IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA, Plaintiff, v. WISCONSIN POWER AND LIGHT COMPANY, MADISON GAS AND ELECTRIC COMPANY, WISCONSIN ELECTRIC POWER COMPANY, and WISCONSIN PUBLIC SERVICE CORPORATION, Defendants.	Civil Action No.: 13-cv-266

SIERRA CLUB, Plaintiff, v. WISCONSIN POWER AND LIGHT COMPANY Defendant.	Civil Action No.: 13-cv-265

CONSENT DECREE

TABLE OF CONTENTS

WHEREAS, on September 9, 2010, Plaintiff, Sierra Club ("Sierra Club"), filed a Complaint for civil penalties, declaratory and injunctive relief, with costs and fees, under the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7401-7671q, and specifically the CAA's citizen suit provision, 42 U.S.C. § 7604, against Defendant, Wisconsin Power and Light Company ("WPL"), Civil Action No. 10-CV-511 (W.D. Wis.), and on May 8, 2012, dismissed that action by stipulation, without prejudice, in anticipation of this Consent Decree and is refiling its Complaint concurrently with this Consent Decree;

WHEREAS, on September 24, 2010, Sierra Club, filed a Complaint for civil penalties, declaratory and injunctive relief, with costs and fees, under the Clean Air Act ("CAA or the "Act"), 42 U.S.C. §§ 7401-7671q, and specifically the CAA's citizen suit provision, 42 U.S.C. § 7604, against Defendant WPL, Civil Action No. 10-cv-00835-AEG (E.D. Wis.);

WHEREAS, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), is concurrently filing a Complaint and this Consent Decree, for injunctive relief and civil penalties pursuant to Sections 113(b)(2) and 167 of the Act 42 U.S.C. §§ 7413(b)(2) and 7477, alleging that WPL, Madison Gas and Electric Company ("MGE"), Wisconsin Electric Power Company ("We Energies"), and Wisconsin Public Service Corporation ("WPSC") (collectively "Defendants"), violated the Prevention of Significant Deterioration ("PSD") provisions of Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, the requirements of Title V of the Act, 42 U.S.C. §§ 7661-7661f, and the federally enforceable Wisconsin State Implementation Plan ("Wisconsin SIP");

WHEREAS, on December 14, 2009, EPA issued a Notice and Finding of Violation ("NOV/FOV") to Defendants with respect to alleged violations of the CAA;

WHEREAS, the United States provided Defendants and the State of Wisconsin with actual notice pertaining to Defendants' alleged violations, in accordance with Sections 113(a)(1) and (b) of the Act, 42 U.S.C. § 7413(a)(1) and (b);

WHEREAS, in their Complaints, the United States and the Sierra Club (hereinafter collectively "Plaintiffs") allege, *inter alia,* that one or more Defendants made major modifications to major emitting facilities, and failed to obtain the necessary permits and install and operate the controls necessary under the Act to reduce sulfur dioxide ("SO_2"), oxides of nitrogen ("NO_x"), and/or particulate matter ("PM"), at certain electricity generating stations located in Wisconsin, and that such emissions damage human health and the environment;

WHEREAS, the Sierra Club alleges in its Complaint, Case 10-cv-00835-AEG, that WPL exceeded its opacity permit limits at the Edgewater Generating Station;

WHEREAS, in their Complaints, the Plaintiffs allege claims upon which relief can be granted against the Defendants under Sections 113, 167, and 304 of the Act, 42 U.S.C. §§ 7413, 7477, and 7604;

WHEREAS, the Plaintiffs and Defendants (collectively, the "Parties") have agreed that settlement of these actions is in the best interests of the Parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving these matters;

WHEREAS, the Parties anticipate that the installation and operation of pollution control equipment and practices pursuant to this Consent Decree, and the retirement, refueling, or repowering of certain facilities required by this Consent Decree, will achieve significant reductions of SO_2, NO_x, and PM emissions and improve air quality;

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;

WHEREAS, the Defendants have cooperated in the resolution of these matters;

WHEREAS, the Defendants deny the violations alleged in the Complaints, and nothing herein shall constitute an admission of liability; and

