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

UNITED STATES OF AMERICA, Plaintiff v. GOLDEN VALLEY ELECTRIC ASSOCIATION INC. and ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY, Defendants.	)	Civil Action No.: ____

CONSENT DECREE

TABLE OF CONTENTS

I. JURISDICTION AND VENUE 3
II. APPLICABILITY 4
III. DEFINITIONS 5
IV. CIVIL PENALTY 12
V. NO_x EMISSION REDUCTIONS AND CONTROLS 13
VI. SO_2 EMISSION REDUCTIONS AND CONTROLS 15
VII. PM EMISSION REDUCTIONS AND CONTROLS 16
VIII. PROHIBITION ON NETTING CREDITS OR OFFSETS 19
IX. ENVIRONMENTAL MITIGATION PROJECT 20
X. MERCURY 22
XI. RESOLUTION OF CIVIL CLAIMS 23
XII. PERIODIC REPORTING 23
XIII. REVIEW AND APPROVAL OF SUBMITTALS 25
XIV. STIPULATED PENALTIES 26
XV. FORCE MAJEURE 36
XVI. DISPUTE RESOLUTION 39
XVII. PERMITS 41
XVIII. INFORMATION COLLECTION AND RETENTION 44
XIX. NOTICES 45
XXI. EFFECTIVE DATE 50
XII. RETENTION OF JURISDICTION 50
XIII. MODIFICATION 51
XXIV. GENERAL PROVISIONS 51
XXV. SIGNATORIES AND SERVICE 54
XXVI. PUBLIC COMMENT/AGENCY REVIEW 55
XXVII. CONDITIONAL TERMINATION OF ENFORCEMENT UNDER CONSENT DECREE 55
XXVIII. FINAL JUDGMENT 56

WHEREAS, Plaintiff, the United States of America ("the United States"), on behalf of the United States Environmental Protection Agency ("EPA"), is concurrently filing a Complaint and Consent Decree, for injunctive relief pursuant to Section 167 of the Clean Air Act ("Act" or "CAA"), 42 U.S.C. §7477, to prevent Golden Valley Electric Association, Inc. ("GVEA") and/or the Alaska Industrial Development and Export Authority ("AIDEA") (collectively the "Defendants") from violating the Prevention of Significant Deterioration ("PSD") provisions of Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, and the federally enforceable Alaska State Implementation Plan ("SIP");

WHEREAS, Unit 1 at the Healy Power Plant in Healy, Alaska is a nominal 25 megawatt ("MW") coal-fired electric generating unit owned and operated by GVEA;

WHEREAS, Unit 2 at the Healy Power Plant, the Healy Clean Coal Project ("HCCP" or "Unit 2") is a nominal 50 MW coal-fired electric generating unit that is currently owned by AIDEA, with GVEA acting as the operator of the unit;

WHEREAS, Unit 2 previously went through PSD review and received an Air Quality Control Permit issued in 1993 and amended in 1994;

WHEREAS, Unit 2 was constructed in 1997 and has not been operated since 1998-1999;

WHEREAS, in its Complaint, the United States alleges, *inter alia*, that Defendants intend to reactivate and/or restart HCCP or Unit 2;

WHEREAS, the Complaint further alleges that the Defendants' project at Unit 2 at the Healy Power Plant, a major emitting facility, would result in the construction of a new source or, in the alternative, a major modification of an existing source without obtaining the necessary

permits under the Act and installing and operating the state-of-the-art controls necessary under the Act to reduce air pollutants, particularly oxides of nitrogen ("NO_x") emissions from Unit 2;

WHEREAS, Defendants have denied and continue to deny the violations alleged in the Complaint, maintain that their construction and operation activities at the Healy Power Plant have been and remain fully permitted and in compliance with the Clean Air Act, Defendants are not liable for civil penalties or injunctive relief, and state that they are agreeing to the obligations imposed by this Consent Decree solely to avoid the costs and uncertainties of litigation;

WHEREAS, Defendants do not admit any liability to the United States or any other person, and nothing herein shall constitute an admission of liability;

WHEREAS, the Parties agree that nothing in this Consent Decree shall constitute an admission of liability in this or any other proceeding;

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

WHEREAS, GVEA serves the Alaskan Interior where, because of extreme climate conditions, prudent utility practice is to conduct construction and maintenance on generating and transmission facilities during summer months and where dispatch schedules may be impacted by extreme climate during winter months;

WHEREAS, GVEA is an isolated power generating system operating without connection to an interstate transmission grid;

WHEREAS, GVEA is generally not directed to supply power on an emergency basis by any governmental agency or regulatory authority, nor is GVEA subject to a Regional Transmission Organization or Independent System Operator;

WHEREAS, GVEA must supply electricity to the Alaskan Interior, particularly during the winter months, to protect against the loss of life and destruction of property under extreme climate conditions regardless of system upsets and malfunctions;

WHEREAS, the Parties recognize that the restart activities for Unit 2 may require up to 18 months to complete;

WHEREAS, pursuant to terms of this Consent Decree, the Defendants are taking a number of actions to mitigate emissions from the restart of Unit 2 including emission reductions at Unit 1 of the Healy Power Plant and a stove changeout project;

WHEREAS, the Parties recognize that EPA is currently reviewing the Regional Haze SIP submittal from Alaska and that EPA may consider the enforceable conditions in this Consent Decree when it takes final action on that SIP submission;

WHEREAS, the Parties believe that the emission limits established under this Consent Decree are enforceable limits for purposes of Best Available Retrofit Technology ("BART") and the Regional Haze SIP in Alaska;

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

NOW, THEREFORE, with the consent of the Parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and pursuant to Section 167 of the Act, 42 U.S.C. § 7477. Venue is proper under Section 167 of

the Act, 42 U.S.C. § 7477 and under 28 U.S.C. § 1391(b) and (c). For purposes of this Consent Decree, any action to enforce this Consent Decree, and the underlying Complaint, the Defendants consent to the Court's jurisdiction over this action, to the Court's jurisdiction over the Defendants, and to venue in this district. The Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to the PSD program.

II. APPLICABILITY

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

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

employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree.

III. DEFINITIONS

5. Every term expressly defined by this Section shall have the meaning given that term herein. Every other term used in this Consent Decree that is also a term used under the Act or in a federal regulation implementing the Act shall mean in this Consent Decree what such term means under the Act or those regulations.

6. A "30-Day Rolling Average NO_x Emission Rate" for a Unit shall be expressed in lb/mmBTU and calculated in accordance with the following procedure: first, sum the total pounds of NO_x emitted from the Unit during the current Unit Operating Day and the previous 29 Unit Operating Days; second, sum the total heat input to the Unit in mmBTU during the current Unit Operating Day and the previous 29 Unit Operating Days; and third, divide the total number of pounds of NO_x emitted during the 30 Unit Operating Days by the total heat input during the 30 Unit Operating Days. A new 30-Day Rolling Average NO_x Emission Rate shall be calculated for each new Unit Operating Day. Each 30-Day Rolling Average NO_x Emission Rate shall include all emissions that occur during all periods within any Unit Operating Day, including emissions from startup, shutdown, and Malfunction.

