IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA, and SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, Plaintiffs, v. SOUTH CAROLINA PUBLIC SERVICE AUTHORITY, Defendant.	)	Civil Action No:

CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America ("the United States"), on behalf of the United States Environmental Protection Agency ("EPA"), and Plaintiff, the South Carolina Department of Health and Environmental Control ("DHEC"), filed a Complaint for injunctive relief and civil penalties pursuant to Sections 113(b)(2) and 167 of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7413(b)(2) and 7477, and Sections 48-1-50 and 48-1-330 of the South Carolina Pollution Control Act, alleging that Defendant, South Carolina Public Service Authority ("Santee Cooper"), has undertaken construction projects at major emitting facilities in violation of the Prevention of Significant Deterioration provisions of Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, and in violation of the federally-enforceable State Implementation Plan developed by the State of South Carolina;

WHEREAS, in its Complaint, the United States alleges, *inter alia,* that Santee Cooper failed to obtain the necessary permits and install the controls necessary under the Act to reduce its sulfur dioxide, nitrogen oxides, and/or particulate matter emissions;

WHEREAS, the Complaint alleges claims upon which relief can be granted against Santee Cooper under Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477;

WHEREAS, the United States provided Santee Cooper and the State with actual notice of Santee Cooper's alleged violations no later than June 1, 2003, and therefore provided Santee Cooper and the State with at least 30 days notice prior to the filing of such claims, as required under Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1);

WHEREAS, Santee Cooper has not answered or otherwise responded to the Complaint in light of the settlement memorialized in this Consent Decree;

WHEREAS, Santee Cooper has denied and continues to deny the violations alleged in

the Complaint, maintains that it has been and remains in compliance with the Act and is not liable for civil penalties or injunctive relief, and states that it is agreeing to the obligations imposed by this Consent Decree solely to improve the air quality of the region (including the Cape Romain Class I area), to benefit the environment generally, and to avoid the costs and uncertainties of litigation;

WHEREAS, Santee Cooper has voluntarily undertaken, and continues to undertake, certain environmentally beneficial measures, other than those required by this Consent Decree, including the use of renewable energy sources, the recycling of used oil, and other similar measures within the State of South Carolina;

WHEREAS, Santee Cooper has previously sought and obtained from DHEC and EPA an interim Alternative Emission Limit ("AEL") for NO_x at Winyah Units 2, 3, and 4;

WHEREAS, the United States, DHEC, and Santee Cooper (collectively, the "Parties") have agreed that settlement of these actions is in the best interest of the Parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

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

WHEREAS, the Parties have consented to entry of this Consent Decree without trial of any issue;

NOW, THEREFORE, without any admission of fact or law, and without any admission

of the violations alleged in the Complaint, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and pursuant to Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477. 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 Complaint, Santee Cooper waives all objections and defenses that it may have to the Court's jurisdiction over this action, to the Court's jurisdiction over Santee Cooper, and to venue in this District. Santee Cooper shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. For purposes of the Complaint filed by the Plaintiffs in this matter and resolved by the Consent Decree, and for purposes of entry and enforcement of this Consent Decree, Santee Cooper waives any defense or objection based on standing. Except as expressly provided for herein, this Consent Decree shall not create any rights in any party other than the Parties to this Consent Decree. Except as provided in Section XXV (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 this Consent Decree shall apply to and be binding upon the Plaintiffs and Santee Cooper and their successors and assigns, and upon Santee Cooper's officers, employees and agents solely in their capacities as such.

3. Santee Cooper shall provide 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, Santee Cooper 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, Santee Cooper 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 Santee Cooper establishes that such failure resulted from a Force Majeure Event, as defined in Paragraph 155.

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 emissions that occur during all periods of startup, shutdown and Malfunction within an Operating Day, except as follows:

a. Emissions of NO_x that occur during the fifth and subsequent Cold Start Up Period(s) that occur in 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 Santee Cooper 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 distribution system and concluding eight (8) hours later, or (ii) those NO_x emissions emitted prior to the time that the flue gas has achieved the minimum SCR operational temperature specified by the catalyst manufacturer;

b. For a Unit that has ceased firing Fossil Fuel, emissions of SO_2 that occur during any period, not to exceed two (2) hours (three (3) hours for Units at the Winyah Plant), from the restart of the Unit to the time that the Unit is fired with any coal, shall be excluded from the calculation of the 30-Day Rolling Average Emission Rate; and

c. Emissions that occur during a period of Malfunction shall be excluded from the calculation of the 30-Day Rolling Average Emission Rate if Santee Cooper provides notice of the Malfunction to EPA and DHEC in accordance with

Paragraph 164 in Section XIV (Force Majeure) of this Consent Decree.

5. "30-Day Rolling Average Removal Efficiency" for a given pollutant means the percent reduction in the mass of that pollutant achieved by a Unit's pollution control device over a 30-Operating-Day period. This percent reduction shall be calculated by subtracting the outlet 30-Day Rolling Average Emission Rate from the inlet 30-Day Rolling Average Emission Rate, dividing that difference by the inlet 30-Day Rolling Average Emission Rate, and then multiplying by 100. A new 30-Day Rolling Average Removal Efficiency shall be calculated for each new Operating Day.

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

7. "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 (2003) and installed and maintained as required by 40 C.F.R. Part 75 (2003).

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

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

10. "Cross Plant" means the Cross Generating Station, located in Pineville, Berkeley County, South Carolina, consisting of the following coal-fired Units: Unit 1 (620 MW), Unit 2 (540 MW), Unit 3 (to be constructed), and Unit 4 (to be constructed).

11. "DHEC" means the South Carolina Department of Health and Environmental Control.

12. "Emission Rate" for a given pollutant means the number of pounds of that pollutant emitted per million British thermal units of heat input (lb/mmBTU), measured in accordance with this Consent Decree.

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

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

15. "Excess Tons" means the number of tons of a pollutant that were emitted as a result of a violation of this Consent Decree that would not have been emitted had the violation not taken place. A fraction of a ton shall count as one ton in accordance with definition of "ton or tonnage" set forth in 40 C.F.R. § 72.2 (2003).

16. "Flue Gas Desulfurization System" or "FGD" means a pollution control device that employs flue gas desulfurization technology for the reduction of sulfur dioxide emissions.

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

18. "Grainger Plant" means the Dolphus M. Grainger Generating Station, located in Conway, Horry County, South Carolina, consisting of the following coal-fired Units: Unit 1 (85 MW) and Unit 2 (85 MW).

19. "Improved Unit" means, in the case of NO_x, a Santee Cooper System Unit scheduled under this Consent Decree to be equipped with SCR (or equivalent NO_x control technology approved pursuant to Paragraph 50), and, in the case of SO_2, a Santee Cooper System Unit scheduled under this Consent Decree to be equipped with an FGD (or equivalent SO_2 control technology approved pursuant to Paragraph 65) or to undergo an

FGD upgrade in accordance with this Consent Decree. A Unit may be an Improved Unit for one pollutant without being an Improved Unit for the other.

20. "Jefferies Plant" means coal-fired Unit 3 (153 MW) and coal-fired Unit 4 (153 MW) (and shall exclude oil-fired Units 1 and 2) of the Jefferies Generating Station, located in Moncks Corner, Berkeley County, South Carolina.

21. "KW" means kilowatt or one thousand Watts.

22. "lb/mmBTU" means one pound of a pollutant per million British thermal units of heat input.

23. "lb/TBTU" means one pound of a pollutant per trillion British thermal units of heat input.

24. "Malfunction" means malfunction as that term is defined under 40 C.F.R. § 60.2 (2003).

25. "Mercury CEMS" or "Mercury Continuous Emission Monitoring System" means, as specified in Section VI.D. (PM and Mercury Monitoring) of this Consent Decree, the equipment that samples, analyzes, measures, and provides, by readings taken at frequent intervals, an electronic or paper record of mercury emissions.

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

29. "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.

30. "Nonattainment NSR" means the nonattainment area New Source Review program under Part D of Subchapter I of the Act, 42 U.S.C. §§ 7501 - 7515, and 40 C.F.R. Part 51 (2003).

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

32. "Other Unit" means any Unit of the Santee Cooper System that is not an Improved Unit for the pollutant in question. A Unit may be an Improved Unit for NO_x and an Other Unit for SO_2 and vice versa.

33. "Parties" means the United States of America, DHEC, and Santee Cooper and "Party" means one of the three named "Parties."

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

35. "PM CEMS" or "PM Continuous Emission Monitoring System" means, as specified in Section VI.D. (PM and Mercury Monitoring) of this Consent Decree, the equipment that samples, analyzes, measures, and provides, by readings taken at frequent intervals, an electronic or paper record of PM emissions.

36. "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 the reference methods set forth in 40 C.F.R. Part 60, Appendix A, Method 5 or Method 17 (2003).

37. "Prevention of Significant Deterioration" or "PSD" means the prevention of significant

deterioration of air quality program under Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470 - 7492, and 40 C.F.R. Part 52 (2003).

38. "Project Dollars" means Santee Cooper's expenditures and payments incurred or made in carrying out the Environmentally Beneficial Projects identified in Section VIII (Environmentally Beneficial Projects) of this Consent Decree to the extent that such expenditures or payments both: (a) comply with the requirements set forth in Section VIII (Environmentally Beneficial Projects) of this Consent Decree, and (b) constitute Santee Cooper's direct payments for such projects, Santee Cooper's external costs for contractors, vendors, and equipment, or Santee Cooper'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.

39. "Santee Cooper System" means, collectively, the Cross Plant, Grainger Plant, Jefferies Plant, and Winyah Plant.

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

41. "SO_2" means sulfur dioxide, measured in accordance with the provisions of this Consent Decree.

42. "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."

43. "State" means the State of South Carolina.

44. A "System-Wide 12-Month Rolling Average Emission Rate" shall be expressed in

lb/mmBTU and calculated in accordance with the following procedure: first, sum the pounds of the pollutant in question emitted from the Santee Cooper System during the most recent complete month and the previous eleven (11) months; second, sum the heat input to the Santee Cooper System in mmBTU during the most recent complete month and the previous eleven (11) months; and third, divide the total number of pounds of the pollutant emitted during the twelve (12) months by the total heat input during the twelve (12) months. A new System-Wide 12-Month Rolling Average Emission Rate shall be calculated for each new complete month in accordance with the provisions of this Consent Decree. The calculation of each System-Wide 12-Month Rolling Average Emission Rate shall include the pollutants emitted during periods of startup, shutdown, and Malfunction within each calendar month.

45. "System-Wide 12-Month Rolling Tonnage" means the sum of the tons of the pollutant in question emitted from the Santee Cooper System in the most recent complete month and the previous eleven (11) months. A new System-Wide 12-Month Rolling Tonnage shall be calculated for each new complete month in accordance with the provisions of this Consent Decree. The calculation of each System-Wide 12-Month Rolling Tonnage shall include the pollutants emitted during periods of startup, shutdown, and Malfunction within each calendar month.

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

47. "Unit" means, for the purposes of this Consent Decree, 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 and systems necessary for the production of electricity. An electric utility steam generating station may comprise one or more Units.

48. "Winyah Plant" means the Winyah Generating Station, located in Georgetown, Georgetown County, South Carolina, consisting of the following coal-fired Units: Unit 1 (295 MW), Unit 2 (295 MW), Unit 3 (295 MW), and Unit 4 (270 MW).

IV. NO_x EMISSION REDUCTIONS AND CONTROLS

A. NO_x Emission Controls

49. Santee Cooper shall install and commence continuous operation of SCRs (or equivalent NO_x control technology approved pursuant to Paragraph 50) at the following Units within the Santee Cooper System so as to achieve, by the dates specified below, and thereafter maintain, a 30-Day Rolling Average Emission Rate not greater than the rates specified below:

Unit	Date by Which Santee Cooper Must Complete Installation and Continuously Operate SCR	Date by Which Santee Cooper Must Comply with the 30-Day Rolling Average Emission Rate for NO_x	Maximum 30-Day Rolling Average Emission Rate for NO_x (lb/mmBTU)
Cross Unit 1	Upon Entry of this Consent Decree	May 31, 2004	0.100
Cross Unit 2	Upon Entry of this Consent Decree	May 31, 2004	0.110
		May 31, 2007	0.100
Cross Unit 3	Within 180 Days of 1st Start-Up	Within 180 Days of 1st Start-Up	0.080
Cross Unit 4	Within 180 Days of 1st Start-Up	Within 180 Days of 1st Start-Up	0.080

Winyah Unit 1	May 31, 2004	November 30, 2004	0.110
		November 30, 2007	0.100
Winyah Unit 2	May 31, 2004	November 30, 2004	0.120
Winyah Unit 3	May 31, 2005	November 30, 2005	0.140
		November 30, 2008	0.120
Winyah Unit 4	May 31, 2005	November 30, 2005	0.130
		November 30, 2008	0.120

50. With prior written notice to and written approval from EPA and DHEC, Santee Cooper may, in lieu of installing and operating an SCR at any Unit specified in Paragraph 49, install and operate equivalent NO_x control technology so long as such equivalent NO_x control technology achieves and thereafter maintains a 30-Day Rolling Average Emission Rate not greater than the rate set forth for that Unit in Paragraph 49.