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

NOW, THEREFORE, without any admission of fact or law, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and pursuant to Sections 113, 167, and 304 of the Act, 42 U.S.C. §§ 7413, 7477, and 7604. Venue is proper in the Western District of Wisconsin pursuant to Sections 113(b) and 304(c) of the Act, 42 U.S.C. §§ 7413(b) and 7604(c), and 28 U.S.C. §§ 1391(b) and (c). Solely for the purposes of this Consent Decree and the underlying Complaints, and for no other purpose, the Defendants waive all objections and defenses that they may have to the Court's jurisdiction over this action, to the sufficiency of any pre-suit notices required by Section 113 or 304 of the Act, 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. Except as expressly provided for herein, this Consent Decree shall not

create any rights in or obligations of any party other than the Parties to this Consent Decree. Except as provided in Section XXVI (Public Comment/Agency Review) of this Consent Decree, the Parties consent to entry of this Consent Decree without further notice. Notwithstanding the foregoing, should this Consent Decree not be entered by this Court, then the waivers and consents set forth in this Section I (Jurisdiction and Venue) shall be null and void and of no effect.

II. APPLICABILITY

2. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the United States and upon the Sierra Club, the Defendants, and their respective successors and assigns or other entities or persons otherwise bound by law.

3. A Defendant performing work under this Consent Decree shall provide a copy of this Consent Decree to all vendors, suppliers, consultants, contractors, agents, and any other company or other organization retained to perform such work at issue. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under this Consent Decree, each Defendant shall ensure that all work it is required to undertake is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree, except as expressly provided herein (*e.g.*, 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

4. 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 regulation implementing the Act, including regulations approved as part of the Wisconsin SIP, shall mean in this Consent Decree what such term means under the Act or those regulations.

5. A "12-Month Rolling Average Emission Rate" shall be determined by calculating an arithmetic average of all hourly emission rates in lb/mmBTU for the current month and all hourly emission rates in lb/mmBTU for the previous 11 Unit Operating Months. A new 12-Month Rolling Average Emission Rate shall be calculated for each new complete month in accordance with the provisions of this Consent Decree. Each 12-Month Rolling Average Emission Rate shall include all emissions of the applicable pollutant that occur during all periods of operation, including startup, shutdown, and Malfunction. For purposes of calculating a "12-Month Rolling Average Emission Rate," a "Unit Operating Month" means any month during which a Unit fires Fossil Fuel.

6. A "30-Day Rolling Average Emission Rate" for a Unit shall be determined by calculating an arithmetic average of all hourly emission rates in lb/mmBTU for the current Unit Operating Day and all hourly emission rates in lb/mmBTU for the previous 29 Unit Operating Days. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Unit Operating Day. Each 30-Day Rolling Average Emission Rate shall include all emissions of the applicable pollutant that occur during all periods within any Unit Operating Day, including emissions from startup, shutdown, and Malfunction.

7. A "24-Hour Rolling Average Emission Rate" for a Unit shall be determined by calculating an arithmetic average of the current Unit Operating Hour emission rate in lb/mm BTU and the previous 23 Unit Operating Hours. A new 24-Hour Rolling Average Emission Rate shall be calculated for each new Unit Operating Hour. Each 24-Hour Rolling Average

Emission Rate for PM shall include all emissions that occur during all periods of operation, including startup, shutdown, and Malfunction.

8. "Baghouse" means a full stream (fabric filter or membrane) particulate emissions control device on the main boilers.

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

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

11. "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 in 40 C.F.R. § 72.2 and installed and maintained as required by 40 C.F.R. Part 60 and 40 C.F.R. Part 75.

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

13. "Columbia Generating Station" or "Columbia Station" or "Columbia" means solely for purposes of this Consent Decree, the Columbia Energy Center consisting of two existing coal-fired boilers designated as Unit 1 (512 MW) and Unit 2 (511 MW), which is

located in Columbia County, Wisconsin. Columbia is operated by WPL and jointly owned by WPL, MGE, and WPSC.

14. "Consent Decree" means this Consent Decree and the Appendices hereto, which are incorporated into the Consent Decree.

15. "Continuously Operate" or "Continuous Operation" means that when a pollution control technology or combustion control is required to be continuously used at a Unit pursuant to this Consent Decree (including, but not limited to, SCR, SNCR, DFGD, ESP, Baghouse, or Low NO_x Combustion System), it shall be operated at all times such Unit is in operation (except as otherwise provided by Section XV (Force Majeure)), consistent with the technological limitations, manufacturers' specifications, good engineering and maintenance practices, and good air pollution control practices for minimizing emissions (as defined in 40 C.F.R. § 60.11(d)) for such equipment and the Unit.