7. A "30-Day Rolling Average PM Emission Rate" for a Unit shall be expressed in lb/mmBTU and calculated in accordance with the following procedure: first, sum the total pounds of PM emitted from the Unit during the current Unit Operating Day and the previous 29 Unit Operating Days; second, sum the total heat input to the Unit in mmBTU during the current Unit Operating Day and the previous 29 Unit Operating Days; and third, divide the total number of pounds of PM emitted during the 30 Unit Operating Days by the total heat

input during the 30 Unit Operating Days. A new 30-Day Rolling Average PM Emission Rate shall be calculated for each new Unit Operating Day. Each 30-Day Rolling Average PM Emission Rate shall include all emissions that occur during all periods within any Unit Operating Day, including emissions from startup, shutdown, and Malfunction.

8. A "30-Day Rolling Average SO_2 Emission Rate" for a Unit shall be expressed in lb/mmBTU and calculated in accordance with the following procedure: first, sum the total pounds of SO_2 emitted from the Unit during the current Unit Operating Day and the previous 29 Unit Operating Days; second, sum the total heat input to the Unit in mmBTU during the current Unit Operating Day and the previous 29 Unit Operating Days; and third, divide the total number of pounds of SO_2 emitted during the 30 Unit Operating Days by the total heat input during the 30 Unit Operating Days. A new 30-Day Rolling Average SO_2 Emission Rate shall be calculated for each new Unit Operating Day. Each 30-Day Rolling Average SO_2 Emission Rate shall include all emissions that occur during all periods within any Unit Operating Day, including emissions from startup, shutdown, and Malfunction.

9. "AIDEA" means the Alaska Industrial Development and Export Authority.

10. "Alaska SIP" means the Alaska State Implementation Plan, and any amendments thereto, as approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410.

11. "Baghouse" means a full stream (fabric filter or membrane) particulate emissions control device.

12. "CEMS" or "Continuous Emission Monitoring System," means, for obligations involving the monitoring of NO_x, SO_2, and PM emissions under this Consent Decree, the devices defined, installed and maintained as specified by 40 C.F.R. Parts 60 and flow

monitoring devices necessary to calculate compliance with the Unit 1 and Unit 2 Annual Tonnage Limitation.

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

14. “Complaint” means the complaint filed by the United States in this action.

15. "Consent Decree” means this Consent Decree.

16. “Continuously Operate” or “Continuous Operation” means that when a pollution control technology or combustion control is required to be used at a Unit pursuant to this Consent Decree (including, but not limited to, SCR, SNCR, SDA, DSI, Baghouse or TRW Slagging Combustor), it shall be operated at all times such Unit is in operation, except as otherwise provided by Section XV (Force Majeure), so as to minimize emissions to the greatest extent practicable, consistent with the technological limitations, manufacturers’ specifications, and good engineering and maintenance practices for such equipment and the Unit.

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

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

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

20. “Defendants” means GVEA and AIDEA.

21. “Dry Sorbent Injection” or “DSI” means an add-on air pollution control system in which sorbent (e.g., Trona, hydrated lime, sodium carbonate, etc.) is injected into the flue gas stream upstream of a PM Control Device to react with and neutralize acid gases (such as SO_2 and hydrogen chloride) in the exhaust stream forming a dry powder material that may be removed in a primary or secondary PM Control Device.

22. “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.

23. “Environmental Mitigation Project” or “Project” means the project set forth in Section IX of this Consent Decree.

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

25. “First Fires Coal” or “First Firing of Coal” means the first day after which any coal of any type or quantity is combusted in Unit 2.

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

27. “GVEA” means Golden Valley Electric Association, Inc., and its wholly owned subsidiaries.

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

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

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

31. "Month" shall mean calendar month unless otherwise specified in this Consent Decree.

32. "Netting" shall mean the process of determining whether a particular physical change or change in the method of operation of a major stationary source results in a "net emissions increase," as that term is defined at 40 C.F.R. § 52.21(b)(3)(i) and in the Alaska SIP.

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

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

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

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

37. "PM CEMS" or "PM Continuous Emission Monitoring System" means, for obligations involving the monitoring of PM emissions under this Consent Decree, the equipment that samples, analyzes, measures, and provides, by readings taken at frequent intervals, an electronic and/or paper record of PM emissions.

38. “PM Control Device” means any device, including but not limited to, a Baghouse, which reduces emissions of PM.

39. “PM Emission Rate” means the number of pounds of PM emitted per million BTU of heat input (lb/mmBTU).

40. “Prevention of Significant Deterioration” or “PSD” means the New Source Review program within the meaning of Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492 and 40 C.F.R. Part 52, and corresponding provisions of the federally enforceable Alaska SIP.

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

42. “Regional Haze State Implementation Plan” or “Regional Haze SIP” means the State Implementation Plan developed pursuant to section 169A and 169B of the CAA , 42 U.S.C. §§ 7491 and 7492-7492 and 40 C.F.R. §§ 50.308 and 50.309.

43. “Retire” means that GVEA shall permanently shut down and cease to operate Unit 1 such that it cannot legally burn any fuel nor produce any steam for electricity production and that GVEA shall comply with applicable state and federal requirements for permanently retiring a coal-fired electric generating unit, including removing Unit 1 from Alaska’s air emissions inventory and amending all applicable permits so as to reflect the permanent shutdown status of Unit 1.

44. "SCR" or "Selective Catalytic Reduction" means an air pollution control device for reducing NO_x emissions in which ammonia (NH_3) is added to the flue gas and then passed through layers of a catalyst material. The ammonia and NOx in the flue gas stream react on the surface of the catalyst, forming nitrogen (N_2) and water vapor.

45. "SDA" or "Spray Dry Absorber" means the flue gas desulfurization equipment used for removing SO_2 and other acid gases from the flue gas and is currently installed on Unit 2.

46. "SNCR" or "Selective Non-Catalytic Reduction" means a pollution control device for the reduction of NO_x emissions through the use of selective non-catalytic reduction technology that utilizes ammonia or urea injection (or an equivalent reagent as approved by EPA) into the boiler.

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

48. "State" means the State of Alaska.

49. "Title V Permit" means the Final Air Quality Control Permit No. AQ0173TVPO2 issued by the Alaska Department of Environmental Conservation to GVEA on February 3, 2012 pursuant to Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

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

51. "Unit 2" means the TRW Integrated Entrained Combustion System pulverized coal-fired steam generator, including emission control equipment, that is currently owned by AIDEA.

52. "Unit 1 and Unit 2 Annual Tonnage Limitation" means the sum of the tons of pollutant in question emitted from Unit 1 and Unit 2 including, without limitation, all tons of that pollutant emitted during periods of startup, shutdown, and Malfunction, in the designated year.

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

54. "Unit Operating Day" means, for Unit 1, any day on which Unit 1 fires Fossil Fuel and for Unit 2, any day on which Unit 2 fires Fossil Fuel.