51. At any time following entry of this Consent Decree, Santee Cooper may petition the Plaintiffs to revise the applicable 30-Day Rolling Average Emission Rate for NO_x on any Santee Cooper System Unit equipped with an SCR and subject to a 30-Day Rolling Average Emission Rate. In its proposal, Santee Cooper must demonstrate that it cannot consistently achieve and maintain the Consent Decree-mandated 30-Day Rolling Average Emission Rate for NO_x for the Unit in question under expected load variability, considering all relevant information. Santee Cooper shall include in such petition an alternative 30-Day Rolling Average Emission Rate for NO_x. Santee Cooper shall also retain a qualified contractor to assist in the preparation and completion of the petition for an alternative 30-Day Rolling Average Emission Rate for NO_x. Santee Cooper shall deliver with each petition all pertinent documents and data. If the Plaintiffs disapprove

the alternative 30-Day Rolling Average Emission Rate for NO_x proposed by Santee Cooper, such disapproval shall be subject to the provisions of Section XV (Dispute Resolution) of this Consent Decree. Santee Cooper shall submit any petition for any Unit under this Paragraph no later than six (6) months prior to the final compliance date specified for that Unit in Paragraph 49.

52. Santee Cooper shall continuously operate each SCR (or equivalent NO_x control technology approved pursuant to Paragraph 50) at all times that the Unit it serves is in operation, consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for the SCR or equivalent technology. Santee Cooper need not operate an SCR during periods of Malfunction of the SCR, provided Santee Cooper satisfies the notice requirements for Malfunction Events as set forth in Paragraph 164 in Section XIV (Force Majeure) of this Consent Decree.

53. Upon entry of this Consent Decree, Santee Cooper shall operate only low NO_x burners (or more stringent technology) on Grainger Unit 1, Jefferies Unit 3, and Jefferies Unit 4.

54. Beginning no later than May 1, 2004, Santee Cooper shall operate only low NO_x burners (or more stringent technology) on Grainger Unit 2.

B. System-Wide Annual Emission Limits for NO_x

55. Santee Cooper shall comply with the following System-Wide 12-Month Rolling Average Emission Rates for NO_x, which apply to all Units collectively within the Santee Cooper System:

For the 12-Month Period Commencing on the Date Specified Below, and Each 12-Month Period Thereafter:	System-Wide 12-Month Rolling Average Emission Rate for NO_x
January 1, 2005	0.300 lb/mmBTU
January 1, 2007	0.180 lb/mmBTU
January 1, 2010	0.150 lb/mmBTU

56. Santee Cooper shall comply with the following System-Wide 12-Month Rolling Tonnage limitations for NOx, which apply to all Units collectively within the Santee Cooper System:

For the 12-Month Period Commencing on the Date Specified Below, and Each 12-Month Period Thereafter:	System-Wide 12-Month Rolling Tonnage Limitation for NO_x
January 1, 2005	30,000 tons
January 1, 2007	25,000 tons
January 1, 2010	20,000 tons

57. Each of the system-wide annual emissions limits for NO_x set forth in Paragraphs 55 and 56 shall apply prospectively from the specified date on which a 12-month period commences and shall end on the date that the subsequent system-wide limit, if any, takes effect. Santee Cooper shall not use NO_x Allowances to comply with these system-wide limitations.

58. In the event that:

a. an Improved Unit is unable to operate for an extended period of time due to unanticipated forced outage(s) caused by catastrophic events;

b. the annual availability (as measured by the Generating Availability Data System)

of the Improved Unit decreases by twenty-five percent (25%) below availability levels, as averaged over the previous two (2) years, due to the occurrence of the unanticipated forced outage(s);

c. Santee Cooper must compensate for the reduced utilization at the Improved Unit by increasing the utilization of other Units within the Santee Cooper System that emit NO_x emissions at higher levels than those emitted by the Improved Unit;

d. the NO_x emissions increase resulting from the increased utilization under Subparagraph 58.c. causes Santee Cooper to exceed the applicable System-Wide 12-Month Rolling Average Emission Rate for NO_x and/or the applicable System-Wide 12-Month Rolling Tonnage limitation for NO_x; and

e. Santee Cooper notifies the Plaintiffs in writing as soon as practicable, but no later than fifteen (15) business days following the start of the unanticipated forced outage,

then Santee Cooper shall be deemed not to be in violation of such system-wide limits, and shall not be liable for stipulated penalties under this Consent Decree for exceeding such limits, if Santee Cooper offsets the emissions in excess of either the System-Wide 12-Month Rolling Average Emission Rate for NO_x or the System-Wide 12-Month Rolling Tonnage limitation for NO_x ("Excess Tons"), whichever is greater: (i) within twenty-four (24) months of the return to service of the affected Unit where the outage is six (6) months or less; or (b) within thirty-six (36) months of the return to service of the affected Unit where the outage exceeds six (6) months. Santee Cooper must achieve this offset by reducing its System-Wide 12-Month Rolling Tonnage for NO_x below the limitation specified in Paragraph 56 by an amount equal to the Excess Tons. Santee

Cooper shall demonstrate in its subsequent periodic reports that it has achieved the required offset in its System-Wide 12-Month Rolling Tonnage for NO_x in the following twenty-four (24) or thirty-six (36) month period, as applicable.

C. Use of NO_x Allowances

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

60. NO_x Allowances allocated to the Santee Cooper System may be used by Santee Cooper to meet its own federal and/or State Clean Air Act regulatory requirements.

61. Provided that Santee Cooper is in compliance with the system-wide NO_x emission limitations of this Consent Decree, nothing in this Consent Decree shall preclude Santee Cooper from selling or transferring NO_x Allowances allocated to the Santee Cooper System that become available for sale or trade as a result of:

a. activities that reduce NO_x emissions at any Unit within the Santee Cooper 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 under this Consent Decree;

c. the installation and operation of any NO_x pollution control technology or technique that achieves and maintains, prior to the date required under this Consent Decree, NO_x emission rates below the 30-Day Rolling Average Emission Rates required by Paragraph 49;

d. achievement and maintenance of NO_x emission rates below the 30-Day Rolling Average Emission Rates specified below, and in accordance with the following requirements, but only to the extent specified below:

Unit	Date	30-Day Rolling Average Emission Rate Range (lb/mmBTU) In Which Santee Cooper May Sell or Trade 50% of Allowances	30-Day Rolling Average Emission Rate (lb/mmBTU) Below Which Santee Cooper May Sell or Trade 100% of Allowances
Cross 1	Beginning May 31, 2004	N/A	0.100
Cross 2	May 31, 2004 - May 31, 2007	0.110 to 0.100	0.100
	Beginning June 1, 2007	N/A	0.100
Cross 3	Beginning 180 Days After 1st Start-Up	N/A	0.080
Cross 4	Beginning 180 Days After 1st Start-Up	N/A	0.080
Winyah 1	November 30, 2004 -November 30, 2007	0.110 to 0.100	0.100
	Beginning December 1, 2007	N/A	0.100
Winyah 2	Beginning November 30, 2004	0.120 to 0.100	0.100
Winyah 3	November 30, 2005 -November 30, 2008	0.140 to 0.100	0.100
	Beginning December 1, 2008	0.120 to 0.100	0.100
Winyah 4	November 30, 2005 - November 30, 2008	0.130 to 0.100	0.100
	Beginning December 1, 2008	0.120 to 0.100	0.100

e. permanent shutdown of any Santee Cooper System Unit;

f. a fuel change at a Unit that results in an emission reduction, provided that the emission reduction is made enforceable through modification of this Consent

Decree; or

g. other emission reduction measures that are agreed to by the Parties and made enforceable through modification of this Consent Decree,

so long as Santee Cooper timely reports the generation of such surplus NO_x Allowances in accordance with Section XI (Periodic Reporting) of this Consent Decree. Santee Cooper 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 through 61.f. only to the extent that the total NO_x emissions from all Units within the Santee Cooper System are below the System-Wide 12-Month Rolling Tonnage limitation for that year.

62. Santee Cooper may not purchase or otherwise obtain NO_x Allowances from another source for purposes of complying with the requirements of this Consent Decree. However, nothing in this Consent Decree shall prevent Santee Cooper 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. General NO_x Provisions

63. In determining Emission Rates for NO_x, Santee Cooper shall use CEMS in accordance with those reference methods specified in 40 C.F.R. Part 75 (2003).

V. SO_2 EMISSION REDUCTIONS AND CONTROLS

A. SO_2 Emission Controls

1. New FGD Installations

64. Santee Cooper shall install and commence continuous operation of an FGD (or equivalent SO_2 control technology approved pursuant to Paragraph 65) on the following Units within the Santee Cooper System so as to achieve, by the dates specified below, and thereafter maintain, a 30-Day Rolling Average Removal Efficiency for SO_2 of at least ninety-five percent (95%):

Unit	**Date by which Santee Cooper Must Complete Installation and Continuously Operate FGD**	**Date by which Santee Cooper Must Comply with 30-Day Rolling Average Removal Efficiency for SO_2**
Cross Unit 3	Within 180 Days of 1st Start-Up	Within 180 Days of 1st Start-Up
Cross Unit 4	Within 180 Days of 1st Start-Up	Within 180 Days of 1st Start-Up
Winyah Unit 1	June 30, 2008	December 31, 2008
Winyah Unit 2	June 30, 2008	December 31, 2008

65. With prior written notice to and written approval from EPA and DHEC, Santee Cooper may, in lieu of installing and operating an FGD at any Unit specified in Paragraph 64, install and operate equivalent SO_2 control technology so long as such equivalent SO_2 control technology achieves and maintains a 30-Day Rolling Average Removal Efficiency of at least ninety-five percent (95%).

2. FGD Upgrades

66. Santee Cooper shall upgrade the FGDs on the following Units within the Santee Cooper System and achieve, by the dates specified below, and thereafter maintain, the 30-Day

Rolling Average Removal Efficiencies for SO_2 specified below:

Unit	Date by Which Santee Cooper Must Complete FGD Upgrade	30-Day Rolling Average Removal Efficiency Requirement	Date by Which Santee Cooper Must Comply with Removal Efficiency Requirement
Cross Unit 1	December 31, 2005	95% Removal Efficiency Through Upgrades of Existing FGD Modules	June 30, 2006
Cross Unit 2	December 31, 2005	Design to 91%, but Achieve and Maintain at least 87%, Removal Efficiency Through Upgrades of Existing FGD Modules	June 30, 2006
Winyah Unit 3	June 30, 2012	90% Removal Efficiency	December 31, 2012
Winyah Unit 4	June 30, 2007	90% Removal Efficiency	December 31, 2007

67. In the case of Winyah Unit 3, Santee Cooper shall achieve and maintain an interim 30-Day Rolling Average Emission Rate for SO_2 of not greater than 1.20 lb/mmBTU during the construction phase of the FGD upgrade required for this Unit under Paragraph 66. The construction phase shall begin when the existing FGD on Winyah Unit 3 must be bypassed in order to undertake the necessary upgrade, and shall end when the upgrade construction is completed, but no later than December 31, 2012. The interim 30-Day Rolling Average Emission Rate for SO_2 for Winyah Unit 3 shall apply during the construction phase in lieu of all other applicable SO_2 emissions limitations required by the Administrator of EPA under the Act, or by DHEC under the South Carolina State

Implementation Plan.

3. FGD Continuous Operation

68. Santee Cooper shall continuously operate each FGD (or equivalent SO_2 control technology approved pursuant to Paragraph 65) in the Santee Cooper System at all times that the Unit it serves is in operation, consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for the FGD or equivalent technology. Santee Cooper need not operate an FGD system during periods of Malfunction of the FGD, provided Santee Cooper satisfies the notice requirements for Malfunction Events as set forth in Paragraph 164 in Section XIV (Force Majeure) of this Consent Decree.