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

17. "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 Western District of Wisconsin.

18. "Day" means calendar day unless otherwise specified in this Consent Decree.

19. "Defendants" means Wisconsin Power and Light Company ("WPL"), Madison Gas and Electric Company ("MGE"), Wisconsin Electric Power Company ("We Energies"), and Wisconsin Public Service Corporation ("WPSC"). "Defendant" means one of the Defendants.

20. "Dry Flue Gas Desulfurization" or "Dry FGD" or "DFGD" means an add-on air pollution control system for the reduction of SO_2 located downstream of a boiler that sprays an

alkaline sorbent slurry in one or more absorber vessels designed to provide intimate contact between an alkaline slurry and the flue gas stream to react with and remove SO_2 from the exhaust stream forming a dry powder material which is captured in a downstream particulate control device. The Parties acknowledge that what was approved by the Public Service Commission of Wisconsin on March 11, 2011, in Docket No. 05-CE-138, to be installed at Columbia Units 1 and 2 would qualify as a DFGD for purposes of this Consent Decree. Likewise, the Parties acknowledge that what was filed on July 27, 2012, with the Public Service Commission of Wisconsin in Docket No. 6680-CE-174 to be installed at Edgewater Unit 5 would qualify as a DFGD for purposes of this Consent Decree.

21. "Edgewater Generating Station" or "Edgewater Station" or "Edgewater" means solely for purposes of this Consent Decree, the Edgewater Generating Station consisting of three existing coal-fired boilers designated as Unit 3 (60 MW), Unit 4 (330 MW), and Unit 5 (380 MW), which is located in Sheboygan County, Wisconsin. Edgewater Unit 3 is owned by WPL, Edgewater Unit 4 is jointly owned by WPL and WPSC, and Edgewater Unit 5 is owned by WPL and was formerly jointly owned by WPL and We Energies. WPL is the operator of Edgewater Units 3, 4, and 5.

22. "Electrostatic Precipitator" or "ESP" means a device for removing particulate matter from combustion gases by imparting an electric charge to the particles and then attracting them to a metal plate or screen of opposite charge before the combustion gases are exhausted to the atmosphere.

23. "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.

24. "Environmental Mitigation Projects" or "Projects" means the projects set forth in Section IX (Environmental Mitigation Projects) and Appendix A of this Consent Decree, and any other project undertaken for the purpose of fulfilling a Defendant's obligations under Section IX and approved for that purpose by the EPA pursuant to Section XIII (Review and Approval of Submittals).

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

26. "Fossil Fuel" means any hydrocarbon fuel, including but not limited to coal, metallurgical coke, petroleum coke, petroleum oil, natural gas, or any other fuel made or derived from the foregoing.

27. "Greenhouse Gases" means the air pollutant defined at 40 C.F.R. § 86.1818-12(a) as of the Date of Lodging of this Consent Decree as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. This definition continues to apply even if 40 C.F.R. § 86.1818-12(a) is subsequently revised, stayed, vacated, or otherwise modified.

28. "Improved Unit" for NO_x means a System Unit equipped with an SCR or scheduled under this Consent Decree to be equipped with an SCR. A Unit may be an Improved Unit for one pollutant without being an Improved Unit for another pollutant. Columbia Unit 2 and Edgewater Unit 5 are Improved Units for NO_x.

29. "Improved Unit" for SO_2 means a System Unit equipped with a DFGD or scheduled under this Consent Decree to be equipped with a DFGD. A Unit may be an Improved Unit for one pollutant without being an Improved Unit for another pollutant. Columbia Units 1 and 2 and Edgewater Unit 5 are Improved Units for SO_2.

30. "kW" means Kilowatt or one thousand watts.

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

32. "Low NO_x Combustion System" means burners and associated combustion air control equipment, including Overfire Air and Rich Reagent Injection (if installed at the Unit), which control mixing characteristics of Fossil Fuel and oxygen, thus restraining the formation of NO_x during combustion of fuel in the boiler.

33. "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.

34. "MGE" means Defendant, Madison Gas and Electric Co., a co-owner of the Columbia Station.

35. "Natural Gas" means natural gas received directly or indirectly through a connection to an interstate pipeline.