IV. CIVIL PENALTY

55. Within 30 days after the Date of Entry of this Consent Decree, GVEA, on behalf of Defendants, shall pay to the United States a civil penalty in the amount of $115,000.00. 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 DOJ Case Number 90-5-2-1-10615, the civil action case name and case number assigned to this case. The costs of such EFT shall be GVEA's responsibility. Payment shall be made in accordance with instructions provided to GVEA by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Alaska. At the time of payment, GVEA shall provide notice of payment, referencing the DOJ Case Number, and the civil action case name and case number, to the Department of Justice and to EPA in accordance with Section XIX (Notices) of this Consent Decree.

56. Failure to timely pay the civil penalty shall subject GVEA 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 GVEA 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.

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

V. NO_x EMISSION REDUCTIONS AND CONTROLS

A. Installation, Operation and Performance NOx Requirements

58. Upon Defendants' First Firing of Coal at Unit 2, Defendants shall achieve and maintain at Unit 2 a 30-Day Rolling Average NO_x Emission Rate of no greater than 0.325 lb/mmBTU.

59. Defendants shall install an SCR at Unit 2 on or before September 30, 2016, or 24 months after Unit 2 First Fires Coal, whichever is later. Continuing thereafter, Defendants shall Continuously Operate such SCR at Unit 2 so that it achieves and maintains a 30-Day Rolling Average NO_x Emission Rate of no greater than 0.080 lb/mmBTU.

60. GVEA shall install an SNCR at Unit 1 on or before September 30, 2015, or 18 months after Unit 2 First Fires Coal, whichever is later. Continuing thereafter, GVEA shall Continuously Operate such SNCR so that it achieves and maintains a 30-Day Rolling Average NO_x Emission Rate of no greater than 0.20 lb/mmBTU until GVEA either retires Unit 1 pursuant to Paragraph 62 or installs an SCR at Unit 1 pursuant to Paragraph 63.

61. On or before December 31, 2022, GVEA shall elect to (a) Retire Unit 1 or (b) install and operate an SCR at Unit 1 (or an alternative control technology approved by EPA) as provided in Paragraph 63. GVEA shall provide Notice of such election pursuant to Section XIX (Notices).

62. If GVEA elects to Retire Unit 1 pursuant to Paragraph 61, GVEA shall Retire Unit 1 by no later than December 31, 2024.

63. If GVEA elects to continue to operate Unit 1 pursuant to Paragraph 61, then GVEA shall install an SCR at Unit 1 (or an alternative control technology approved by EPA) commencing on December 31, 2024. Continuing thereafter, GVEA shall Continuously Operate such SCR (or alternative control technology approved by EPA) so that it achieves and maintains a 30-Day Rolling Average NO_x Emission Rate of no greater than 0.070 lb/mmBTU.

B. Unit 1 and Unit 2 Annual NO_x Tonnage Limitation

64. Unit 1 and Unit 2 shall operate so as not to exceed the following Unit 1 and Unit 2 Annual NO_x Tonnage Limitation:

For Each 12-Month Period, Beginning on January 1st, within the Dates Specified Below:	**Unit 1 and Unit 2 Annual NOx Tonnage Limitation:**
For the first full year of operation following installation of SNCR on Unit 1	1,239
For the first full year of operation following installation of SCR on Unit 2 through 2024	533
For the first full year of operation following installation of SCR on Unit 1	352
For the first full year of operation following retirement of Unit 1	231

C. Monitoring of NO_x Emissions

In determining a 30-Day Rolling Average NO_x Emission Rate, Defendants shall use NO_x emission data obtained from a CEMS in accordance with the procedures of 40 C.F.R. Part 60, and flow monitoring devices necessary to calculate compliance with the Unit 1 and Unit 2 Annual Tonnage Limitation.

VI. SO_2 EMISSION REDUCTIONS AND CONTROLS

A. Installation, Operation and Performance SO_2 Requirements

65. Commencing on the Day that Unit 2 First Fires Coal, and continuing thereafter, Defendants shall Continuously Operate the existing SDA on Unit 2 so that it achieves and maintains a 30-Day Rolling Average SO_2 Emission Rate of no greater than 0.10 lb/mmBTU.

66. Commencing September 30, 2015 or 18 months after Unit 2 First Fires Coal, whichever is later, and continuing thereafter, Defendants shall Continuously Operate the existing DSI at Unit 1 so that it achieves and maintains a 30-Day Rolling Average SO_2 Emission Rate of no greater than 0.30 lb/mmBTU.

B. Unit 1 and Unit 2 Annual SO_2 Tonnage Limitation

67. Unit 1 and Unit 2 shall operate so as not to exceed the following Unit 1 and Unit 2 Annual SO_2 Tonnage Limitation:

For Each 12-Month Period, Beginning on January 1st, within the Dates Specified Below:	Unit 1 and Unit 2 Annual SO_2 Tonnage Limitation:
January 1, 2016 and continuing each 12-month period thereafter	701
If Unit 1 is Retired pursuant to Paragraph 62: January 1 of the first calendar year after the retirement and continuing each 12-month period thereafter	248

C. Monitoring of SO_2 Emissions

68. In determining a 30-Day Rolling Average SO_2 Emission Rate, Defendants shall use SO_2 emission data obtained from a CEMS in accordance with the procedures of 40 C.F.R. Part 60, and flow monitoring devices necessary to calculate the Unit 1 and Unit 2 Annual Tonnage Limitation.

VII. PM EMISSION REDUCTIONS AND CONTROLS

A. Optimization of Baghouses

69. Commencing upon the Date of Entry of this Consent Decree for Unit 1, and continuing thereafter, GVEA shall Continuously Operate the Baghouse on Unit 1.

70. Except as required during correlation testing under 40 C.F.R. Part 60, Appendix B, Performance Specification 11, and Quality Assurance Requirements under Appendix F, Procedure 2, as required by this Consent Decree, GVEA for Unit 1 and Defendants for Unit 2 shall Continuously Operate, at a minimum, to the extent practicable: each compartment of the Baghouse for Unit 1 and Unit 2 (regardless of whether those actions are needed to comply with opacity limits); repair any failed Baghouse compartment at the next planned Unit outage (or unplanned outage of sufficient length); and maintain and replace bags on each Baghouse for Unit 1 and Unit 2 as needed to maximize collection efficiency, where applicable.

B. Operation and Performance Requirements for PM Controls

71. Commencing on the Day that Unit 2 First Fires Coal, Defendants shall Continuously Operate the existing Baghouse at Unit 2 so that it achieves and maintains a 30-Day Rolling Average Filterable PM Emission Rate of no greater than 0.0200 lb/mmBTU.

72. Commencing September 30, 2015 or 18 months after Unit 2 First Fires Coal, whichever is later, GVEA shall Continuously Operate the existing Baghouse at Unit 1 so that it achieves and maintains a 30-Day Rolling Average Filterable PM Emission Rate of no greater than 0.0200 lb/mmBTU.