B. System-Wide Annual Emission Limits for SO_2

69. Santee Cooper shall comply with the following System-Wide 12-Month Rolling Average Emission Rates for SO_2, which apply to all Units collectively within the Santee Cooper System:

For the 12-Month Period Commencing on the Date Specified Below, and Each 12-Month Period Thereafter:	**System-Wide 12-Month Rolling Average Emission Rate for SO_2**
January 1, 2005	0.92 lb/mmBTU
January 1, 2007	0.75 lb/mmBTU
January 1, 2009	0.53 lb/mmBTU
January 1, 2011	0.50 lb/mmBTU

70. Santee Cooper shall comply with the following System-Wide 12-Month Rolling Tonnage limitations for SO_2, which apply to all Units collectively within the Santee Cooper

System:

For the 12-Month Period Commencing on the Date Specified Below, and Each 12-Month Period Thereafter:	System-Wide 12-Month Rolling Tonnage Limitation for SO_2
January 1, 2005	95,000 tons
January 1, 2007	85,000 tons
January 1, 2009	70,000 tons
January 1, 2011	65,000 tons

71. Each of the system-wide annual emission limits for SO_2 set forth in Paragraphs 69 and 70 shall apply prospectively from the specified date on which a 12-month period commences and shall end on the date that the subsequent system-wide limit, if any, takes effect. Santee Cooper shall not use SO_2 allowances or credits to comply with these system-wide limitations.

72. In the event that:

a. an Improved Unit is unable to operate for an extended period of time due to unanticipated forced outage(s) caused by catastrophic events;

b. the annual availability (as measured by the Generating Availability Data System) of the Improved Unit decreases by twenty-five percent (25%) below availability levels, as averaged over the previous two (2) years, due to the occurrence of the unanticipated forced outage(s);

c. Santee Cooper must compensate for the reduced utilization at the Improved Unit by increasing the utilization of other Units within the Santee Cooper System that emit SO_2 emissions at higher levels than those emitted by the Improved Unit;

d. the SO_2 emissions increase resulting from the increased utilization under Subparagraph 72.c. causes Santee Cooper to exceed the applicable System-Wide 12-Month Rolling Average Emission Rate for SO_2 and/or the applicable System-Wide 12-Month Rolling Tonnage limitation for SO_2; and

e. Santee Cooper notifies the Plaintiffs in writing as soon as practicable, but no later than fifteen (15) business days following the start of the unanticipated forced outage,

then Santee Cooper shall be deemed not to be in violation of such system-wide limits, and shall not be liable for stipulated penalties under this Consent Decree for exceeding such limits, if Santee Cooper offsets the emissions in excess of either the System-Wide 12-Month Rolling Average Emission Rate for SO_2 or the System-Wide 12-Month Rolling Tonnage limitation for SO_2 ("Excess Tons"), whichever is greater: (i) within twenty-four (24) months of the return to service of the affected Unit where the outage is six (6) months or less; or (b) within thirty-six (36) months of the return to service of the affected Unit where the outage exceeds six (6) months. Santee Cooper must achieve this offset by reducing its System-Wide 12-Month Rolling Tonnage for SO_2 below the limitation specified in Paragraph 70 by an amount equal to the Excess Tons. Santee Cooper shall demonstrate in its subsequent periodic reports that it has achieved the required offset in its System-Wide 12-Month Rolling Tonnage for SO_2 in the following twenty-four (24) or thirty-six (36) month period, as applicable.

C. Surrender of SO_2 Allowances

73. For purposes of this Subsection, the "surrender of allowances" means permanently

surrendering allowances from the accounts administered by EPA for all Units in the Santee Cooper System, so that such allowances can never be used to meet any compliance requirement under the Clean Air Act, the South Carolina State Implementation Plan, or this Consent Decree.

74. Santee Cooper may use any SO_2 Allowances allocated by EPA to the Santee Cooper System only to meet its own federal and/or State Clean Air Act regulatory requirements.

75. For each calendar year beginning with calendar year 2007, Santee Cooper shall surrender to EPA, or transfer to a non-profit third party selected by Santee Cooper for surrender, SO_2 Allowances allocated to Santee Cooper that are surplus to its Clean Air Act SO_2 Allowance-holding requirements for the Santee Cooper System Units, collectively, for that year. The number of SO_2 Allowances that are surplus to Santee Cooper's Clean Air Act SO_2 Allowance-holding requirements shall be equal to the amount by which the SO_2 Allowances allocated to all Santee Cooper System Units for a particular year are greater than the total amount of SO_2 emissions from those same Units for the same year. However, beginning with calendar year 2013, and for each subsequent calendar year, Santee Cooper need not surrender any SO_2 Allowances that are surplus to its SO_2 Allowance-holding requirements for the Santee Cooper System Units, collectively, for that year, and may use such surplus SO_2 Allowances to meet its SO_2 Allowance-holding requirements for the Santee Cooper System Units for the next five (5) calendar years, on a rolling five-year basis. Beginning with calendar year 2018, and for each subsequent calendar year, Santee Cooper shall surrender, in accordance with the provisions of this Section, any such surplus SO_2 Allowances that have not been used for the Santee Cooper

System Units in the prior five-year rolling period. Santee Cooper shall make such surrender annually, within forty-five (45) days of Santee Cooper's receipt from EPA of the Annual Deduction Reports for SO_2. Any surrender need not include the specific SO_2 Allowances that were allocated to Santee Cooper System Units, so long as Santee Cooper surrenders SO_2 Allowances that are from the same year or an earlier year and that are equal to the number required to be surrendered under this Paragraph.

76. If any allowances are transferred directly to a non-profit third party, Santee Cooper shall include a description of such transfer in the next report submitted to EPA and DHEC pursuant to Section XI (Periodic Reporting) of this Consent Decree. Such report shall: (i) provide the identity of the non-profit third-party recipient(s) of the SO_2 Allowances and a listing of 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, Santee Cooper 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 77 within one (1) year after Santee Cooper transferred the SO_2 Allowances to them. Santee Cooper 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.

77. For all SO_2 Allowances surrendered to EPA, Santee Cooper 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, Santee Cooper 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.

78. Provided that Santee Cooper is in compliance with the system-wide SO_2 emission limitations of this Consent Decree, nothing in this Consent Decree shall preclude Santee Cooper from banking, selling or transferring SO_2 Allowances allocated to the Santee Cooper System that become available for sale or trade as a result of:

a. activities that reduce SO_2 emissions at any Unit within the Santee Cooper System prior to the date of entry of this Consent Decree;

b. the installation and operation of any SO_2 pollution control technology or technique that is not otherwise required under this Consent Decree;

c. achievement and maintenance of a 30-Day Rolling Average Removal Efficiency at an Improved Unit for SO_2 that is below the applicable 30-Day Rolling Average Removal Efficiency limit specified in Paragraphs 64 and 66;

d. permanent shutdown of any Santee Cooper System Unit;

e. a fuel change at a Unit that results in an emission reduction, provided that the emission reduction is made enforceable through modification of this Consent

Decree; or

f. other emission reduction measures that are agreed to by the Parties and made enforceable through modification of this Consent Decree,

so long as Santee Cooper timely reports the generation of such surplus SO_2 Allowances in accordance with Section XI (Periodic Reporting) of this Consent Decree. Santee Cooper shall be allowed to bank, sell or transfer SO_2 Allowances equal to the SO_2 emissions reductions achieved for any given year by any of the actions specified in Subparagraphs 78.b. through 78.f. only to the extent that the total SO_2 emissions from all Units within the Santee Cooper System are below the System-Wide 12-Month Rolling Tonnage limitation for that year. In addition, and notwithstanding any other requirement in this Consent Decree regarding the surrender, or restricting the banking, sale or transfer, of SO_2 Allowances allocated to the Santee Cooper System, in any calendar year Santee Cooper need not surrender, and may bank, sell or transfer, SO_2 Allowances allocated to the Santee Cooper System in an amount equal to the number of tons by which SO_2 emissions from the Santee Cooper System Units, collectively, are below 35,000 tons, provided that Santee Cooper shall not bank, sell, or transfer SO_2 Allowances based on emission reductions below 35,000 tons if Santee Cooper has already banked, sold, or traded those SO_2 Allowances as a result of its activities under Subparagraphs 78.b. through 78.f.

D. Fuel Limitations

79. Santee Cooper shall not burn coal having a sulfur content greater than any amount authorized by regulation or State permit at any Santee Cooper System Unit.

80. Santee Cooper shall not burn petroleum coke at any Unit where Santee Cooper is not required to install or upgrade an FGD under this Consent Decree. Santee Cooper shall not burn petroleum coke at any Unit where Santee Cooper is required to install or upgrade an FGD under this Consent Decree prior to the date on which Santee Cooper achieves the 30-Day Rolling Average Removal Efficiency for SO_2 required by this Consent Decree, unless authorized by permit as of the date of lodging of this Consent Decree. In the case of any Unit that is controlled by an FGD and achieves the 30-Day Rolling Average Removal Efficiency for SO_2 required by this Consent Decree, Santee Cooper may burn petroleum coke at that Unit beginning on the date that it achieves compliance with the required 30-Day Rolling Average Removal Efficiency for SO_2, provided that Santee Cooper has first obtained from DHEC the necessary State operating permit.

81. Notwithstanding Paragraph 80, nothing in this Consent Decree shall preclude Santee Cooper from burning petroleum coke at any Santee Cooper System Unit if it first obtains permit authorization to do so pursuant to the PSD and Nonattainment NSR rules that may apply to such Unit under the Clean Air Act and the South Carolina State Implementation Plan.

E. General SO_2 Provisions

82. In determining Emission Rates for SO_2, Santee Cooper shall use CEMS in accordance with those reference methods specified in 40 C.F.R. Part 75 (2003) and 40 C.F.R. Part 60 (2003).

83. For Units that are required to be equipped with SO_2 control equipment and that are

subject to the percent removal efficiency requirements of this Consent Decree, the outlet SO_2 Emission Rate and the inlet SO_2 Emission Rate shall be determined based on the data generated in accordance with 40 C.F.R. Part 75 (2002) (using SO_2 CEMS data from both the inlet and outlet of the control device). For the purpose of determining mass emissions, Santee Cooper shall (a) monitor the gas flow rate at both the inlet and outlet of the control device, or (b) with prior written notice to and written approval from EPA and DHEC, monitor the gas flow rate at the outlet of the control device and determine the inlet flow rate based on an approved alternative methodology.

VI. PM EMISSION REDUCTIONS AND CONTROLS

A. New PM Emission Controls

84. Santee Cooper shall install and commence continuous operation of PM emission control equipment on Cross Unit 3 and Cross Unit 4 within one hundred eighty (180) days after the date of first start-up of each Unit. Santee Cooper shall continuously operate the PM control equipment on each Unit so as to maximize PM emission reductions, consistent with the Unit's operational design and safety requirements, and shall achieve and maintain a PM Emission Rate of no greater than 0.015 lb/mmBTU at each Unit.

B. Optimization of PM Emission Controls

85. Within ninety (90) days after entry of this Consent Decree and continuing thereafter, Santee Cooper shall continuously operate each PM control device on its existing Units to maximize PM emission reductions, consistent with the operational and maintenance limitations of the Units. Specifically, Santee Cooper shall, at a minimum: (a) energize each section of the ESP for each Unit, regardless of whether that action is needed to

comply with opacity limits; (b) maintain the energy or power levels delivered to the ESPs for each Unit to achieve the greatest possible removal of PM; (c) make best efforts to expeditiously repair and return to service transformer-rectifier sets when they fail; and (d) inspect for, and schedule for repair, any openings in ESP casings and ductwork to minimize air leakage. Within two hundred seventy (270) days after entry of this Consent Decree and continuing thereafter, Santee Cooper shall also optimize the plate-cleaning and discharge-electrode-cleaning systems for the ESPs at each Santee Cooper System Unit by varying the cycle time, cycle frequency, rapper-vibrator intensity, and number of strikes per cleaning event, of these systems to minimize PM emissions.

C. Upgrade of Existing PM Emission Controls

86. Santee Cooper shall demonstrate that each of the following Units can achieve and maintain a PM Emission Rate of no greater than 0.030 lb/mmBTU by the dates specified in the table below and in accordance with Paragraph 91. In the alternative and in lieu of demonstrating compliance with a PM Emission Rate applicable under this Paragraph, Santee Cooper may elect to undertake an upgrade of the existing PM emissions control equipment for any such Unit based on a Pollution Control Upgrade Analysis for that Unit. The preparation, submission, and implementation of such Pollution Control Upgrade Analysis shall be undertaken and completed in accordance with the compliance schedules and procedures specified in Paragraph 88.

Unit	Date by Which Santee Cooper Must Demonstrate Compliance with PM Emission Rate of 0.030 lb/mmBTU
Cross Unit 1	90 Days After Date of Entry of Consent Decree
Cross Unit 2	90 Days After Date of Entry of Consent Decree
Winyah Unit 1	December 31, 2008
Winyah Unit 2	December 31, 2008
Winyah Unit 3	December 31, 2012
Winyah Unit 4	December 31, 2007
Grainger Unit 1	December 31, 2012
Grainger Unit 2	December 31, 2012
Jefferies Unit 3	December 31, 2012
Jefferies Unit 4	December 31, 2012

87. Demonstration and Compliance with PM Emission Limit. If Santee Cooper demonstrates by the applicable date set forth in Paragraph 86 that a Unit can achieve and maintain a PM Emission Rate of no greater than 0.030 lb/mmBTU, Santee shall thereafter operate that Unit to maximize PM emission reductions, consistent with the Unit's operational design and safety requirements, and shall achieve and maintain a PM Emission Rate no greater than 0.030 lb/mmBTU.