36. "Nelson Dewey Generating Station" or "Nelson Dewey Station" or "Nelson Dewey" means, solely for purposes of this Consent Decree, the Nelson Dewey Generating Station consisting of two existing coal-fired boilers designated as Unit 1 (100 MW) and Unit 2

(100 MW), which is located in Grant County, Wisconsin. Nelson Dewey is owned and operated by WPL.

37. "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. §§ 51.165(a)(2)(vi), 52.21(b)(3)(i), and in the Wisconsin SIP.

38. "NO_x" means oxides of nitrogen.

39. "NO_x Allowance" means an authorization to emit a specified amount of NO_x that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or applicable State Implementation Plan; provided, however, that with respect to any such program that first applies to emissions occurring after December 31, 2011, a "NO_x Allowance" shall include an allowance created and allocated under such program only for control periods starting on or after the fourth anniversary of the Date of Entry of this Consent Decree.

40. "Nonattainment NSR" means the new source review program within the meaning of Part D of Subchapter I of the Act, 42 U.S.C. §§ 7501-7515 and 40 C.F.R. Part 51, and corresponding provisions of the federally enforceable Wisconsin SIP.

41. "Operational Interest" means part or all of a Defendant's right to be the operator (as that term is used and interpreted under the Act) of any Unit.

42. "Ownership Interest" with respect to a Unit means part or all of a Defendant's legal or equitable ownership interest in any Unit. A Defendant has an "Ownership Interest" with respect to a Plant if the Defendant is a Unit Owner of any Unit included within that Plant.

43. "Other Unit" means any Unit within the System that is not an Improved Unit for the pollutant in question. A Unit may be an Improved Unit for NO_x and an Other Unit for SO_2, and vice versa.

44. "Over-Fire Air" or "OFA" means an in-furnace staged combustion control to reduce NO_x emissions.

45. "Parties" means the United States of America on behalf of EPA, the Sierra Club, and the Defendants. "Party" means one of the named "Parties."

46. "Plant" means each of the following individually: (i) the Columbia Generating Station (consisting of Units 1 & 2); (ii) Edgewater Generating Station (consisting of Units 3, 4 & 5); or (iii) the Nelson Dewey Generating Station (consisting of Units 1 & 2).

47. "Plant-Wide Annual Tonnage Limitation" for a pollutant means the sum of the tons of the pollutant emitted from all the Units at a Plant including, without limitations, all tons of that pollutant emitted during periods of startup, shutdown, and Malfunction, in the designated year.

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

49. "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.

50. "PM Control Device" means any device, including an ESP or Baghouse, which reduces emissions of PM. Where a Unit is equipped with both an ESP and a Baghouse, the Baghouse, and not the ESP, shall be considered the PM Control Device for that Unit.

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

52. "Prevention of Significant Deterioration" or "PSD" means the new source review program within the meaning of Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492 and 40 C.F.R. Part 52, and corresponding provisions of the federally enforceable Wisconsin SIP.

53. "Project Dollars" means expenditures and payments incurred or made by a Defendant in carrying out the Environmental Mitigation Projects identified in Section IX (Environmental Mitigation Projects) of this Consent Decree for which such Defendant is responsible to the extent that such expenditures or payments both: (a) comply with the requirements set forth in Section IX and Appendix A of this Consent Decree, and (b) constitute a Defendant's direct payments for such projects, or a Defendant's external costs for contractors, vendors, and equipment.

54. "Refuel" or "Refueled" means that a Unit is either Refueled to Natural Gas or Refueled to Another Non-Fossil Fuel Approved by EPA within the meaning of this Consent Decree.

55. "Refuel to Natural Gas" or "Refueled to Natural Gas" means, solely for purposes of this Consent Decree, the modification of a Unit such that the modified unit generates electricity solely through the combustion of Natural Gas rather than coal, including installation

of at least the following combustion controls to reduce emissions of NOx: low-NOx natural gas burners and an overfire air system. Nothing herein shall prevent the reuse of any equipment at any existing unit or new emissions unit, provided that the Unit Owner(s) applies for, and obtains, all required permits, including, if applicable, a PSD or Nonattainment NSR permit.

56. "Refuel to Another Non-Fossil Fuel Approved by EPA" or "Refueled to Another Non-Fossil Fuel Approved by EPA" means, solely for purposes of this Consent Decree, the modification of a unit such that the modified unit generates electricity solely through the combustion of a non-fossil fuel approved by EPA pursuant to Section XIII (Review and Approval of Submittals). Nothing herein shall prevent the reuse of any equipment at any existing unit or new emissions unit, provided that the Unit Owner(s) applies for, and obtains, all required permits, including, if applicable, a PSD or Nonattainment NSR permit.