C. PM CEMS

73. Defendants with respect to Unit 2 and GVEA with respect to Unit 1, shall install, correlate, maintain, and operate PM CEMS on Units 1 and 2 as specified below. The PM CEMS shall be comprised of a continuous particle mass monitor measuring filterable particulate matter concentration, directly or indirectly, on an hourly average basis and a diluent monitor used to convert the concentration to units expressed in lb/mmBTU. The PM CEMS installed at Unit 2 must be appropriate for the anticipated stack conditions and capable of measuring filterable PM concentrations on an hourly average basis. Defendants shall maintain, in an electronic database that maintains data for at least five years, the hourly average emission values of all PM CEMS in lb/mmBTU. Except for periods of monitor malfunction, maintenance, repair, calibration, or testing as identified in Defendants' PM CEMS protocols prepared pursuant to Paragraphs 77 and 78, GVEA shall Continuously Operate the PM CEMS at all times when the Unit it serves is operating.

74. Not later than upon First Firing of Coal in Unit 2, Defendants on Unit 2 and GCEA on Unit 1 shall install, correlate, maintain, and operate PM CEMS on Unit 1 and Unit 2 in accordance with 40 C.F.R. Part 60, Appendix B, Performance Specification 11.

75. Within 180 days of the Date of Entry, Defendants shall submit to EPA a plan for the installation and correlation of the PM CEMS.

76. Within 365 days of the Date of Entry, Defendants shall submit to EPA a Quality Assurance/Quality Control ("QA/QC") protocol that shall be followed for such PM CEMS.

77. In developing both the plan for installation and correlation of the PM CEMS and the QA/QC protocol, Defendants shall use the criteria set forth in 40 C.F.R. Part 60, Appendix B, Performance Specification 11, and Appendix F, Procedure 2. After PM CEMS

is installed, Defendants shall thereafter operate the PM CEMS in accordance with the plan and QA/QC protocol.

78. By no later than the Day Unit 2 First Fires Coal, except for periods of monitor malfunction, maintenance, repair, calibration, or testing as identified in Defendants' PM CEMS protocols prepared pursuant to Paragraphs 77 and 78, Defendants shall install, correlate, maintain, and Continuously Operate the PM CEMS when the Unit it serves is operating, conduct performance specification tests on the PM CEMS, and demonstrate compliance with the PM CEMS installation and correlation plans submitted to EPA. Defendants shall report, pursuant to Section XII (Periodic Reporting), the data recorded by the PM CEMS during Unit operation, expressed in lb/mmBTU on a rolling average 30-day basis in compact disc- electronic format to EPA and identify in the report any PM emission rates in excess of the applicable PM Emission Rate and any concentrations measured by the PM CEMS that are greater than 125% of the highest PM concentration level used in the most recent correlation testing performed pursuant to Performance Specification 11 in 40 C.F.R. Part 60, Appendix B.

D. <u>General PM Provisions-</u>

79. Compliance with the PM Emission Rates established by this Consent Decree shall be determined using CEMS data obtained in accordance with Paragraphs 78 and 79. Data from PM CEMS shall be used to monitor compliance with PM Emission Rates established by this Consent Decree on a continuous basis.

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

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

VIII. PROHIBITION ON NETTING CREDITS OR OFFSETS

81. Except as provided in Paragraph 83, emission reductions that result from actions to be taken by Defendants after the Date of Entry of this Consent Decree to comply with the requirements of this Consent Decree shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a Netting credit or offset under the Act's Nonattainment NSR and PSD programs.

82. The limitations on the generation and use of Netting credits and offsets set forth in the previous Paragraph do not apply to emission reductions achieved by Unit 1 and Unit 2 that are greater than those required under this Consent Decree. For purposes of this Paragraph, emission reductions from Unit 1 and Unit 2 are greater than those required under this Consent Decree if they result from such Unit's compliance with federally-enforceable emission limits that are more stringent than those limits imposed on the Unit under this Consent Decree and under applicable provisions of the Act or the Alaska SIP. Nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by EPA or the applicable state for the purposes of: attainment demonstrations submitted pursuant to Section 110 of the Act, 42 U.S.C. § 7410; determining impacts on National Ambient Air Quality Standards, PSD increment, or air quality related values, including visibility, in a Class I area; Best Available Retrofit Technology ("BART") determinations pursuant to Section 169A(g)(2) of the CAA, 42 U.S.C. § 7491(g)(2); and reasonable progress portions of the Alaska Regional Haze State Implementation Plan.

IX. ENVIRONMENTAL MITIGATION PROJECT

83. GVEA, on behalf of Defendants, shall fund as an Environmental Mitigation Project a change out program for solid-fuel burning devices, including wood or coal stoves, wood or coal-fired furnaces, wood or coal-fired hydronic heaters, or fireplace inserts ("Stove Change Out Project" or "Stove Project") in compliance with the approved plans and schedules for such Project and the other terms of this Consent Decree.

84. GVEA shall spend a total of $250,000 in Project Dollars on a Stove Change Out Project for municipalities in Interior Alaska, specifically the Fairbanks North Star Borough and Denali Borough (collectively "the Boroughs"). GVEA shall spend no less than $175,000 of the Project Dollars by providing funds to the Fairbanks North Star Borough Air Quality Division ("FNSB") for the express purpose of funding FNSB's existing Change Out Program for solid-fuel burning devices such as stoves ("FNSB Program"). GVEA shall spend no less than $75,000 in Project Dollars on a Stove Project for the Denali Borough ("Denali") that meets the requirements of the FNSB Program. After providing notification to EPA pursuant to Section XIX (Notices), the allocation of Project Dollars between FNSB and Denali may be changed by GVEA if one of the Boroughs is unwilling or unable to spend Project Dollars on the Stove Change Out Project in compliance with the terms and conditions of this Consent Decree.

85. To the extent that a Borough is willing to participate in the Stove Change Out Project under this Consent Decree, GVEA shall provide to the United States within 90 days of the Date of Entry of this Consent Decree a certification from that participating Borough stating that: the Borough shall spend all of its Project Dollars provided by GVEA exclusively and solely on the Project; the Borough shall limit the use of its Project Dollars

for administrative costs associated with the Stove Project to no greater than 10% of the Project Dollars GVEA provides; the Borough shall implement the Stove Project consistent with the materials available on EPA's website at http://www.epa.gov/burnwise; the Borough shall prepare true and accurate reports for GVEA's use in complying with this Consent Decree, to the extent GVEA requests the Borough to do so; and the Borough shall direct Project Dollars to the Stove Change Out Project, such that all Project Dollars, to the best of the Borough's ability, are expended by no later than December 31, 2014 or twenty-four (24) months following the Date of Entry of this Consent Decree whichever is later.

86. GVEA shall pay $87,500 to FNSB and $37,500 to Denali within 120 days of the Date of Entry of this Consent Decree for the Implementation of the Change Out Program, consistent with this Consent Decree and the Boroughs' certifications. Within 365 days of the Date of Entry of this Consent Decree, GVEA shall pay $87,500 of Project Dollars to FNSB and $37,500 in Project Dollars to Denali. GVEA shall not include its own personnel costs as a credit or offset for the Project Dollars to be paid to the Boroughs to implement the Stove Project.

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

88. While GVEA intends to have the Stove Change Out Project carried out by the Boroughs, GVEA acknowledges that GVEA will receive credit for the expenditure of such funds as Project Dollars only if GVEA demonstrates that the funds have been actually spent by the Boroughs, and that such expenditures met all requirements of this Consent Decree. Nothing in this settlement shall be construed to prohibit a contractual allocation of liability

between the Boroughs and GVEA, should the Boroughs fail to spend the Project Dollars in accordance with the certification that it provided to the Parties to this Consent Decree.