88. PM Emission Control Upgrade. For each existing Unit in the Santee Cooper System for which Santee Cooper does not elect to meet a PM Emission Rate of 0.030 lb/mmBTU, Santee Cooper shall prepare, submit, and implement a Pollution Control Upgrade Analysis in accordance with this Paragraph. Such Pollution Control Upgrade Analysis shall include proposed upgrades to the PM pollution control device and a proposed alternate PM Emission Rate that the Unit shall meet upon completion of such upgrade.

For each Unit for which such a Pollution Control Upgrade Analysis is required, Santee Cooper shall deliver such Pollution Control Upgrade Analysis to EPA and DHEC for approval pursuant to Section XII (Review and Approval of Submittals) of this Consent Decree by the deadlines set forth in Paragraph 86 for each such Unit.

a. In conducting the Pollution Control Upgrade Analysis for any Unit, Santee Cooper need not consider any of the following PM control measures:

   i. the complete replacement of the existing ESP with a new ESP, FGD, or baghouse, or

   ii. the upgrade of the existing ESP controls through the installation of a supplemental PM pollution control device, through the refurbishment of existing PM control equipment, or through other measures, if (*a*) the costs of such upgrade are similar to the costs of a replacement ESP, FGD, or baghouse, or (*b*) the costs, including but not limited to the incremental costs, of such upgrade, measured in terms of dollars per ton removed, are not consistent with EPA regulatory guidance on PSD.

   With each Pollution Control Upgrade Analysis delivered to EPA and DHEC, Santee Cooper shall simultaneously deliver all documents that support or were considered in preparing such Pollution Control Upgrade Analysis. Santee Cooper shall retain a qualified contractor to assist in the performance and completion of each Pollution Control Upgrade Analysis.

b. Beginning one (1) year after EPA and DHEC approve the recommendation(s) made in a Pollution Control Upgrade Analysis for a Unit, Santee Cooper shall not

operate that Unit unless all equipment called for in the recommendation(s) of the Pollution Control Upgrade Analysis has been installed. An installation period longer than one year may be allowed if Santee Cooper makes such a request in the Pollution Control Upgrade Analysis and EPA and DHEC determine such additional time is necessary due to factors such as the magnitude of the PM control project or the need to address reliability concerns that could result from multiple Unit outages within the Santee Cooper System. Upon installation of all equipment recommended under an approved Pollution Control Upgrade Analysis, Santee Cooper shall operate such equipment in compliance with the recommendation(s) of the approved Pollution Control Upgrade Analysis, including compliance with the PM Emission Rate specified by the recommendation(s).

89. Santee Cooper shall continuously operate each ESP in the Santee Cooper System at all times that the Unit it serves is combusting Fossil Fuel, except that Santee Cooper need not commence operation of any ESP until the Unit that the ESP serves has continuously combusted any amount of coal or petroleum coke for a period of two hours (three hours for Units at the Winyah Plant and at the Jefferies Plant). Santee Cooper shall use good engineering practices for PM control at all times that the Unit is combusting Fossil Fuel.

D. PM and Mercury Monitoring

1. PM Stack Tests

90. Beginning in calendar year 2004, and continuing annually thereafter, Santee Cooper shall conduct a PM performance test on each Santee Cooper System Unit. The annual stack

test requirement imposed on each Santee Cooper System Unit by this Paragraph may be satisfied by stack tests conducted by Santee Cooper as required by its permits from DHEC for any year that such stack tests are required under the permits. Santee Cooper may perform biennial rather than annual testing provided that (a) two of the most recently completed test results from tests conducted in accordance with Method 5 or Method 17 demonstrate that the particulate matter emissions are equal to or less than 0.015 lb/mmBTU, or (b) the Unit is equipped with a PM CEMS in accordance with Paragraphs 93 through 98. Santee Cooper shall perform annual rather than biennial testing the year immediately following any test result demonstrating that the particulate matter emissions are greater than 0.015 lb/mmBTU, unless the Unit is equipped with a PM CEMS in accordance with Paragraph 93 through 98.

91. The reference and monitoring 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 Method 17 (2003). Use of any particular method shall conform to the EPA requirements specified in 40 C.F.R. Part 60, Appendix A (2003) and 40 C.F.R. § 60.48a (b) and (e) (2003), or any federally approved method contained in the South Carolina State Implementation Plan. Santee Cooper shall calculate the PM Emission Rates from the stack test results in accordance with 40 C.F.R. § 60.8(f) (2003), and 40 C.F.R. § 60.46a(c) (2003). The results of each PM stack test shall be submitted to EPA and DHEC within 30 days of completion of each test.

92. The PM Emission Rates established under this Section shall not apply to emissions that occur at any Unit during the periods that the ESP serving that Unit is not required to be in

operation, pursuant to Paragraph 89, and shall not apply to emissions that occur during periods of Unit Malfunction so long as Santee Cooper provides notice of the Malfunction in accordance with Paragraph 164 in Section XIV (Force Majeure) of this Consent Decree.

2. PM CEMS

93. Santee Cooper shall install and operate PM CEMS in accordance with Paragraphs 94 through 99. 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. Santee Cooper shall maintain, in an electronic database, the hourly average emission values of all PM CEMS in lb/mmBTU. Santee Cooper shall use reasonable efforts to keep each PM CEMS running and producing data whenever any Unit served by the PM CEMS is operating.

94. No later than twelve (12) months after entry of this Consent Decree, Santee Cooper shall submit to EPA and DHEC for review and approval pursuant to Section XII (Review and Approval of Submittals) of this Consent Decree a plan for the installation and certification of each PM CEMS.

95. Santee Cooper shall install, certify, and operate PM CEMS on two Units, stacks or common stacks, in accordance with the following schedule:

Unit	Deadline to Commence Operation of PM CEMS
Cross Unit 1 or 2	24 Months After Date of Entry of Consent Decree
Grainger Unit 1 or 2, or Jefferies Unit 3 or 4	24 Months After Date of Entry of Consent Decree

96. No later than one hundred twenty (120) days prior to the deadline to commence operation of each PM CEMS, Santee Cooper shall submit to EPA and DHEC for review and approval pursuant to Section XII (Review and Approval of Submittals) of this Consent Decree a proposed Quality Assurance/Quality Control ("QA/QC") protocol that shall be followed in calibrating such PM CEMS. Following EPA's and DHEC's approval of the protocol, Santee Cooper shall thereafter operate each PM CEMS in accordance with the approved protocol.

97. In developing both the plan for installation and certification of the PM CEMS and the QA/QC protocol, Santee Cooper 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).

98. No later than ninety (90) days after Santee Cooper begins operation of the PM CEMS, Santee Cooper 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 DHEC in accordance with Paragraph 94.

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

3. Mercury CEMS

100. Santee Cooper shall install and operate Mercury CEMS in accordance with Paragraphs 101 through 105. Each Mercury CEMS shall continuously measure mercury emission concentration, directly or indirectly, on an hourly average basis, in units of lb/TBTU. Santee Cooper shall maintain, in an electronic database, the hourly average emission values of all Mercury CEMS in lb/TBTU. Santee Cooper shall use reasonable efforts to keep each Mercury CEMS running and producing data whenever any Unit served by the Mercury CEMS is operating.

101. No later than twelve (12) months after entry of this Consent Decree, Santee Cooper shall submit to EPA and DHEC for review and approval pursuant to Section XII (Review and Approval of Submittals) of this Consent Decree a plan for the installation and certification of each Mercury CEMS.

102. Santee Cooper shall install, certify, and operate Mercury CEMS on the following Units in accordance with the following schedule:

Unit	Deadline to Commence Operation of Mercury CEMS
Cross Unit 1	24 Months After Date of Entry of Consent Decree
Cross Unit 2	24 Months After Date of Entry of Consent Decree

No later than twelve (12) months after entry of this Consent Decree, Santee Cooper may submit to EPA and DHEC for review and approval alternative Units on which to install the two (2) Mercury CEMS required by this Paragraph.

103. No later than one hundred twenty (120) days prior to the deadline to commence operation of each Mercury CEMS, Santee Cooper shall submit to EPA and DHEC for review and approval pursuant to Section XII (Review and Approval of Submittals) of this Consent Decree a proposed QA/QC protocol that shall be followed in calibrating such Mercury CEMS. Following EPA's and DHEC's approval of the protocol, Santee Cooper shall thereafter operate each Mercury CEMS in accordance with the approved protocol.

104. No later than ninety (90) days after Santee Cooper begins operation of the Mercury CEMS, Santee Cooper shall conduct tests of each Mercury CEMS to demonstrate compliance with the Mercury CEMS installation and certification plan submitted to and approved by EPA and DHEC in accordance with Paragraph 101.

105. Santee Cooper shall operate the Mercury CEMS for at least two (2) years on each of the Units specified under Paragraph 102. After two (2) years of operation, Santee Cooper shall not be required to continue operating the Mercury CEMS on any such Units if EPA and DHEC agree that operation of the Mercury CEMS is no longer feasible. Operation of a Mercury CEMS shall be considered no longer feasible if (a) the Mercury 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) Santee Cooper 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 and DHEC determine that Santee Cooper has demonstrated pursuant to this Paragraph that operation is no longer feasible, Santee Cooper shall be entitled to discontinue operation of and remove the Mercury CEMS.

4. PM and Mercury CEMS Reporting

106. Following the installation of each PM and Mercury CEMS, Santee Cooper shall report to EPA and DHEC, pursuant to Section XI (Periodic Reporting) of this Consent Decree, the data recorded by the PM and Mercury CEMS, expressed in lb/mmBTU and lb/TBTU, respectively, on a 30-day and 365-day rolling average basis, in electronic format, as required in Paragraphs 93 and 100.

E. General PM Provisions

107. In determining the PM Emission Rate for purposes of this Consent Decree, Santee Cooper shall use the reference methods specified in 40 C.F.R. Part 60, Appendix A, Method 5 or Method 17 (2003), using stack tests, or alternative methods that are either promulgated by EPA or requested by Santee Cooper and approved by EPA. Santee Cooper shall also calculate the PM Emission Rates from annual (or biennial) stack tests in accordance with 40 C.F.R. § 60.8(f) (2003).

VII. PROHIBITION ON NETTING CREDITS OR OFFSETS FROM REQUIRED CONTROLS

108. Emission reductions generated by Santee Cooper 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. Notwithstanding the preceding sentence, Santee Cooper may use any creditable contemporaneous emission decreases of NO_x and SO_2 generated under this Consent Decree at Cross Units 1 and 2 for the purpose of obtaining netting credit for these pollutants at Cross Units 3 and 4 under the Clean Air Act's Nonattainment NSR and PSD programs, provided that DHEC has:

a. Issued a permit for Cross Units 3 and 4 with emissions limits for NO_x, SO_2 and PM that are at least as stringent as those specified in Paragraphs 49, 64, and 84; and

b. Determined through air quality modeling that emissions from Cross Units 3 and 4 will not exceed a PSD increment or have adverse impacts on a Class I area.

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

110. Nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by DHEC 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. ENVIRONMENTALLY BENEFICIAL PROJECTS

111. Santee Cooper shall implement the Environmentally Beneficial Projects ("Projects") described in this Section in compliance with the approved plans and schedules for such Projects and other terms of this Consent Decree. Santee Cooper shall submit plans for the Projects to Plaintiffs for review and approval pursuant to Section XII (Review and Approval of Submittals) of this Consent Decree in accordance with the schedules set forth in this Section. In implementing the Projects, Santee Cooper shall spend no less than $4.5 million in Project Dollars. Santee Cooper shall spend no less than $1.25 million in Project Dollars within one (1) year after entry of this Consent Decree and the full amount of the Project Dollars required by this Paragraph on or before December 31, 2006. Santee Cooper shall maintain, and present to Plaintiffs, upon request, all documents required by GAAP to substantiate the Project Dollars expended and shall provide these documents to Plaintiffs within thirty (30) days of a request by Plaintiffs for the documents.

112. All plans and reports prepared by Santee Cooper pursuant to the requirements of this Section of the Consent Decree shall be publicly available without charge.

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

114. Santee Cooper 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.

115. If Santee Cooper elects (where such an election is allowed) to undertake a Project by contributing funds to another person or instrumentality that will carry out the Project, 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 Santee Cooper contributes the funds. Regardless of whether Santee Cooper 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, Santee Cooper acknowledges that it will receive credit for the expenditure of such funds as Project Dollars only if Santee Cooper demonstrates that the funds have been actually spent by either Santee Cooper or by the person or instrumentality receiving them (or, in the case of internal costs, have actually been incurred by Santee Cooper), and that such expenditures met all requirements of this Consent Decree.