57. "Repower" or "Repowered" means, solely for purposes of this Consent Decree, the removal and replacement of the Unit components such that the replaced unit generates electricity solely through the combustion of Natural Gas rather than coal, through the use of a combined cycle combustion turbine technology. Nothing herein shall prevent the reuse of any equipment at any existing unit or new emissions unit, provided that the Unit Owner(s) applies for, and obtains, all required permits, including, if applicable, a PSD or Nonattainment NSR permit.

58. "Retire" means to permanently shut down a Unit such that the Unit cannot physically or legally burn coal, and with respect to the applicable Unit Owner(s) and/or Unit Operator, to comply with applicable state and federal requirements for permanently ceasing operation of the Unit as a coal-fired electric generating Unit, including removing the Unit from

Wisconsin's air emissions inventory, and amending all applicable permits so as to reflect the permanent shutdown status of such Unit. The Unit Owners can choose to not retire and to continue to operate such a Unit only if it is Refueled or Repowered within the meaning of this Consent Decree, and such Unit Owner(s) obtains any and all required CAA permit(s) for the Refueled or Repowered Unit, including but not limited to an appropriate permit pursuant to CAA Subchapter I, Parts C and D, and pursuant to the applicable Wisconsin SIP provisions implementing CAA Subchapter I.

59. "Rich Reagent Injection" means a process of adding NO_x reducing agents in a staged fuel rich region of the lower furnace to reduce the formation of NO_x.

60. "SCR" or "Selective Catalytic Reduction" means a pollution control device for reducing NO_x emissions through the use of selective catalytic reduction technology.

61. "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 into the boiler.

62. "SO_2" means sulfur dioxide.

63. "SO_2 Allowance" means an authorization to emit a specified amount of SO_2 that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or applicable State Implementation Plan; provided, however, that with respect to any such program that first applies to emissions occurring after December 31, 2011, a "SO_2 Allowance" shall include an allowance created and allocated under such program only for control periods starting on or after the fourth anniversary of the Date of Entry of this Consent Decree.

64. "State" means the State of Wisconsin.

65. "Super-Compliant Allowance" means a NO_x Allowance or SO_2 Allowance attributable to reductions beyond the requirements of this Consent Decree, as described in Paragraphs 98 and 113.

66. "Surrender" or "Surrender of Allowances" means, for purposes of SO_2 or NO_x Allowances, permanently surrendering allowances from the accounts administered by EPA and the State of Wisconsin, if applicable, so that such allowances can never be used thereafter to meet any compliance requirements under the CAA, a state implementation plan, or this Consent Decree.

67. "System" means collectively, and solely for purposes of this Consent Decree, the Columbia Generating Station (consisting of Units 1 & 2), the Edgewater Generating Station (consisting of Units 3, 4 & 5), and the Nelson Dewey Generating Station (consisting of Units 1 & 2).

68. "Title V Permit" means the permit required of major sources pursuant to Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

69. "Unit" means collectively, the coal pulverizer, stationary equipment that feeds coal to the boiler, the boiler that produces steam for the steam turbine, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine, and boiler, and all ancillary equipment, including pollution control equipment and systems necessary for production of electricity. An electric steam generating station may be comprised of one or more Units.

70. "Unit Operating Day" means any Day on which a Unit fires Fossil Fuel.

71. "Unit Operating Hour" means each clock hour during which any fuel is combusted at any time in the Unit.

72. "Unit Operator" means the operator (as that term is used and interpreted under the Act) of a Unit. For purposes of this Consent Decree, "Unit Operator" means WPL.

73. "Unit Owner" or "Unit Owners" means, with respect to any Unit addressed in this Consent Decree, in singular form, WPL, MGE, or WPSC, each of which has ownership interests, in whole or in part, in the following Units addressed in this Consent Decree: Nelson Dewey Units 1 & 2 - WPL; Columbia Units 1 & 2 - WPL, MGE, and WPSC; Edgewater Unit 3 - WPL; Edgewater Unit 4 - WPL and WPSC; and Edgewater Unit 5 – WPL, and in plural form, means all Unit Owners that have an Ownership Interest in the particular Unit or Units addressed.