89. Beginning one hundred eighty (180) days from the Date of Entry of this Consent Decree, and continually annually thereafter until completion of the Project, GVEA shall provide EPA with written reports (which may be prepared by the Boroughs) detailing the progress of the Stove Project, including an accounting of Project Dollars spent to date.

90. Within 60 Days following the completion of the Project required under this Consent Decree GVEA shall submit to the United States a report, which may be prepared by the Boroughs, that documents: the date that the Stove Project was completed, i.e., when all of the Project Dollars were spent by the Boroughs; the results of implementing the Stove Project, including the emission reductions or other environmental benefits achieved; and the Project Dollars expended by the Boroughs in implementing the Stove Project.

X. MERCURY

91. GVEA stipulates that Unit 1 and Unit 2 at the Healy Power Plant shall comply with the requirements for mercury emissions from existing coal-fired electric generating units established by the National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units, 40 C.F.R. Part 63, Subpart UUUUU (the "MATS Rule").

92. GVEA shall make available to the National Park Service ("NPS") the results of any mercury emissions monitoring required by law conducted on Unit 1 and Unit 2 within 45 days of receiving a request for such data from the NPS.

93. Nothing in this Consent Decree shall be construed or interpreted to relieve GVEA of any requirements in the MATS Rule that may otherwise apply to Unit 1 or Unit 2 of the

Healy Power Plant, including requirements that might apply to emissions of other hazardous air pollutants from Unit 1 or Unit 2.

XI. RESOLUTION OF CIVIL CLAIMS

94. Entry of this Consent Decree shall resolve all civil claims of the United States against AIDEA and GVEA that are (1) alleged in the Complaint, specifically claims under Section 167 of the Act, 42 U.S.C. § 7477, that arise from the proposed modification, proposed restart, and/or proposed reactivation of Unit 2 at the Healy Power Plant, and (2) claims that arise, prior to the Date of Lodging of this Consent Decree, from the proposed modification, proposed restart, and/or proposed reactivation of Unit 2 at the Healy Power Plant under any or all of: (a) Part C and D of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, 7501-7515, and the implementing PSD and Nonattainment NSR provisions of the Alaska SIP; (b) Section 111 of the Act, 42 U.S.C. § 7411, and 40 C.F.R. § 60.14; and (c) Title V of the Act, 42 U.S.C. § 7661-7661f, but only to the extent that such Title V claims are based on Defendants' failure to obtain terms in the Title V Permit that reflect applicable requirements imposed under Part C or D of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, 7501-7515, and the implementing PSD and Nonattainment NSR provisions of the Alaska SIP.

XII. PERIODIC REPORTING

95. After the Date of Entry of this Consent Decree, GVEA for Unit 1 and Defendants for Unit 2 shall submit to the United States a periodic report, within 60 Days after the end of each half of the calendar year (January through June and July through December). The report shall include the following information:

a. all information necessary to determine compliance during the reporting period with: all applicable 30-Day Rolling Average NO_x Emission Rates and 30-Day Rolling Average SO_2 Emission Rates; all applicable PM Emission Rates; all applicable Unit 1 and Unit 2 Annual Tonnage Limitations; the obligation to monitor NO_x, SO_2, and PM emissions; and the obligation to optimize PM emission controls;

b. the schedule for the installation or upgrade and commencement of operation of new or upgraded pollution control devices required by this Consent Decree, including the nature and cause of any actual or anticipated delays, and any steps taken by Defendants to mitigate such delay;

c. the date on which Unit 2 First Fires Coal;

d. all affirmative defenses asserted pursuant to Paragraphs 110 through 118 during the period covered by the progress report; and

e. an identification of all periods when any pollution control device required by this Consent Decree to Continuously Operate did not Continuously Operate, the reason(s) for the equipment not operating, and the basis for Defendants' compliance or non-compliance with the Continuous Operation requirements of this Consent Decree.

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

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

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

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

XIII. REVIEW AND APPROVAL OF SUBMITTALS

99. Defendants shall submit each plan, report, or other submission required by this Consent Decree to United States whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. To the extent EPA approval is required, EPA may approve the submittal or decline to approve it and provide written comments

explaining the basis for declining such approval as soon as reasonably practicable. Within 60 Days of receiving written comments from EPA, Defendants shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal to EPA; or (b) submit the matter for dispute resolution, including the period of informal negotiations, under Section XVI (Dispute Resolution) of this Consent Decree.

100. Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, Defendants shall implement the approved submittal in accordance with the schedule specified therein or another EPA-approved schedule or as resolved at the completion of the Dispute Resolution process.

XIV. STIPULATED PENALTIES

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

Consent Decree Violation	**Stipulated Penalty**
a. Failure to pay the civil penalty as specified in Section IV (Civil Penalty) of this Consent Decree	$5,000 per Day
b. Failure to comply with any applicable 30-Day Rolling Average NO_x Emission Rate, 30-Day Rolling Average SO_2 Emission Rate, or 30-Day Rolling Average PM Emission Rate	$1,250 per Day per violation where the violation is less than 5% in excess of the lb/mmBTU limits $2,500 per Day per violation where the violation is equal to or greater than 5% but less than 10% in excess of the lb/mmBTU limits $5,000 per Day per violation where the violation is equal to or greater than 10% in excess of the lb/mmBTU limits
c. Failure to comply with the applicable Unit 1 and Unit 2 Annual NO_x Tonnage Limitation established by this Consent Decree	$2,500 per ton for first 100 tons, $5,000 per ton for each additional ton above 100 tons, plus the payment of $2,500 per ton for an amount of tons equal to two times the number of tons of NO_x emitted that exceeded the Unit 1 and Unit 2 Annual NO_x Tonnage Limitation on Units 1 and 2
d. Failure to comply with the applicable Unit 1 and Unit 2 Annual Tonnage Limitation for SO_2 required by this Consent Decree	$2,500 per ton for the first 100 tons over the limit, and $5,000 per ton for each additional ton over the limit, plus the payment of $1,250 per ton for an amount of tons equal to two times the number of tons of SO_2 emitted that exceeded the Unit 1 and Unit 2 Annual Tonnage Limitation on Units 1 and 2

e. Failure to install and commence Continuous Operation, or Continuously Operate an NO_x, SO_2, or PM control device as required under this Consent Decree	$5,000 per Day per violation during the first 30 Days; $19,000 per Day per violation thereafter
f. Failure to Retire Unit 1, if elected, as required under this Consent Decree	$5,000 per Day during the first 30 Days; $19,000 per Day thereafter
g. Failure to install or operate NO_x, SO_2, and/or PM CEMS as required in this Consent Decree	$500 per Day per violation
h. Failure to apply for any permit required by Section XVII (Permits)	$500 per Day per violation
i. Failure to timely submit, modify, or implement, as approved, the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree	$375 per Day per violation during the first 10 Days; $500 per Day per violation thereafter
j. Failure to optimize Baghouses as required by Paragraph 71	$500 per Day per violation
k. Any other violation of this Consent Decree	$500 per Day per violation

102. Violation of any limit based on a 30-Day rolling average constitutes 30 Days of violation but where such a violation (for the same pollutant and from the same Unit) recurs within periods less than 30 Days, Defendants shall not be obligated to pay a daily stipulated penalty for any Day of the recurrence for which a stipulated penalty has already been paid.

