Hous. Dev. Corp., 616 F. 2d at 1014; BP Exploration & Oil Co. 167 F. Supp. at 1049-1050. In so doing, a court should not substitute its judgment for that of the parties, nor conduct the type of detailed investigation required if the parties were trying the case. BP Exploration & Oil Co. 167 F. Supp. at 1050; Seymour Recycling Corp., 554 F. Supp. at 1338.

As demonstrated below, the Consent Decree meets the foregoing test for approval because it embodies a settlement that is fair, adequate and reasonable, and consistent with applicable law and the public interest.

B. The Consent Decree is Fair

In assessing fairness, a court considers a comparison of the strength of plaintiff's case versus the amount of the settlement offer; the likely complexity, length and expense of the litigation; the amount of opposition to the settlement among affected parties; the opinion of counsel; and the stage of the proceedings and amount of discovery already undertaken at the time of the settlement. E.E.O.C. v. Hiram Walker & Sons, Inc., 768 F.2d at 889; BP Exploration & Oil Co. 167 F. Supp. 2d at 1051-52.

The Court is well aware of the length and complexity of the instant litigation, both with respect to what has already transpired and what lies ahead. The litigation has been pending since 1999 and key aspects of the case are unresolved, including a ruling on liability, and the scope of

remedy (to be determined through a remedy trial). The settlement negotiations that led to this Consent Decree were conducted over many months and the parties were represented by capable attorneys and technical staff who approve of the terms of the settlement. Especially in light of the complexity of this case and the expense of continuing litigation, such agreement by the parties weighs heavily in favor of a finding that the Consent Decree is fair. City of Belleville, 1995 WL 1943014 at *4. Moreover, as discussed *infra*, only one public comment was received concerning the Consent Decree. The comment did not address the fairness of the settlement. Thus, there is no opposition to this Consent Decree on fairness grounds. For all of these reasons, the Court should find that the Consent Decree is fair. See BP Exploration & Oil Co. 167 F. Supp. at 1053.

C. The Consent Decree is Adequate and Reasonable

In considering the reasonableness of the Decree, a court considers: the nature and extent of the potential hazards; the availability and likelihood of alternatives to the Decree; whether the Decree is technically adequate to accomplish the goal of cleaning the environment; the extent to which the Consent Decree furthers the goals of the statutes which form the basis of the litigation; the extent to which the court's approval of the Consent Decree is in the public interest; and whether the Decree reflects the relative strength or weakness of the Government's case against the Defendant. BP Exploration & Oil Co. 167 F. Supp. 2d at 1053; Seymour Recycling Corp., 554 F. Supp. at 1339.

The Consent Decree addresses hazards to the environment by tailoring relief to dramatically reduce emissions of PM, NOx and SO_2, pollutants known to be harmful to human health and the environment. The only likely alternative to the Consent Decree is additional complex and lengthy litigation, which would expend limited Government and corporate resources,

and valuable judicial resources required to complete work on a liability ruling, potentially to conduct a remedy trial involving dozens of expert witnesses and to decide technically complex issues associated with the remedy. Potential appeals of liability and/or remedy rulings could extend this litigation even farther into the future.

As noted, the Consent Decree's compliance measures will result in a reduction of approximately 39,500 tons per year of SO_2, 14,835 tons per year of NOx, and a substantial curtailment of PM emissions into the atmosphere. State-of-the-art pollution controls will be installed not only at the Baldwin Plant, which was the subject of this litigation, but also at other coal-fired power plants in DMG's system. The Consent Decree requires DMG to pay a substantial civil penalty and to perform significant environmentally beneficial projects to mitigate past violations alleged by Plaintiffs. As discussed *infra*, the Court's approval of the Consent Decree also would serve the public interest, as it promotes compromise in lieu of litigation, and voluntary actions to clean the environment.

In this case, the relief that would be ordered if the Consent Decree were entered – installation and/or operation of pollution control devices that will reduce emissions of harmful air pollutants – is consistent with the violations alleged in the Amended Complaint and the relief that the United States would seek through a remedy trial. In lieu of a complex and costly remedy trial, the settlement embodied in the Consent Decree accomplishes, without the burdens and uncertainty of continuing litigation, substantial environmental benefits and amelioration of the harmful effects of air pollutants.

One public comment was received questioning the adequacy of the Consent Decree. The commenter expressed the view that the civil penalty "should be $20,000,000.00," speculated as to

"how many others are similarly operating without permits and emitting mercury to cause autism in the children of america [sic]," and opined that "[t]his kind of pollution is inexcusable." The comment is attached in its entirety in Exhibit A hereto.