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

117. Santee Cooper shall not financially benefit to a greater extent than any other member of the general public from the sale or transfer of technology obtained in the course of

implementing any Project.

118. Beginning one (1) year after entry of this Consent Decree, Santee Cooper shall provide Plaintiffs with semi-annual updates concerning the progress of each Project.

119. South Carolina Land Conservation Project. Within ninety (90) days after entry of this Consent Decree, and as part of the consideration provided to DHEC for its resolution of claims under this Consent Decree, Santee Cooper shall spend no less than $1.25 million in Project Dollars for the purchase of conservation easements and restrictive covenants to prevent the future development of environmentally-sensitive land along the Cooper River in Berkeley County, South Carolina. Santee Cooper shall make such payment to the South Carolina Department of Natural Resources. The property subject to the conservation easements and restrictive covenants must contain a biologically significant riverine ecology that functions as an important wetlands buffer from the surrounding environs, such that development of the property would have significant and likely irreversible adverse impacts on the Cooper River.

120. Energy-Efficient Technologies Project. Within one (1) year after entry of this Consent Decree, Santee Cooper shall submit to EPA and DHEC for review and approval a proposal for the purchase and installation of innovative and environmentally beneficial energy technologies designed to minimize the use of electric power and improve energy self-sufficiency.

a. Santee Cooper shall spend at least $1.0 million in Project Dollars to purchase and install the technologies at State-funded universities.

b. The technologies may include advanced renewable energy supply sources (such

as next-generation solar panels or fuel cells) and energy-efficient building systems such as highly-efficient HVAC and water heating systems, passive lighting systems, dynamic window coatings, and innovative framing and insulation materials.

c. Santee Cooper shall receive dollar-for-dollar credit on any expenditures of Project Dollars for renewable energy technologies, but shall only receive credit for expenditures of Project Dollars for energy-efficient materials and technologies to the extent that the cost of such energy-efficient materials and technologies exceed the cost of less energy-efficient materials and technologies.

121. Demand-Side Management Project. Within one hundred eighty (180) days after entry of this Consent Decree, Santee Cooper shall submit to EPA for review and approval pursuant to Section XII (Review and Approval of Submittals) of this Consent Decree a plan for the implementation of a Demand-Side Management Project. As part of this Project, Santee Cooper shall spend no less than $1.0 million in Project Dollars to install technologies to reduce the demand for energy consumption, to subsidize the installation of technologies that reduce the demand for energy consumption, and to implement strategies that will reduce the demand for energy consumption. Santee Cooper shall make such expenditures only in those situations presenting a demonstrated financial need for such assistance within the Santee Cooper System service area. The plan may include the distribution of energy efficient lighting and/or the use of thermally-efficient design measures.

122. Clean Diesel School Bus Retrofit Project. Within one hundred eighty (180) days after

entry of this Consent Decree, Santee Cooper shall submit to EPA for review and approval pursuant to Section XII (Review and Approval of Submittals) of this Consent Decree a plan to retrofit new school bus diesel engines with emission control equipment designed to reduce emissions of particulates and/or ozone precursors (the "Clean Diesel School Bus Retrofit Project"). This Project shall include, where necessary, techniques and infrastructure needed to support such retrofits. Santee Cooper shall spend no less than $1.0 million in Project Dollars in performing this Clean Diesel School Bus Retrofit Project. The plan shall also satisfy the following criteria:

a. Involve school bus fleets located in areas that are either geographically diverse, in nonattainment areas, or in areas at significant risk of nonattainment status, within the State.

b. Provide for the retrofit of school bus diesel engines with established technologies and emissions control equipment designed to reduce emissions of particulates and/or ozone precursors. The retrofit emissions control equipment may include oxidation catalysts and particulate matter filters that will reduce particulate matter and hydrocarbon emissions.

c. Provide for the use of technologies and retrofit procedures that have been verified or certified by EPA to achieve measurable reductions in emissions of particulates and/or ozone precursors, and that are not being applied on a demonstration basis.

d. Provide for the retrofit of engines with the goal of meeting EPA standards for diesel school bus engines in 2007.

e. Account for hardware and installation costs, and include the costs of operation

and maintenance training for each of the recipient municipalities.

f. Limit recipients of retrofits to school districts that bind themselves to operate and maintain after the retrofit any equipment installed in connection with the Project.

g. For any third-party with whom Santee Cooper might contract to carry out this program, establish minimum standards that include prior experience in arranging retrofits, and a record of prior ability to interest and organize fleets, school districts, and community groups to join a clean diesel program.

h. Include a schedule for completing each portion of the project.

i. Be consistent with EPA's SEP Policy and any other applicable EPA guidance or provisions of law.

123. Environmental Management System Project. Santee Cooper shall spend no less than $250,000 on implementation of an Environmental Management System ("EMS") to facilitate its compliance with all environmental laws applicable to the Santee Cooper System. Santee Cooper shall implement the EMS in accordance with the requirements and schedules set forth in the Appendix of this Consent Decree, including:

a. An initial review of the current environmental management systems within the Santee Cooper System;

b. Development of an EMS Manual;

c. Implementation of a Comprehensive EMS;

d. An audit of the Comprehensive EMS; and

e. A post-audit action plan for implementing any additional measures as part of the Comprehensive EMS.

IX. CIVIL PENALTY

124. Within thirty (30) calendar days after entry of this Consent Decree, Santee Cooper shall pay to the United States a civil penalty in the amount of $1.3 million. 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 2003v02237 and DOJ Case Number 90-5-2-1-07492 and the civil action case name and case number of this action. The costs of such EFT shall be Santee Cooper's responsibility. Payment shall be made in accordance with instructions provided to Santee Cooper by the Financial Litigation Unit of the U.S. Attorney's Office for the District of South Carolina. Any funds received after 2:00 p.m. EDT shall be credited on the next business day. At the time of payment, Santee Cooper 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 XVIII (Notices) of this Consent Decree.

125. Failure to timely pay the civil penalty shall subject Santee Cooper 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 Santee Cooper 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.

126. Within thirty (30) calendar days after entry of this Consent Decree, Santee Cooper shall pay a civil penalty in the amount of $700,000. Payment shall be made in the form of a certified check or cashier's check, and be payable to "South Carolina Department of

Health and Environmental Control." Payment shall be sent to Director, Compliance Management Division, Bureau of Air Quality, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201. To ensure proper credit, the check must reference *United States et al. v. South Carolina Public Service Authority*, and the civil action case number.

127. Santee Cooper shall pay interest if it fails to make a complete or timely payment of the civil penalty that it is required to pay under Paragraph 126. Interest shall be determined pursuant to S.C. Code Ann. § 34-31-20(B). The interest shall be calculated on the full amount of the civil penalty due as principal, calculated from the due date specified in this Consent Decree until the date that the delinquent payment is finally paid in full.

128. 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. RESOLUTION OF CLAIMS

A. RESOLUTION OF PLAINTIFFS' CIVIL CLAIMS

129. Claims Based on Modifications Occurring Before the Lodging of Consent Decree. Entry of this Consent Decree shall resolve all civil claims of the Plaintiffs under:

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

b. Section 111 of the Clean Air Act;

c. Sections 502(a) and 504(a) of the Clean Air Act, but only to the extent that such claims are based on Santee Cooper'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;

d. South Carolina Pollution Control Act, S.C. Code Ann. 48-1-10 et seq. (1987), as implemented by 24A S.C. Code Ann. Regulations 61-62.5, Standard 7 (Supp. 2003);

e. South Carolina Pollution Control Act, S.C. Code Ann. 48-1-10 et seq. (1987), as implemented by 24A S.C. Code Ann. Regulations 61-62.60 (Supp. 2003); and

f. South Carolina Pollution Control Act, S.C. Code Ann. 48-1-10 et seq. (1987), as implemented by 24A S.C. Code Ann. Regulations 61-62.70 (Supp. 2003), but only to the extent that such claims are based on Santee Cooper's failure to obtain an operating permit that reflects applicable requirements imposed under South Carolina Pollution Control Act, S.C. Code Ann. 48-1-10 et seq., as implemented by 24A S.C. Code Ann. Regulations 61-62.5, Standard 7 (Supp. 2003) or 24A S.C. Code Ann. Regulations 61-62.60 (Supp. 2003);

that arose from any construction activity at Cross Unit 3, or that arose from modifications at any Santee Cooper System Unit other than Cross Units 3 and 4, where the construction activity or modification was commenced prior to the date of lodging of this Consent Decree, including but not limited to those construction and modification activities alleged in the Complaint filed by the Plaintiffs in this civil action.

130. Claims Based on Modifications After the Lodging of Consent Decree. Plaintiffs covenant not to sue or to bring administrative action against Santee Cooper for civil claims arising under:

a. Parts C or D of Subchapter I of the Clean Air Act and under regulations

promulgated thereunder as of July 31, 2003;

b. Sections 502(a) and 504(a) of the Clean Air Act, but only to the extent that such claims are based on Santee Cooper's failure to obtain an operating permit that reflects applicable requirements imposed under Parts C or D of Subchapter I of the Clean Air Act and under regulations promulgated thereunder as of July 31, 2003;

c. South Carolina Pollution Control Act, S.C. Code Ann. 48-1-10 et seq. (1987), as implemented by 24A S.C. Code Ann. Regulation 61-62.5, Standard 7 (Supp. 2003); or

d. South Carolina Pollution Control Act, S.C. Code Ann. 48-1-10 et seq. (1987), as implemented by 24A S.C. Code Ann. Regulation 61-62.70 (Supp. 2003), but only to the extent that such claims are based on Santee Cooper's failure to obtain an operating permit that reflects applicable requirements imposed under the South Carolina Pollution Control Act, S.C. Code Ann. 48-1-10 et seq. (1987), as implemented by 24A S.C. Code Ann. Regulation 61-62.5, Standard 7 (Supp. 2003);

for pollutants regulated under Parts C or D of Subchapter I of the Clean Air Act as of the date of lodging of this Consent Decree, where such claims are based on any physical change in, or change in the method of operation of, any Santee Cooper System Unit: (i) that increases the amount of any air pollutant emitted by such Unit, is commenced after lodging of this Consent Decree, and is completed before December 31, 2015; or (ii) that this Consent Decree expressly directs Santee Cooper to undertake.

131. Reopener. The Plaintiffs' covenant not to sue or to bring administrative action under this Subsection is subject to the provisions of Subsection B of this Section.

B. PURSUIT OF PLAINTIFFS' CIVIL CLAIMS OTHERWISE RESOLVED

132. Bases for Pursuing Resolved Claims Across Santee Cooper System. If Santee Cooper violates Paragraph 55 (System-Wide 12-Month Rolling Average Emission Rate for NO_x), Paragraph 56 (System-Wide 12-Month Rolling Tonnage limitations for NO_x), Paragraph 69 (System-Wide 12-Month Rolling Average Emission Rates for SO_2), Paragraph 70 (System-Wide 12-Month Rolling Tonnage limitations for SO_2), or Paragraphs 79 or 80 (Fuel Limitation), or fails by more than ninety (90) days to complete installation or upgrade, and commence operation, of any emission control device required pursuant to Paragraphs 49, 64, 66 or 84 (as may be extended by written agreement of the Parties or pursuant to Force Majeure or Dispute Resolution provisions of this Consent Decree), then the Plaintiffs may pursue any claim at any Santee Cooper System Unit that is otherwise covered by the covenant not to sue or to bring administrative action under Subsection A of this Section, subject to Subparagraphs 132.a. and 132.b.

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

133. 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 are otherwise covered by the covenant not to sue or to bring administrative action under Subsection A of this Section, if the modification (or collection of modifications) at the Improved Unit on which such claims are based (i) was commenced after lodging of this Consent Decree, and (ii) 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)(2003)) by more than ten percent (10%).

134. Additional Bases for Pursuing Resolved Claims for Modifications at an Other Unit. 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 are otherwise covered by the covenant not to sue or to bring administrative action under Subsection A of this Section, 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:

a. 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)(2003));

b. the aggregate of all Capital Expenditures made at such Other Unit exceed $125/KW on the Unit's Boiler Island (based on the generating capacities identified in Paragraphs 10, 18, 20 and 48) during any of the following five (5) year periods: January 1, 2006 through December 31, 2010; and January 1, 2011 through December 31, 2015. For the period from the date of lodging of this Consent Decree through December 31, 2005, the $125/KW limit shall be pro-rated to include only that portion of the five (5) year period (January 1, 2000 through December 31, 2005) following the date of lodging of this Consent Decree. (Capital Expenditures shall be measured in calendar year 2002 constant dollars, as adjusted by the McGraw-Hill Engineering News-Record Construction Cost Index); or

c. 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 an 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.