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

unreviewable discretion, waive all or any part of any stipulated penalties which may have accrued pursuant to this Consent Decree.

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

105. Stipulated penalties shall continue to accrue as provided in accordance with Paragraph 104 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 the United States pursuant to Section XVI (Dispute Resolution) of this Consent Decree that is not appealed to the Court, accrued stipulated penalties agreed or determined to be owing, together with accrued interest, shall be paid within 30 Days of the effective date of the agreement or of the receipt of the United States' decision;

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

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

Notwithstanding any other provision of this Consent Decree, the accrued stipulated penalties agreed by the United States and Defendants, or determined by the United States through Dispute Resolution, to be owing may be less than the stipulated penalty amounts set forth in Paragraph 102.

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

107. Should Defendants 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.

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

109. Affirmative Defense as to Stipulated Penalties for Excess Emissions Occurring During Malfunctions: If any of Defendants' Units exceed an applicable 30-Day Rolling Average Emission Rate for PM, NO_x or SO_2, or fail to meet a Continuously Operate

requirement set forth in this Consent Decree due to a claimed Malfunction, Defendants, bearing the burden of proof by a preponderance of the evidence, have an affirmative defense to stipulated penalties under this Consent Decree if Defendants have complied with the reporting requirements of Paragraphs 115 through 116 and have demonstrated all of the following:

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

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

c. to the maximum extent practicable, the air pollution control equipment and processes were maintained and operated in a manner consistent with approved plans, QA/QC procedures, manufacturers' specifications and recommendations, and good engineering and maintenance practices for minimizing emissions;

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

e. the amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions,

and consistent with manufacturers' specifications and recommendations and good engineering and maintenance practices;

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

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

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

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

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

110. To assert an affirmative defense for Malfunction under Paragraph 110, Defendants shall submit actual emissions data for the Day the Malfunction occurred and the 29-Day period following the Day the Malfunction occurred. Defendants may, if they elect, submit emissions data for the same 30-Day period but that excludes the excess emissions.

111. Affirmative Defense as to Stipulated Penalties for Excess Emissions Occurring During Startup and Shutdown: If any of Defendants' Units exceed an applicable 30-Day Rolling Average Emission Rate for PM, NO_x or SO_2 set forth in this Consent Decree due to startup or shutdown, Defendants, bearing the burden of proof by a preponderance of the evidence, have an affirmative defense to stipulated penalties under this Consent Decree,

if Defendants have complied with the reporting requirements of Paragraphs 115 through 116 and have demonstrated all of the following:

a. the periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design consistent with good engineering and maintenance practices and manufacturers' specifications and recommendations;

b. the excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance or which could have been prevented by following manufacturers' specifications and recommendations and good engineering and maintenance practices;

c. if the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

d. at all times, the facility was operated in a manner consistent with good engineering and maintenance practices and manufacturers' specifications and recommendations for minimizing emissions;

e. the frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable and consistent with good engineering and maintenance practices and manufacturers' specifications and recommendations;

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

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

h. Defendants' actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence; and

i. Defendants properly and promptly notified EPA as required by this Consent Decree.

112. To assert an affirmative defense for startup or shutdown under Paragraph 112, Defendants shall submit actual emissions data for the Day the excess emissions from startup or shutdown occurred and the 29-Day period following the Day the excess emissions from startup or shutdown occurred. Defendants may, if elected, submit emissions data for the same 30-Day period but that excludes the excess emissions.

113. If excess emissions occurred due to a Malfunction during routine startup and shutdown, then those instances shall be treated as other Malfunctions subject to Paragraph 110.

114. For an affirmative defense under Paragraphs 110 and 112, Defendants, bearing the burden of proof, shall demonstrate, through submission of the data and information under the reporting provisions of this Section, that all reasonable and practicable measures in accordance with good engineering and maintenance practices and within Defendants' control were implemented to prevent the occurrence of the excess emissions.

115. Defendants shall provide notice to United States in writing of Defendants' intent to assert an affirmative defense for Malfunction, startup, or shutdown under Paragraphs 110 and 112, as soon as practicable, but in no event later than 21 Days following

the date of the Malfunction, startup or shutdown. This notice shall be submitted pursuant to the provisions of Section XIX (Notices). The notice shall contain:

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

b. the magnitude of the excess emissions expressed in lb/mmBTU and the operating data and calculations used in determining the magnitude of the excess emissions;

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

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

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

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

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

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

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

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

XV. FORCE MAJEURE

118. 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 Defendants, its contractors, or any entity controlled by Defendants that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite Defendants' best efforts to fulfill the obligation. "Best efforts to fulfill the obligation" include using the best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay and any adverse environmental effect of the delay or violation is minimized to the greatest extent possible.

119. 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 Defendants intend to assert a claim of Force Majeure, Defendants shall notify United States in writing as soon as practicable, but in no event later than 21 Days following the date Defendants 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, Defendants 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 Defendants to prevent or minimize the delay or violation; the schedule by which Defendants propose to implement those

measures; and Defendants' rationale for attributing the delay or violation to a Force Majeure Event. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure Event. Defendants shall adopt all reasonable measures to avoid or minimize such delays or violations. Defendants shall be deemed to know of any circumstance which Defendants, its contractors, or any entity controlled by Defendants knew or should have known.

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

121. United States' Response. The United States shall notify Defendants in writing regarding Defendants' claim of Force Majeure within 30 Days after receipt of the notice provided in Paragraph 120. If the United States agrees that a delay in performance has been or will be caused by a Force Majeure Event, the United States and Defendants shall stipulate to an extension of deadline(s) for performance of the affected compliance requirement(s) by a period equal to the delay actually caused by the event. In such circumstances, an appropriate modification shall be made pursuant to Section XXIII (Modification) of this Consent Decree.

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

123. Burden of Proof. In any dispute regarding Force Majeure, Defendants 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. Defendants shall also bear the burden of proving by a preponderance of the evidence that Defendants gave the notice required by this Section and the burden of proving the anticipated duration and extent of any delay(s) attributable to a Force Majeure Event. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.

124. Events Excluded. Unanticipated or increased costs or expenses associated with the performance of Defendants' obligations under this Consent Decree shall not constitute a Force Majeure Event. Force Majeure also does not include Defendants' financial inability to perform any obligation under this Consent Decree.