The United States has considered this comment and does not believe it counsels any change in its position that the Consent Decree in its entirety, as well as the civil penalty in particular, are adequate and reasonable. With respect to the civil penalty, as noted above, the $9 million penalty that DMG is required to pay under the Consent Decree would be the highest civil penalty under any settlement the United States has entered into with owners and operators of coal-fired power plants to resolve similar claims under the Act for alleged "modifications." Second, the United States believes the civil penalty under the Consent Decree reflects – and the commenter's suggested alternative does not reflect – this Court's February 19, 2003 ruling limiting the penalties that might be obtained in this action based on the statute of limitations. Third, the United States believes the commenter's criticism does not reflect the fact that the civil penalty ($9 million) and mitigation project expenditures ($15 million) required of DMG under the Consent Decree together total $24 million, and that the Consent Decree further will require DMG to install pollution controls at an estimated cost of half a billion dollars.

With respect to the commenter's speculation about other [coal-fired power plants] operations and opinion about the pollution involved, it is unclear whether these comments are a criticism of the adequacy of this particular settlement, or a negative comment generally about coal-fired power plant operators and the pollution emitted from such plants. To the extent these comments relate to the question whether this settlement will serve adequately to deter other violations, the United States believes the answer is affirmative. As noted, the Consent Decree

includes requirements for approximately half a billion dollars in pollution controls plus civil penalty and mitigation project expenditures totaling approximately $24 million. The United States regards the injunctive relief under the Consent Decree as adequate to meet important objectives of the Act (as discussed *infra*) and the civil penalty as adequate to deter other violations of the Act. These provisions cannot reasonably be construed as "excusing" pollution, and there is no basis to conclude that the Consent Decree is not adequate and reasonable.[3/]

D. The Consent Decree Is Consistent with Applicable Law and in the Public Interest

A consent decree may not contravene the statute upon which the initial claims are based; where a lawsuit seeks to enforce a statute, the most important factor as to public policy is whether the decree comports with the goals of Congress. BP Exploration & Oil Co., 167 F. Supp. 2d at 1054. Here, the Court has ample basis to conclude that the Consent Decree is consistent with applicable law and that its approval is in the public interest.

One of the primary purposes of the Clean Air Act is to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. §7401(b)(1). Consistent with the PSD rules, this settlement prevents the significant deterioration of air quality in the areas around the plant, and in fact

---

[3] We note that no States, localities, citizen or environmental organizations have commented adversely on the Consent Decree – despite the saliency of this litigation – and that, indeed, the State of Illinois and several citizen groups are parties to and support this settlement. With respect to mercury pollution mentioned by the commenter, although mercury emissions are not alleged as violations in this action, the Consent Decree nonetheless will reduce such emissions. One of the mitigation projects under the Consent Decree discussed above (*see supra* Section II.F.4) entails an expected $26 million capital cost to be borne by DMG to control mercury emissions from Vermilion Units 1 and 2, with a goal of achieving 90% mercury reduction, no later than June 30, 2007. In addition, EPA expects that mercury emissions will also be reduced as a secondary benefit associated with the installation of the SO_2 and NOx controls required under the Consent Decree.

improves it. As described above, clean air resources are preserved and enhanced under the Consent Decree by and through: (1) the installation and/or operation of state-of-the-art pollution controls at the Baldwin Plant and the other DMG facilities in Illinois that are covered by the Consent Decree; (2) the requirements relating to control of other DMG units where DMG is not obligated to install state-of-the-art controls; (3) the systemwide caps; and (4) the surrender of Allowances achieved through installation of new controls (which ensures that emission reductions achieved at DMG units do not facilitate higher levels of emissions at units elsewhere that might otherwise purchase these Allowances).

The Consent Decree also furthers the public interest in encouraging compromise. See Metro. Hous. Dev. Corp., 616 F.2d at 1014 ("[T]he clear policy in favor of encouraging settlement must also be considered, particularly in the area where voluntary compliance by the parties over an extended period will contribute significantly toward ultimate achievement of statutory goals"); Seymour Recycling Corp., 554 F. Supp. at 1339 ("There is a public interest in encouraging parties to come forward first in an effort to settle enforcement cases. This is consistent with the general policy favoring compromise of claims"). Moreover, the public policy favoring voluntary settlement of litigation is particularly strong where a consent decree, like here, has been negotiated by the United States Department of Justice on behalf of a federal agency, such as EPA, which enjoys substantial expertise in the environmental field. BP Exploration & Oil Co. 167 F. Supp. 2d at 1050.