135. Solely for purposes of Subparagraph 134.c., the determination of whether there was an emissions increase must take into account any emissions changes relevant to the modeling domain that have occurred or will occur under this Consent Decree at other Santee Cooper System Units. In addition, an emissions increase shall not be deemed to have occurred at an Other Unit unless the annual emissions of the relevant pollutant (NO_x or SO_2) from the plant at which such modification(s) occurred exceed the annual emissions from that plant for calendar year 2003.

136. The introduction of any new or changed NAAQS shall not, standing alone, provide the showing needed under Subparagraphs 134.c.ii. or 134.c.iii. to pursue any claim for a modification at an Other Unit resolved under Subsection A of this Section.

XI. PERIODIC REPORTING

137. Within one hundred eighty (180) days after each date established by this Consent Decree for Santee Cooper to achieve and maintain a certain PM Emission Rate at any Santee Cooper System Unit, Santee Cooper shall conduct a performance test that demonstrates compliance with the limit specified in this Consent Decree or in any approved Pollution Control Upgrade Analysis submitted under Paragraph 88. Within thirty (30) days of each such performance test, Santee Cooper shall submit the results of the performance test to EPA and DHEC at the addresses specified in Section XVIII (Notices) of this Consent Decree.

138. Beginning thirty (30) days after the end of the first full calendar quarter following the entry of this Consent Decree, continuing on a semi-annual basis until December 31, 2015, and in addition to any other express reporting requirement in this Consent Decree, Santee

Cooper shall submit to EPA and DHEC a progress report.

139. The progress report shall contain the following information:

a. all information necessary to determine compliance with this Consent Decree, including information required to be included in periodic reports pursuant to Paragraphs 58, 72, 76 and 106;

b. all information relating to emission allowances and credits that Santee Cooper claims to have generated in accordance with Paragraphs 61 or 78 by compliance beyond the requirements of this Consent Decree; and

c. 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 Santee Cooper to mitigate such delay.

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

141. In addition to the progress reports required pursuant to this Section, Santee Cooper shall provide a written report to Plaintiffs of any violation of the requirements of this Consent Decree, including exceedances of the Unit-specific 30-Day Rolling Average Emission Rates, Unit-specific 30-Day Rolling Average Removal Efficiencies, System-Wide 12-Month Rolling Average Emission Rates, and System-Wide 12-Month Rolling Tonnage limitations, within ten (10) business days of when Santee Cooper knew or should have

known of any such violation. In this report, Santee Cooper shall explain the cause or causes of the violation and all measures taken or to be taken by Santee Cooper to prevent such violations in the future.

142. Each Santee Cooper report shall be signed by Santee Cooper's Manager of Performance and Environmental Services or, in his or her absence, Santee Cooper's Senior Vice President of Generation, or higher ranking official, 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.

143. If any allowances are surrendered to any third party pursuant to Subsection V.C. (Surrender of SO_2 Allowances) of this Consent Decree, the third party's certification pursuant to Paragraph 76 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.

XII. REVIEW AND APPROVAL OF SUBMITTALS

144. Santee Cooper shall submit each plan, report, or other submission to EPA and DHEC whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. EPA, in consultation with the DHEC to the extent that this Consent Decree provides for joint approval with DHEC, may approve the submittal or decline to approve it and provide written comments. Within sixty (60) days of receiving written comments from EPA, Santee Cooper shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal for final approval to EPA and, if applicable, to DHEC; or (b) submit the matter for dispute resolution, including the period of informal negotiations, under Section XV (Dispute Resolution) of this Consent Decree.

145. Upon receipt of EPA's final approval of the submittal, and DHEC's final approval, if applicable, or upon completion of the submittal pursuant to dispute resolution, Santee Cooper shall implement the approved submittal in accordance with the schedule specified therein.

XIII. STIPULATED PENALTIES

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

Consent Decree Violation	**Stipulated Penalty (Per day per violation, unless otherwise specified)**
a. Failure to pay the civil penalty as specified in Section IX (Civil Penalty) of this Consent Decree	$10,000
b. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO_x or SO_2, 30-Day Rolling Average Removal Efficiency for 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
c. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO_x or SO_2, 30-Day Rolling Average Removal Efficiency for 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
d. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO_x or SO_2, 30-Day Rolling Average Removal Efficiency for 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
e. Failure to comply with any System-Wide 12-Month Rolling Average Emission Rate, where the violation is less than 5% in excess of the limits set forth in this Consent Decree	$2,500 per month
f. Failure to comply with any System-Wide 12-Month Rolling Average Emission Rate, 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 month
g. Failure to comply with any System-Wide 12-Month Rolling Average Emission Rate, where the violation is equal to or greater than 10% in excess of the limits set forth in this Consent Decree	$10,000 per month
h. Failure to comply with the System-Wide 12-Month Rolling Tonnage limitations for SO_2 and NO_x	$5,000 per ton per month for the first 100 tons over the limit, and $10,000 per ton per month for each additional ton over the limit

i. Failure to install, commence operation, or continue operation of the NO_x, SO_2, and PM pollution control devices on any Unit	$10,000 during the first 30 days, $27,000 thereafter
j. Failure to comply with the fuel limitations at a Unit, as required by Paragraph 79 through 81	$10,000
k. Failure to install or operate CEMS as required in Paragraphs 93 through 105	$1,000
l. Failure to conduct annual or biennial performance tests of PM emissions, as required in Paragraph 90	$1,000
m. Failure to apply for any permit required by Section XVI	$1,000
n. Failure to timely submit, modify, or implement, as approved, the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree	$750 during the first ten days, $1,000 thereafter
o. Using, selling, or transferring SO_2 Allowances, except as permitted by Paragraphs 74, 75 and 78	the surrender, pursuant to the procedures set forth in Paragraphs 76 and 77 of this Consent Decree, of SO_2 Allowances in an amount equal to four times the number of SO_2 Allowances used, sold, or transferred in violation of this Consent Decree
p. Using, selling or transferring NO_x Allowances except as permitted under Paragraphs 60 and 61	the surrender, pursuant to the procedures set forth in Paragraphs 76 and 77 of this Consent Decree, 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
q. Failure to surrender an SO_2 Allowance as required by Paragraph 75	(a) $27,500 plus (b) $1,000 per SO_2 Allowance
r. Failure to demonstrate the third-party surrender of an SO_2 Allowance in accordance with Paragraph 76	$2,500

s. Failure to undertake and complete any of the Environmentally Beneficial Projects in compliance with Section VIII (Environmentally Beneficial Projects) of this Consent Decree	$1,000 during the first 30 days, $5,000 thereafter
t. Any other violation of this Consent Decree	$1,000

147. Violation of an Emission Rate or removal efficiency that is based on a 30-Day Rolling Average is a violation on every day on which the average is based. Violation of System-Wide 12-Month Rolling Average Emission Rates or System-Wide 12-Month Rolling Tonnage limitations is a violation each month on which the average is based.

148. Where a violation of a 30-Day Rolling Average Emission Rate or 30-Day Rolling Average Removal Efficiency (for the same pollutant and from the same source) recurs within periods of less than thirty (30) days, Santee Cooper shall not pay a daily stipulated penalty for any day of the recurrence for which a stipulated penalty has already been paid.

149. 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. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

150. Santee Cooper shall pay all stipulated penalties to the United States within thirty (30) days of receipt of written demand to Santee Cooper from the United States, and shall continue to make such payments every thirty (30) days thereafter until the violation(s) no longer continues, unless Santee Cooper elects within 20 days of receipt of written demand to Santee Cooper from the United States to dispute the accrual of stipulated penalties in

accordance with the provisions in Section XV (Dispute Resolution) of this Consent Decree.

151. Stipulated penalties shall continue to accrue as provided in accordance with Paragraph 149 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 XV (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, Santee Cooper 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 accrued interest, except as provided in Subparagraph 151.c.;

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

For purposes of this Paragraph, the accrued stipulated penalties agreed by the Parties, or determined by the Plaintiffs through Dispute Resolution, to be owing may be less than the stipulated penalty amounts set forth in Paragraph 146.

152. All stipulated penalties shall be paid in the manner set forth in Section IX (Civil Penalty)

of this Consent Decree.

153. Should Santee Cooper 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.

154. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to any Plaintiff by reason of Santee Cooper'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, Santee Cooper shall be allowed a credit for stipulated penalties paid against any statutory penalties also imposed for such violation.

XIV. FORCE MAJEURE

155. 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 Santee Cooper, its contractors, or any entity controlled by Santee Cooper that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite Santee Cooper'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.

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

157. Failure to Give Notice. If Santee Cooper fails to comply with the notice requirements in Paragraph 156, the Plaintiffs may void Santee Cooper's claim for Force Majeure as to the specific event for which Santee Cooper has failed to comply with such notice requirement.

158. Plaintiffs' Response. The United States shall notify Santee Cooper in writing regarding Santee Cooper's claim of Force Majeure within twenty (20) business days of receipt of the notice provided under Paragraph 156. If Plaintiffs agree that a delay in performance has been or will be caused by a Force Majeure Event, the Parties 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 XXII (Modification) of this Consent Decree.

159. Disagreement. If Plaintiffs do not accept Santee Cooper's claim of Force Majeure, or if the Parties cannot agree on the length of the delay actually caused by the Force Majeure Event, the matter shall be resolved in accordance with Section XV (Dispute Resolution) of this Consent Decree.

160. Burden of Proof. In any dispute regarding Force Majeure, Santee Cooper 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. Santee Cooper shall also bear the burden of proving that Santee Cooper gave the notice required by Paragraph 156 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.

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

162. Potential Force Majeure Events. The Parties agree that, depending upon the circumstances related to an event and Santee Cooper'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; natural gas supply interruption; acts of God; acts of

war or terrorism; orders by a government official, government agency, or other regulatory body acting under and authorized by applicable law that directs Santee Cooper to supply electricity in response to a system-wide (state-wide or regional) emergency; and a third-party appeal of a permit that Santee Cooper needs in order to meet its obligations under this Consent Decree. Depending upon the circumstances and Santee Cooper'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 Santee Cooper and Santee Cooper 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.

163. As part of the resolution of any matter submitted to this Court under Section XV (Dispute Resolution) of this Consent Decree regarding a claim of Force Majeure, the Parties 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 the Force Majeure Event. Santee Cooper shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule, provided that Santee Cooper shall not be precluded from asserting that a new Force Majeure Event has caused or may cause a new or additional delay in complying with the extended or modified schedule.

164. Malfunction Events. If Santee Cooper intends to exclude a period of Malfunction, as defined in Paragraph 24, from the calculation of any 30-Day Rolling Average Emission Rate, PM Emission Rate or 30-Day Rolling Average Removal Efficiency, Santee Cooper shall notify EPA and DHEC in writing as soon as practicable, but in no event later than fourteen (14) business days following the date Santee Cooper first knew, or by the exercise of due diligence should have known, of the Malfunction. Santee Cooper shall be deemed to know of any circumstance which Santee Cooper, its contractors, or any entity controlled by Santee Cooper knew or should have known.

a. In this notice, Santee Cooper shall describe the anticipated length of time that the Malfunction may persist, the cause or causes of the Malfunction, all measures taken or to be taken by Santee Cooper to minimize the duration of the Malfunction, and the schedule by which Santee Cooper proposes to implement those measures. Santee Cooper shall adopt all reasonable measures to minimize the duration of such Malfunctions.

b. A Malfunction, as defined in Paragraph 24 of this Consent Decree, does not constitute a Force Majeure Event unless the Malfunction also meets the definition of a Force Majeure Event, as provided in this Section. Conversely, a period of Malfunction may be excluded by Santee Cooper from the calculations of emission rates and removal efficiencies, as allowed under this Paragraph, regardless of whether the Malfunction constitutes a Force Majeure Event.

XV. DISPUTE RESOLUTION

165. 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 Parties.

166. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Parties 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 Parties 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.

167. 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).

168. If the disputing Parties are unable to reach agreement during the informal negotiation period, the Plaintiffs shall provide Santee Cooper with a written summary of their position regarding the dispute. The written position provided by the Plaintiffs shall be considered binding unless, within forty-five (45) calendar days thereafter, Santee Cooper 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.

169. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Section may be shortened upon motion of one of the Parties to the dispute.

170. 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.

171. 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. Santee Cooper shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule, provided that Santee Cooper 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.

172. 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 168, the disputing Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

XVI. PERMITS

173. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires Santee Cooper to secure a permit to

authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under state law, Santee Cooper shall make such application in a timely manner. EPA and DHEC will use their best efforts to expeditiously review all permit applications submitted by Santee Cooper in order to meet the requirements of this Consent Decree. In addition, EPA and DHEC agree to use their best efforts to review timely any application by Santee Cooper to establish plant-wide applicability limits (PAL) at any plant in the Santee Cooper System.