125. Potential Force Majeure Events. The Parties agree that, depending upon the circumstances related to an event and the Defendants' response to such circumstances, the kinds of events listed below are among those that could qualify as Force Majeure Events within the meaning of this Section: construction, labor, or equipment delays; Malfunction of a Unit or emission control or monitoring device; unanticipated coal supply or pollution control reagent delivery interruptions; acts of God; acts of war or terrorism; the need of Defendants to supply electricity in response to a system-wide (state-wide or regional) emergency that temporarily precludes compliance with an Emission Rate, a Tonnage Limitation, or the duty to Continuously Operate a NO_x, SO_2, or PM control device. Depending upon the circumstances and Defendants' 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 Defendants and Defendants have taken all steps available to obtain the necessary permit, including without limitation, submitting a complete permit application, responding to requests for additional information by the permitting authority in a timely fashion, and accepting lawful permit terms and conditions after expeditiously exhausting any legal rights to appeal terms and conditions imposed by the permitting authority.

126. As part of the resolution of any matter submitted to this Court under Section XVI (Dispute Resolution) regarding a claim of Force Majeure, the United States and Defendants by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay agreed to by the United States or approved by the Court. Defendants shall be liable for stipulated penalties pursuant to Section XIV (Stipulated Penalties) for its failure thereafter to complete the work in accordance with the extended or modified schedule (provided that Defendants shall not be precluded from making a further claim of Force Majeure with regard to meeting any such extended or modified schedule).

XVI. DISPUTE RESOLUTION

127. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, provided that the Party invoking such procedure has first made a good faith attempt to resolve the matter with the other Party. The provisions of this Section XVI shall be the sole and exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

128. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Party advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice, and the Parties in dispute shall expeditiously schedule a meeting to discuss the dispute informally not later than 14 Days following receipt of such notice.

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

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

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

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

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

XVII. PERMITS

134. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires GVEA to secure a permit to authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under State law, GVEA shall make such application in a timely manner. EPA will use best efforts to review expeditiously, to the extent applicable, all permit applications submitted by GVEA to meet the requirements of this Consent Decree.

135. When permits are required, GVEA shall complete and submit applications for such permits to the applicable State agency to allow sufficient time for all legally required processing and review of the permit request, including requests for additional information by the applicable State agency. Any failure by GVEA to submit a timely permit application for a GVEA Unit, as required by permitting requirements under state and/or federal regulations, shall bar any use by GVEA of Section XV (Force Majeure) of this Consent Decree where a Force Majeure claim is based on permitting delays.

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

137. Within 180 Days after the Date of Entry of this Consent Decree, Defendants shall apply to modify the Title V Permit, to include a schedule for all Unit-specific and plant-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, any (a) 30-Day Rolling Average NO_x Emission Rate, (b) 30-Day Rolling Average SO_2 Emission Rate, (c) Unit 1 and Unit 2 Annual Tonnage Limitation, (d) 30-Day Rolling Average filterable PM Emission Rate, (e) installation of controls; and (f) Retirement of any Unit as required or elected under this Consent Decree.

138. Within 365 days from the Date of Entry of this Consent Decree, Defendants shall either apply to permanently include the requirements and limitations enumerated in this Consent Decree into a federally enforceable non-Title V permit or request a site-specific revision to the Alaska SIP to include the requirements and limitations enumerated in this Consent Decree. The permit application or Alaska SIP revision request shall require compliance with the following: any applicable (a) 30-Day Rolling Average NO_x Emission Rate; (b) 30-Day Rolling Average SO_2 Emission Rate; (c) Unit 1 and Unit 2

Annual Tonnage Limitations; (d) 30 Day Rolling Average filterable PM Emission Rate; (e) installation of controls; and (f) the Retirement of any Unit as required or elected under this Consent Decree.

139. Defendants shall provide the United States with a copy of each application for a federally enforceable permit or Alaska SIP revision submitted pursuant to Paragraph 139, 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.

140. Prior to conditional termination of enforcement through this Consent Decree, Defendants shall obtain enforceable provisions in its Title V permits that incorporate all Unit-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, any (a) 30-Day Rolling Average NO_x Emission Rate; (b) 30-Day Rolling Average SO_2 Emission Rate; (c) Unit 1 and Unit 2 Annual Tonnage Limitations; (d) 30-Day Rolling Average filterable PM Emission Rate; (e) installation of controls; and (f) the election to retire or retrofit any Unit as required or elected under this Decree.

141. If AIDEA proposes to sell or transfer to GVEA part or all of its Operational or Ownership Interest of Unit 2, AIDEA shall comply with the requirements of Section XX (Sales or Transfers of Operational or Ownership Interests) of this Consent Decree with regard to that Operational or Ownership Interest prior to any such sale or transfer.

142. If AIDEA or GVEA proposes to sell or transfer to an entity unrelated to AIDEA and GVEA ("Third Party Purchaser") part or all of its Operational or Ownership Interest of Units covered under this Consent Decree, AIDEA and GVEA shall comply with

the requirements of Section XX (Sales or Transfers of Operational or Ownership Interests) of this Consent Decree with regard to that Operational or Ownership Interest prior to any such sale or transfer.

XVIII. INFORMATION COLLECTION AND RETENTION

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

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

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

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

d. assessing Defendants' compliance with this Consent Decree.

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

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

146. Nothing in this Consent Decree shall limit the authority of EPA to conduct tests and right of entry, or right to obtain information under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of the Defendants to maintain documents, records or other information imposed by applicable federal or state laws, regulations or permits.

XIX. NOTICES

147. 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:

(if by mail service)
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
DJ# 90-5-2-1-10163

(if by commercial delivery service)
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
ENRD Mailroom, Room 2121
601 D Street, NW
Washington, DC 20004

DJ# 90-5-2-1-10163

and

(if by mail service)
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

(if by commercial delivery service)
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios South Building, Room 1119
1200 Pennsylvania Avenue, NW
Washington, DC 20004

and

Manager of Air/RCRA Compliance Unit
EPA Region 10
Air /RCRA Compliance Unit
U.S.EPA Region 10
1200 Sixth Avenue Ste. 900
Seattle, WA 98101

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

and

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

As to AIDEA:

Executive Director

Alaska Industrial Development and Export Authority
813 West Northern Lights Blvd.
Anchorage, AK 99503

and

State of Alaska Department of Law
Counsel for the Alaska Industrial Development and
Export Authority
P.O. Box 110300
Juneau, AK 99811

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

149. 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.

XX. SALES OR TRANSFERS OF OPERATIONAL OR OWNERSHIP INTERESTS

150. Prior to any transfer of an ownership or operational interest in Unit 2, Defendants shall remain jointly and severally liable to the United States for the obligations of this Consent Decree unless such obligation is the sole responsibility of GVEA under this

Consent Decree for Unit 1. The United States and the Defendants recognize that AIDEA and GVEA have been in negotiations to transfer ownership of Unit 2 from AIDEA to GVEA. The transfer has not yet occurred. Without further approval of the Court or the United States, AIDEA's obligations and its Party status under this Consent Decree shall immediately terminate upon the sale or transfer of Unit 2 from AIDEA to GVEA, provided that AIDEA and GVEA file a notice with the Court certifying that (1) the transfer has occurred, (2) any accrued stipulated penalties are paid in full, and (3) GVEA shall remain liable to the United States for the obligations of this Consent Decree applicable to the transferred or purchased Operational or Ownership Interest. So long as the requirements of this Consent Decree are met, this Consent Decree shall not be construed to impede the transfer of any Operational or Ownership Interests between GVEA and any Third Party Purchaser. This Consent Decree shall not be construed to prohibit a contractual allocation of the burdens of compliance with this Consent Decree as between AIDEA and GVEA Operational or Ownership Interests.