CONCLUSION

The Consent Decree submitted to this Court for approval would result in significant improvements to human health and the environment through the reduction of power plant emissions from the Baldwin Plant and other plants in DMG's system. The terms of the settlement are fair, reasonable and adequate, and consistent with applicable law and the public interest. No public comments submitted disclose considerations that support a contrary conclusion, and all parties to the Consent Decree support its entry as an order of this Court. The United States, therefore, respectfully requests that this Court grant this Motion and enter the proposed Consent Decree.

Respectfully Submitted,

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division

s/David Rosskam
DAVID ROSSKAM
Senior Counsel
NICOLE VEILLEUX
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20530
(202) 514-3974

RONALD J. TENPAS
United States Attorney for the
Southern District of Illinois

WILLIAM COONAN
Assistant United States Attorney
Southern District of Illinois
9 Executive Drive
Suite 300
Fairview Heights, Illinois 62208
(618) 628-3714

OF COUNSEL:

EDWARD J. MESSINA
Attorney Advisor
Office of Enforcement Compliance and Assurance (2242A)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

MARK J. PALERMO
Assistant Regional Counsel
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604-3590

Exhibit A

-----Original Message-----
From: jeanpublic@yahoo.com [mailto:jeanpublic@yahoo.com]
Sent: Sunday, March 20, 2005 2:02 PM
To: Fleetwood, Tonia (ENRD)
Cc: rodney.frelinghuysen@mail.house.gov
Subject: public comment on federal register of 3/l6/05 vol 70 no 50 page 12898

usdoj consent decree us and illinois power company
and dynegy midwest generation center under clean air
act

i think the penalty should be $20,000,000.00

I note that someone has not bothered to properly fill
out the fed register notice in that the paragraph
which begins "in addition" is not complete at the end
of the paragraph failing to specify what "department"
is noted.

One wonders how many others are similarly operating
without permits and emitting mercury to cause autism
in the children of america.

This kind of pollution is inexcusable.

b. sachau
15 elm st
florham park nj 07932

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2005, I electronically filed the foregoing "United States' Motion for Entry of Consent Decree" with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Stephen J. Bonebrake
sbonebrake@schiffhardin.com

William E. Coonan
SDILCivil@usdoj.gov Liam.Coonan@usdoj.gov;Donna.Gerdes@usdoj.gov

Thomas E. Davis
tdavis@atg.state.il.us

Albert Ettinger
aettinger@elpc.org

Shannon Fisk
sfisk@elpc.org

Paul E. Gutermann
pgutermann@akingump.com

Mary A. Mullin
mmullin@schiffhardin.com

Scott C. Oostdyk
soostdyk@mcguirewoods.com

Alvin C. Paulson
acp@bphlaw.com sharon@bphlaw.com

David Rosskam
david.rosskam@usdoj.gov; bethanne.walinskas@usdoj.gov

Paul N. Venker
pvenker@wvslaw.com

Sheldon A. Zabel
szabel@schiffhardin.com

and I hereby certify that on April 27, 2005, I mailed by United States Postal Service the document to the following non-registered participants:

Gordon R. Alphonso
William M. Droze
Troutman Sanders - Atlanta, GA
600 Peachtree Street NE
5200 NationsBank Plaza
Atlanta, GA 30308-2216

James W. Ingram
Dynegy, Inc. Legal Department
1000 Louisiana Street Suite 5800
Houston, TX 77002

Michael S. Caldwell
Rachel L. Gibson
Daniel Joseph
David H. Quigley
Perry M. Rosen
Akin, Gump et al. - Washington
1333 New Hampshire Avenue, N.W. Suite 400
Washington, DC 20036

Thomas P. Luning
Schiff, Hardin et al. Cook County
6600 Sears Tower Suite 7569
Chicago, IL 60606-6473

Andrew G. Mauck
Troutman Sanders - Richmond, VA
1111 East Main Street
Richmond, VA 23219

David L. Rieser
Ross & Hardies
150 North Michigan Avenue
Suite 2500
Chicago, IL 60601-7567

s/ David Rosskam
David Rosskam
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
phone: (202) 514-3974
fax: (202) 616-2427
email: david.rosskam@usdoj.gov