174. Notwithstanding Paragraph 173, nothing in this Consent Decree shall be construed to require Santee Cooper to apply for or obtain a PSD or Nonattainment NSR permit for physical changes in, or changes in the method of operation of, any Santee Cooper System Unit that would give rise to claims resolved by, or covered by, the covenant not to sue or to bring administrative action in, Section X (Resolution of Claims) of this Consent Decree.

175. When permits are required as described in Paragraph 173, Santee Cooper shall complete and submit applications for such permits to the appropriate authorities to allow sufficient time for all legally required processing and review of the permit request, including requests for additional information by the permitting authorities. Any failure by Santee Cooper to submit a timely permit application for any Unit in the Santee Cooper System shall bar any use by Santee Cooper of Section XIV (Force Majeure) of this Consent Decree, where a Force Majeure claim is based on permitting delays.

176. 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 XXVI (Conditional Termination of Enforcement Under Consent Decree) of this Consent Decree.

177. Within one hundred eighty (180) days after entry of this Consent Decree, Santee Cooper 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, emission rates, removal efficiencies, fuel limitations, and the requirement in Paragraph 75 pertaining to the surrender of SO_2 Allowances.

178. Within one (1) year from the commencement of operation of each pollution control device to be installed or upgraded on an Improved Unit under this Consent Decree, Santee Cooper 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 or 30-Day Rolling Average Removal Efficiency.

179. Prior to January 1, 2015, Santee Cooper shall either: (a) apply to amend the Title V permit for each plant in the Santee Cooper System to include a provision, which shall be identical for each Title V permit, that contains the allowance surrender requirements, and the System-Wide 12-Month Rolling Average Emission Rates and System-Wide 12-Month Rolling Tonnage limitations (including the provisions of Paragraphs 58 and 72), set forth

in this Consent Decree; or (b) apply for amendments to the South Carolina State Implementation Plan to include such requirements and limitations.

180. Santee Cooper shall provide EPA and DHEC with a copy of each application to amend its Title V permit, 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.

181. If Santee Cooper sells or transfers to an entity unrelated to Santee Cooper ("Third Party Purchaser") part or all of its ownership interest in a Unit in the Santee Cooper System ("Ownership Interest"), Santee Cooper shall comply with the requirements of Paragraphs 177 through 179 with regard to that Unit prior to any such sale or transfer unless, following any such sale or transfer, Santee Cooper remains the holder of the Title V permit for such facility.

182. Plaintiffs agree that this Consent Decree resolves Condition Number 62 of Construction Permit Number 0420-0030-CI ("Permit") issued by DHEC on February 5, 2004, for the construction of Cross Units 3 and 4, and that no changes or revisions are required pursuant to that Condition. DHEC agrees that after entry of this Consent Decree and upon request by Santee Cooper, it shall within a reasonable period of time administratively amend the Permit by deleting Condition Number 62 and reissue an amended version of the Permit that does not contain that Condition.

XVII. INFORMATION COLLECTION AND RETENTION

183. Any authorized representative of the Plaintiffs, including their attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the premises of any facility in the Santee Cooper 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 Plaintiffs in accordance with the terms of this Consent Decree;

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

d. assessing Santee Cooper's compliance with this Consent Decree.

184. Santee Cooper 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 Santee Cooper'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 130; 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.

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

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

XVIII. NOTICES

187. 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# 90-5-2-1-07492

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 IV
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

As to the South Carolina Department of Health and Environmental Control:

Chief, Bureau of Air Quality
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

As to Santee Cooper:

President
Santee Cooper
One Riverwood Drive
Moncks Corner, South Carolina 29461-2901

and

General Counsel
Santee Cooper
One Riverwood Drive
Moncks Corner, South Carolina 29461-2901

188. All notifications, communications or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or delivery service; (b) certified or registered mail, return receipt requested; or (c) electronic transmission, unless the recipient is not able to review the transmission in electronic form. 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. All notifications, communications, and submissions made by electronic means shall be electronically signed and certified, and shall be deemed submitted on the date that Santee Cooper receives written acknowledgment of receipt of such transmission.

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

XIX. SALES OR TRANSFERS OF OWNERSHIP INTERESTS

190. If Santee Cooper proposes to sell or transfer an Ownership Interest to a 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 XVIII (Notices) of this Consent Decree at least sixty (60) days before such proposed sale or transfer.

191. No later than sixty (60) days after the completion of the sale or transfer of part or all of an Ownership Interest, Santee Cooper, the Third Party Purchaser and the Plaintiffs shall execute, and the Parties shall submit to the Court for approval, a modification pursuant to Section XXII (Modification) of this Consent Decree in accordance with the following:

a. In the absence of any agreement by Plaintiffs to make the Third Party Purchaser solely liable for the Unit-specific and allocated system-wide obligations in this Consent Decree, such modification shall make the Third Party Purchaser a party defendant to this Consent Decree and jointly and severally liable with Santee Cooper for all the requirements of this Consent Decree that may be applicable to the purchased or transferred Ownership Interests, including (i) all requirements specific to the purchased or transferred Santee Cooper System Unit, and (ii) all requirements in this Consent Decree that are not specific to any particular Santee Cooper System Unit.

b. Santee Cooper may request that the modification relieve Santee Cooper of its liability under this Consent Decree, and make the Third Party Purchaser solely liable, for all obligations and liabilities specifically applicable to the purchased or transferred Ownership Interests. Plaintiffs shall agree to such a modification if they determine that the Third Party Purchaser has the technical capability,

financial capability, and history of compliance that would justify such sole liability. If Santee Cooper makes this request later than ninety (90) days prior to the sale or transfer, Plaintiffs' determination shall be made in their sole and unreviewable discretion.

c. Santee Cooper may also request that the modification relieve Santee Cooper of its liability under this Consent Decree, and make the Third Party Purchaser solely liable, for all system-wide emission limitations that have been allocated by Santee Cooper and the Third Party Purchaser to the purchased or transferred Ownership Interests. Plaintiffs shall agree to such a modification if they determine that the Third Party Purchaser has the technical capability, financial capability, and history of compliance that would justify such allocation and sole liability. If Santee Cooper makes this request later than ninety (90) days prior to the sale or transfer, Plaintiffs determination shall be made in their sole and unreviewable discretion.

d. Santee Cooper shall not assign, and shall not be released from, any obligation under this Consent Decree which is not specific to the purchased or transferred Ownership Interests, including the obligations set forth in Sections VIII (Environmentally Beneficial Projects) and IX (Civil Penalty) of this Consent Decree, and the system-wide emission limitations that have not been allocated pursuant to Subparagraph 191.c. to the purchased or transferred Ownership Interests.

192. This Consent Decree shall not be construed to impede the sale or transfer of any Ownership Interests between Santee Cooper and any Third Party Purchaser as long as the

requirements of this Consent Decree are met. This Consent Decree shall not be construed to prohibit a contractual allocation – as between Santee Cooper and any Third Party Purchaser – of the burdens of compliance with this Consent Decree.

XX. EFFECTIVE DATE

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

XXI. RETENTION OF JURISDICTION

194. Continuing Jurisdiction. 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.

XXII. MODIFICATION

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

196. In the event that this Consent Decree is modified, following approval by the Court, to require the installation of an additional NO_x or SO_2 pollution control device on a Santee Cooper System Unit not scheduled for installation of such control device as part of the original Consent Decree, and to require the operation of the control device to comply with a 30-Day Rolling Average Emission Rate for NO_x of no greater than 0.100 lb/mmBTU, or

a 30-Day Rolling Average Removal Efficiency for SO_2 of no less than ninety-five percent (95%), then the modification of the Consent Decree shall also provide that such Unit be treated as an Improved Unit as to the pollutant that will be controlled.

XXIII. GENERAL PROVISIONS

197. 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. Except as provided in Section X (Resolution of Claims) of this Consent Decree, the emission rates set forth herein do not relieve Santee Cooper from any obligation to comply with other state and federal requirements under the Clean Air Act, including Santee Cooper's obligation to satisfy any state modeling requirements set forth in the South Carolina State Implementation Plan.

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

199. In any subsequent administrative or judicial action initiated by the United States or DHEC for injunctive relief or civil penalties relating to the facilities covered by this Consent Decree, Santee Cooper 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 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, or shall, affect the validity of Section X (Resolution of Claims) of this Consent Decree.

200. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Santee Cooper of its obligation to comply with all applicable federal, state,

and local laws and regulations. Subject to the provisions in Section X (Resolution of Claims) of this Consent Decree, 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.

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

202. 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. 8315 (Feb. 27, 1997)) concerning the use of data for any purpose under the Act, generated either by the reference methods specified herein or otherwise.

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

204. 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. Santee Cooper 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. Santee Cooper shall report data to the number of significant digits in which the standard or limit is expressed. As otherwise applicable and unless this Consent Decree expressly directs otherwise, the calculation and measurement procedures established under 40 C.F.R. Part 75 apply to the measurement and calculation of NO_x and SO_2 emissions under this Consent Decree.

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

206. 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 Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

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

XXIV. SIGNATORIES AND SERVICE

208. 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.

209. This Consent Decree may be signed in counterparts, and such counterpart signature pages

shall be given full force and effect.

210. 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.

XXV. PUBLIC COMMENT

211. 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. Santee Cooper 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 Santee Cooper, in writing, that the United States no longer supports entry of the Consent Decree.

XXVI. CONDITIONAL TERMINATION OF ENFORCEMENT UNDER CONSENT DECREE

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

213. Conditional Termination of Enforcement Through the Consent Decree. After Santee Cooper:

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 XVI (Permits) of this Consent Decree; and

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

then Santee Cooper 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 Santee Cooper's certification, then, for any 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.

214. Resort to Enforcement under this Consent Decree. Notwithstanding Paragraph 213, if enforcement of a provision in this Consent Decree cannot be pursued by a Party under the applicable Title V permit, or if a Consent 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 Consent Decree at any time.

XXVII. FINAL JUDGMENT

215. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment in the above-captioned matter between the Plaintiffs and Santee Cooper.

SO ORDERED, THIS _____ DAY OF _____, 2004.

_____

UNITED STATES DISTRICT COURT JUDGE

Signature Page for Consent Decree in United States v. South Carolina Public Service Authority

FOR THE UNITED STATES OF AMERICA:

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

MATTHEW W. MORRISON
Senior Counsel
Environmental Enforcement Section
Environmental and Natural Resources Division
United States Department of Justice

PHYLLIS P. HARRIS
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

_____

J. I. PALMER, JR.
Regional Administrator
U.S. Environmental Protection Agency
Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303

_____

PAUL SCHWARTZ
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

FOR THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL:

_____

ROBERT W. KING JR., P.E.
Deputy Commissioner for Environmental Quality Control

Signature Page for Consent Decree in United States v. South Carolina Public Service Authority

FOR SOUTH CAROLINA PUBLIC SERVICE AUTHORITY:

LONNIE N. CARTER
President and Chief Executive Officer
South Carolina Public Service Authority

APPENDIX

SANTEE COOPER ENVIRONMENTAL MANAGEMENT SYSTEMS

Initial Review of Current Environmental Management Systems

1. Within one hundred twenty (120) days after entry of this Consent Decree, Santee Cooper shall submit to EPA and DHEC for review and approval the following:

   a. the name, affiliation and address of an auditor to perform a review and evaluation of the existing systems and procedures utilized by Santee Cooper for ensuring compliance with all applicable environmental laws ("Environmental Management Systems" or "EMS") at each facility within the Santee Cooper System; each such auditor shall be referred to as an "Initial Auditor" and the initial review and evaluation shall be referred to as the "Initial EMS Review and Evaluation";

   b. evidence that each Initial Auditor satisfies the qualification requirements of ISO 14012 (First edition, 1996-10-01), has a working knowledge of the Santee Cooper System facilities or similar operations, and has a working knowledge of federal and state environmental requirements which apply to each facility within the Santee Cooper System; and

   c. a schedule, including milestones, for conducting the Initial EMS Review and Evaluation.

2. Within forty-five (45) days after receipt of approval from EPA and DHEC, Santee Cooper shall direct the Initial Auditor(s) identified pursuant to Paragraph 1 of this Appendix to conduct and complete an Initial EMS Review and Evaluation at each facility within the Santee Cooper System. The designated Initial Auditor(s) shall review and evaluate the current EMS in place, if any, using the criteria set forth in Paragraph 5 of this Appendix.

3. Within one hundred eighty (180) days after receipt of approval from EPA and DHEC, the Initial Auditors shall submit the results of the Initial EMS Review and Evaluation in a written report, which it shall provide to Santee Cooper. Santee Cooper shall provide a copy of this report to EPA and DHEC upon request.

Development of the Environmental Management Systems Manual

4. Based on the results of the Initial EMS Review and Evaluation and other information as appropriate, Santee Cooper shall develop a comprehensive environmental management system ("Comprehensive EMS") for ensuring compliance with all applicable environmental laws at each facility within the Santee Cooper System.