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

152. No sale or transfer of an Operational or Ownership Interest shall take place before the Third Party Purchaser and the United States have executed, and the Court has approved, a modification pursuant to Section XXIII (Modification) of this Consent Decree making the Third Party Purchaser a party to this Consent Decree and jointly and

severally liable with AIDEA and GVEA for all the requirements of this Consent Decree that may be applicable to the transferred or purchased Operational or Ownership Interests.

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

154. If the United States agrees, the United States, the Defendants, and the Third Party Purchaser that has become a party to this Consent Decree pursuant to Paragraph 153 may execute a modification that relieves AIDEA or GVEA of its liability under this Consent Decree for, and makes the Third Party Purchaser liable for, all obligations and liabilities applicable to the purchased or transferred Operational or Ownership Interests. Notwithstanding the foregoing, however, AIDEA and GVEA may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Operational or Ownership Interests, including the obligations set forth in Sections IX (Environmental Mitigation Project) and IV (Civil Penalty). AIDEA and GVEA may propose and the United States may agree to restrict the scope of the joint and several liability of any purchaser or transferee for any obligations of this Consent Decree that are not

specific to the transferred or purchased Operational or Ownership Interests, to the extent such obligations may be adequately separated in an enforceable manner.

155. Paragraphs 152 through 155 of this Consent Decree do not apply if an Ownership Interest is transferred solely as collateral security in order to consummate a financing arrangement (not including a sale-leaseback), so long as AIDEA and GVEA: (a) remain the operator (as that term is used and interpreted under the Act) of the subject Unit(s); (b) remain subject to and liable for all obligations and liabilities of this Consent Decree; and (c) supply the United States with the following certification within 30 Days after the transfer:

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

XXI. EFFECTIVE DATE

156. The effective date of this Consent Decree shall be the Date of Entry.

XII. RETENTION OF JURISDICTION

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

modification of the Consent Decree, or for adjudication of disputes. 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.

XIII. MODIFICATION

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

XXIV. GENERAL PROVISIONS

159. When this Consent Decree specifies that Defendants shall achieve and maintain a 30-Day Rolling Average Emission Rate, the Parties expressly recognize that compliance with such 30-Day Rolling Average Emission Rate shall commence immediately upon the date specified and that compliance as of such specified date (e.g., December 30) shall be determined based on data from that date and the 29 prior Unit Operating Days.

160. This Consent Decree is not a permit. Compliance with the terms of this Consent Decree does not guarantee compliance with all applicable federal, state, or local laws or regulations. The emission rates and removal efficiencies set forth herein do not relieve Defendants from any obligation to comply with other state and federal requirements under the Act.

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

162. In any subsequent administrative or judicial action initiated by the United States for injunctive relief or civil penalties relating to Unit 1 or Unit 2 as covered by this

Consent Decree, neither AIDEA nor GVEA shall 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 United States in the subsequent proceeding were brought, or should have been brought, in the instant case; provided, however, that nothing in this Paragraph is intended to affect the validity of Section XI (Resolution of Civil Claims).

163. Nothing in this Consent Decree shall relieve Defendants of their obligation to comply with all applicable federal, state, and local laws and regulations, including, but not limited to,the Clean Water Act and the National Pollutant Discharge Elimination System (NPDES) implementing regulations, National Ambient Air Quality Standards, the National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units (Utility MACT or MATS), the Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial Commercial-Institutional Steam Generating Units (Utility NSPS), and BART requirements set forth in the Alaska SIP. Nothing in this Consent Decree shall be construed to provide any relief from the emission limits or deadlines for the installation of pollution controls specified in these regulations.

164. Subject to the provisions in Section XI (Resolution of Civil Claims), XIV (Stipulated Penalties), and in Section XVI (Dispute Resolution), nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits.

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

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

167. 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. Defendants 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. Defendants shall report data to the number of significant digits in which the standard or limit is expressed.

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

169. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree, and supersedes all prior agreements and understandings between the Parties related to the subject matter herein. No document, representation, inducement,

agreement, understanding, or promise constitutes any part of this Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

170. Except as provided below, each Party to this action shall bear its own costs and attorneys' fees.

XXV. SIGNATORIES AND SERVICE

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

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

173. 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.

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

XXVI. PUBLIC COMMENT/AGENCY REVIEW

175. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of this Consent Decree.

XXVII. CONDITIONAL TERMINATION OF ENFORCEMENT UNDER CONSENT DECREE

176. Conditional Termination of Enforcement Through this Consent Decree. Subject to the provisions of Paragraph 178, after Defendants:

a. have successfully completed construction, and have maintained operation, of all pollution controls as required by this Consent Decree for a period of two years and have successfully completed all actions necessary to Retire any Unit required or elected to be Retired as required by this Consent Decree; and

b. have obtained all the final permits and/or site-specific Alaska SIP revisions (i) as required by Section XVII (Permits) of this Consent Decree and (ii) that include as federally enforceable permit terms or Alaska SIP provisions all Unit-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree;

then Defendants may so certify these facts to the United States and this Court. If the United States do not object in writing with specific reasons within 45 Days of receipt of Defendants' certification, then, for any violations of this Consent Decree that occur after the filing of notice, the United States shall pursue enforcement of these requirements through the applicable permits and/or other enforcement authorities and not through this Consent Decree.

177. Resort to Enforcement Under this Consent Decree. Notwithstanding Paragraph 177, if enforcement of a provision in this Consent Decree cannot be pursued by the United States under the Alaska SIP or applicable permit(s) issued pursuant to the Act or its implementing regulations ("CAA Permit"), or if a Consent Decree requirement was intended to be part of the Alaska SIP or CAA Permit but did not become or remain part of such SIP or permit, then such requirement may be enforced under the terms of this Consent Decree at any time.

XXVIII. FINAL JUDGMENT

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

SO ORDERED, THIS ____ DAY OF _____ 2012

_____
UNITED STATES DISTRICT COURT JUDGE

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

FOR THE UNITED STATES DEPARTMENT OF JUSTICE

Respectfully submitted,

_____

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

_____

JAMES A. LOFTON
Counsel to the Chief
JUSTIN SAVAGE
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-5293

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

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respectfully submitted,

Date: _____

_____
CYNTHIA GILES
Assistant Administrator
Office of Enforcement and
Compliance Assurance
United States Environmental
Protection Agency

Date: _____

_____
PHILLIP A. BROOKS
Director, Air Enforcement Division
United States Environmental
Protection Agency

Of Counsel:

SABRINA ARGENTIERI
Attorney-Advisor, Air Enforcement Division
United States Environmental Protection Agency

JULIANE MATTHEWS
Assistant Regional Counsel, Region 10
United States Environmental Protection Agency

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

FOR GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.

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

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

FOR ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

By: _____
Ted Leonard
Executive Director
Alaska Industrial Development and
Export Authority