5. Within one hundred eighty (180) days after completion of the written report required by Paragraph 3 of this Appendix, Santee Cooper shall submit to EPA and DHEC for review and approval an environmental management systems manual ("EMS Manual") describing and documenting the Comprehensive EMS, including a schedule for implementation of the Comprehensive EMS. For each of the following elements, the EMS Manual shall describe how the activity or program will be: (a) established as a formal system or task, (b) integrated into ongoing department operations, and (c) continuously evaluated and improved:

   a. Environmental Policy - The policy upon which the Comprehensive EMS is based must clearly communicate management's commitment to achieving compliance with applicable federal, state, and local environmental statutes, regulations, enforceable agreements, and permits ("Environmental Requirements") and continual improvement in environmental performance. The policy should also state management's intent to provide adequate personnel and other resources for

the Comprehensive EMS.

b. Organization, Personnel, and Oversight of the Comprehensive EMS - This section of the EMS Manual shall:

i. describe, organizationally, how the Comprehensive EMS is implemented and maintained;

ii. include organization charts that identify units, line management, and other individuals having environmental performance and regulatory compliance responsibilities;

iii. identify and define specific duties, responsibilities, and authorities of key environmental program personnel to participate in implementing and sustaining the Comprehensive EMS; and

iv. establish means of communicating, receiving, and addressing feedback on environmental issues, concerns, and information, with all organization personnel, on-site service providers, and contractors.

c. Accountability and Responsibility - This section of the EMS Manual shall:

i. specify accountability and environmental responsibilities of the organization's managers, on-site service providers, and contractors for environmental protection practices, assuring compliance with the Comprehensive EMS, required reporting to regulatory agencies, and corrective actions implemented in their area(s) of responsibility, as they relate to the Santee Cooper System;

ii. describe incentive programs, consistent with applicable State law, for managers and employees to improve and enhance compliance with

Environmental Requirements; and

iii. describe potential consequences for departure from specified operating procedures, including liability for civil and administrative penalties imposed as a result of noncompliance with Environmental Requirements.

d. Environmental Requirements - This section of the EMS Manual shall:

i. describe the process for identifying, interpreting, and effectively communicating Environmental Requirements to affected organization personnel, on-site service providers, and contractors, and then ensuring that facility activities conform to those requirements (*i.e.*, ongoing compliance monitoring);

ii. specify procedures for prospectively identifying and obtaining information about changes and proposed changes in Environmental Requirements, and incorporating those changes into the Comprehensive EMS; and

iii. describe processes to ensure communication with regulatory agencies regarding compliance with Environmental Requirements.

e. Assessment, Prevention, and Control - This section of the EMS Manual shall:

i. identify an ongoing process for assessing operations for the purposes of preventing and controlling releases, enhancing environmental protection, and maintaining compliance with Environmental Requirements;

ii. describe monitoring and measurements, as appropriate, to ensure sustained compliance;

iii. identify operations and waste streams where equipment malfunctions and deterioration, operator errors, and discharges or emissions may be causing,

or may lead to, releases of hazardous waste or other pollutants to the environment, a threat to human health or the environment, or violations of Environmental Requirements;

iv. describe a process for identifying operations and activities where documented standard operating practices are needed to prevent potential violations or pollutant releases, and define a uniform process for developing, approving and implementing the standard operating practices;

v. describe a system for conducting and documenting routine, objective, self-inspections by department supervisors and trained staff to check for worker adherence to standard operating procedures, malfunctions, deterioration, and unauthorized releases; and

vi. describe a process for ensuring consideration of Environmental Requirements and environmental concerns in the planning, design, and operation of ongoing, new, and/or changing processes, equipment, and maintenance activities.

f. Environmental Incident and Noncompliance Investigations - This section of the EMS Manual shall:

i. describe standard procedures and requirements for internal and external reporting of potential violations and release incidents;

ii. establish procedures for investigation, and prompt and appropriate correction, of potential violations;

iii. specify self-testing of such procedures, where practicable; and

iv. describe a system for developing, tracking, and verifying the effectiveness

of corrective and preventative actions.

g. Environmental Training, Awareness, and Competence - This section of the EMS Manual shall:

i. identify specific education and training required for organization personnel, as well as a process for documenting the training provided;

ii. describe programs to ensure that employees are aware of organizational environmental policies and procedures, Environmental Requirements, and their roles and responsibilities under the Comprehensive EMS; and

iii. describe programs for ensuring that personnel responsible for meeting and maintaining compliance with Environmental Requirements are competent on the basis of appropriate education, training, and/or experience.

h. Environmental Planning and Organizational Decision-Making - This section of the EMS Manual shall:

i. describe how environmental planning will be integrated into organizational decision-making, including plans and decisions on capital improvements, process design, training programs, and maintenance activities;

ii. require written environmental targets, objectives, and action plans (including, at a minimum, targets, objectives, and action plans to reduce the risk of noncompliance with Environmental Requirements) for each individual organizational unit and contractor operation with environmental responsibilities at a Santee Cooper System facility; and

iii. specify how the targets, objectives, and action plans will be tracked and progress reported.

i. Maintenance of Records and Documentation - This section of the EMS Manual shall:

i. identify the types of records developed and to be developed in support of the Comprehensive EMS (including audits and reviews), the persons responsible for maintaining such records, the location of such records, and the protocols for responding to inquiries and requests for information;

ii. specify the data management systems for environmental data and information; and

iii. specify document control procedures.

j. Pollution Prevention Program - This section of the EMS Manual shall:

i. describe an internal program for preventing, reducing, recycling, reusing, and minimizing waste and emissions, including procedures to encourage material substitutions; and

ii. include mechanisms for identifying candidate materials to be addressed by the program and for tracking progress.

k. Continuing Program Evaluation and Improvement - This section of the EMS Manual shall:

i. describe a program for periodic (at least annual) evaluation of the Comprehensive EMS;

ii. provide that the results of the evaluation shall be incorporated into the Comprehensive EMS and the EMS Manual, and shall be communicated to affected employees, on-site service providers, and contractors; and

iii. describe a program for audits, by an independent auditor(s), of each

facility's compliance with Environmental Requirements, at least once for each facility every four years, which also requires that the results of the audits be provided to upper management and requires that potential violations be addressed through the process described in Subparagraph 5.f. of this Appendix.

l. Public Involvement/Community Outreach - This section of the EMS Manual shall describe a program for ongoing community education and involvement in the environmental aspects of Santee Cooper's operations.

6. Within sixty (60) days after receipt of comments from EPA and DHEC on the proposed EMS Manual, Santee Cooper shall submit to EPA and DHEC a revised EMS Manual incorporating and reflecting those comments.

7. Within sixty (60) days after receipt of approval from EPA and DHEC on the revised EMS Manual, Santee Cooper shall immediately commence implementation of the Comprehensive EMS in accordance with the schedule contained in the approved EMS Manual.

EMS Status Reports

8. Santee Cooper shall submit to EPA and DHEC status reports on the implementation of the Comprehensive EMS on a periodic (at least annual) basis, beginning no later than one hundred eighty (180) days after commencing implementation of the Comprehensive EMS, and continuing until: (a) each facility has undergone at least one audit for compliance with Environmental Requirements pursuant to Subparagraph 5.k.iii. of this Appendix, or (b) one year after the facility manager for each Santee Cooper System facility has certified, pursuant to Paragraph 18 of this Appendix, that all items or activities in the Post-Audit

Action Plan for that facility have been completed, whichever is later.

Selection of a Consultant Auditor to Conduct an Audit of Santee Cooper's Comprehensive EMS

9. Within one hundred eighty (180) days after commencing implementation of the Comprehensive EMS, Santee Cooper shall propose to EPA and DHEC for approval an independent "Consultant Auditor" who (a) was not involved in the Initial EMS Review and Evaluation, (b) meets the qualification requirements of ISO 14012 (First edition, 1996-10-01); and (c) has expertise and competence in applicable regulatory programs under federal and state environmental laws.

10. The Consultant Auditor shall be paid by Santee Cooper, but must not directly own any stock in Santee Cooper or in any parent or subsidiary, and must have no other direct financial stake in the outcome of the EMS Audit conducted pursuant to this Consent Decree. If Santee Cooper has any other contractual relationship with the Consultant Auditor, Santee Cooper shall disclose to EPA such past or existing contractual relationships.

11. EPA and DHEC will notify Santee Cooper in writing of their approval or disapproval of Santee Cooper's proposed Consultant Auditor as expeditiously as possible. If EPA and DHEC determine that the proposed Consultant Auditor does not meet the qualifications set forth above, or that past or existing relationships with the Consultant Auditor would affect the Consultant Auditor's ability to exercise the independent judgment required to conduct the EMS Audit, such Consultant Auditor shall be disapproved and Santee Cooper shall propose for approval another Consultant Auditor within thirty (30) days of Santee Cooper's receipt of such disapproval.

Audit of Santee Cooper's Comprehensive EMS

12. Santee Cooper shall require the Consultant Auditor to conduct an EMS Audit to evaluate Santee Cooper's implementation of its Comprehensive EMS, from top management down through each major organizational unit at the Facility, and to identify where further improvements should be made to Santee Cooper's Comprehensive EMS. The EMS Audit shall be conducted in accordance with ISO 14011 (First edition, 1996-10-01), using ISO 14010 (First edition, 1996-10-01) as supplemental guidance. The Consultant Auditor shall assess Santee Cooper's conformance with the EMS Manual, and conformance of the EMS Manual with the elements specified in Paragraph 5 of this Appendix, and shall determine the following:

a. Whether there is a defined system, program, or planned task for each element of the Comprehensive EMS;

b. To what extent the system, program, or task has been implemented, and is being maintained;

c. The adequacy of each operational unit's internal self-assessment procedures for programs and tasks comprising the Comprehensive EMS;

d. Whether Santee Cooper is effectively communicating Environmental Requirements to affected parts of the organization, contractors, and on-site service providers;

e. Whether there are observed deviations from Santee Cooper's written requirements or procedures;

f. Whether continuous improvement in compliance with Environmental Requirements is occurring; and

g. Whether further improvements should be made to the Comprehensive EMS.

13. Designated representatives from EPA and DHEC may participate in the EMS Audit as observers. Santee Cooper shall make timely notification to designated regulatory contacts regarding audit scheduling in order to make arrangements for observers to be present. Santee Cooper personnel may also participate in the on-site EMS Audits as observers, but may not interfere with the independent judgement of the Consultant Auditor.

14. Within one hundred twenty (120) days of approval of the Consultant Auditor, Santee Cooper shall require the Consultant Auditor to submit an EMS Audit Report simultaneously to Santee Cooper, EPA and DHEC. The EMS Audit Report shall, at a minimum, contain the following information:

a. Audit scope, including the period of time covered by the audit;

b. The dates the on-site portion of the audit was conducted;

c. Identification of audit team members;

d. Identification of Santee Cooper representatives and regulatory agency personnel observing the audit;

e. A summary of the audit process, including any obstacles encountered;

f. Detailed findings, including the basis for each finding and each area of concern identified;

g. Identification of any findings corrected or areas of concern addressed during the audit, and a description of the corrective measures and when they were implemented; and

h. Certification by the Consultant Auditor that the EMS Audit was conducted in accordance with the provisions of this Appendix.

15. If the Consultant Auditor believes that additional time is needed to analyze available information or to gather additional information, Santee Cooper may request that EPA and DHEC grant the Consultant Auditor such additional time as needed to prepare and submit the EMS Audit Report. EPA's and DHEC's decision whether to grant additional time shall be final and unreviewable.

Post-Audit Action Plan for Corrective Measures

16. Within one hundred twenty (120) days of receiving the EMS Audit Report for each Santee Cooper facility, Santee Cooper shall develop and submit to EPA and DHEC for review and comment, a Post-Audit Action Plan for expeditiously bringing the EMS Manual into conformance with the elements specified in Paragraph 5 of this Appendix, for expeditiously bringing each Santee Cooper facility into conformance with the EMS Manual, and for fully addressing all areas of concern identified in the EMS Audit Report. The Post-Audit Action Plan shall include the results of any root cause analysis, specific deliverables, responsibility assignments, and an implementation schedule.

17. EPA and DHEC shall review the Post-Audit Action Plan and shall provide written comments to Santee Cooper. Within sixty (60) days of receipt of such comments, Santee Cooper shall make any modifications to the Post-Audit Action Plan required to respond to EPA and DHEC comments, and shall implement the Post-Audit Action Plan in accordance with the schedules set forth therein.

18. Within thirty (30) days after all items or activities in the Post-Audit Action Plan have been completed at a Santee Cooper System facility, the facility manager for that facility shall certify such completion in writing to EPA and DHEC.