74. "Unit-Specific Annual Tonnage Cap" for a Unit means the sum of the tons of the pollutant in question emitted from the Unit including, without limitations, all tons of that pollutant emitted during periods of operation, startup, shutdown, and Malfunction, in the designated calendar year.

75. "We Energies" means Defendant, Wisconsin Electric Power Company, a former co-owner of Edgewater Unit 5.

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

77. "Working Day" means a day other than a Saturday, Sunday, or Federal Holiday. 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 Working Day.

78. "WPL" means Defendant, Wisconsin Power and Light Company, the operator and the owner or co-owner of the Columbia Station, the Edgewater Station, and the Nelson Dewey Station.

79. "WPSC" means Defendant, Wisconsin Public Service Corporation, a co-owner of the Columbia Station and Edgewater Unit 4.

IV. REQUIREMENT TO RETIRE, REFUEL, OR REPOWER UNITS

80. By no later than December 31, 2015, WPL shall Retire, Refuel, or Repower Nelson Dewey Units 1 and 2.

81. By no later than December 31, 2015, WPL shall Retire, Refuel, or Repower Edgewater Unit 3.

82. By no later than December 31, 2018, WPL and WPSC shall ensure that Edgewater Unit 4 is Retired, Refueled, or Repowered.

V. NO_x EMISSION REDUCTIONS AND CONTROLS

A. Installation, Operation, and Performance NO_x Requirements at Columbia Station

83. Commencing no later than 90 Days after the Date of Entry of this Consent Decree, and continuing thereafter, WPL, MGE, and WPSC shall ensure the Continuous Operation of the Low NO_x Combustion System at Columbia Units 1 and 2 so that Units 1 and 2 each achieves and maintains a 12-Month Rolling Average Emission Rate for NO_x of no greater than 0.150 lb/mmBTU.

84. WPL, MGE, and WPSC shall install an SCR at Columbia Unit 2 on or before December 31, 2018. Commencing on January 1, 2019, and continuing thereafter, WPL, MGE, and WPSC shall ensure Continuous Operation of the SCR. Commencing no later than 30

Operating Days after January 1, 2019, WPL, MGE, and WPSC shall ensure Continuous Operation of the SCR so that Unit 2 achieves and maintains a 30-Day Rolling Average Emission Rate for NO_x of no greater than 0.080 lb/mmBTU and a 12-Month Rolling Average Emission Rate for NO_x of no greater than 0.070 lb/mmBTU.

B. Installation, Operation, and Performance NOx Requirements at Edgewater Unit 5

85. WPL shall install an SCR at Edgewater Unit 5 on or before May 1, 2013. Commencing on May 1, 2013, and continuing thereafter, WPL shall Continuously Operate the SCR. Commencing no later than 30 Operating Days after May 1, 2013, WPL shall Continuously Operate the SCR so that Unit 5 achieves and maintains a 30-Day Rolling Average Emission Rate for NO_x of no greater than 0.080 lb/mmBTU and a 12-Month Rolling Average Emission Rate for NO_x of no greater than 0.070 lb/mmBTU.

C. Operation and Performance Requirements for Existing Selective Non-Catalytic Reduction, Overfire Air, and Rich Reagent Injection at Edgewater Unit 4

86. Commencing immediately upon the Date of Entry of this Consent Decree, and continuing until January 1, 2014, WPL and WPSC shall ensure that the existing Selective Non-Catalytic Reduction System and Low NO_x Combustion System at Edgewater Unit 4 is Continuously Operated. Commencing no later than 30 Operating Days after the Date of Entry of this Consent Decree, WPL and WPSC shall ensure Continuous Operation of the existing Selective Non-Catalytic Reduction System and Low NO_x Combustion System so that Unit 4 achieves and maintains a 30-Day Rolling Average Emission Rate for NO_x of no greater than 0.170 lb/mmBTU.

87. Commencing on January 1, 2014, and continuing thereafter, WPL and WPSC shall ensure that the existing Selective Non-Catalytic Reduction System and Low NO_x

Combustion System at Edgewater Unit 4 is Continuously Operated so that Unit 4 achieves and maintains a 12-Month Rolling Average Emission Rate for NO_x of no greater than 0.150 lb/mmBTU.

D. Unit-Specific Annual Tonnage Cap for NO_x for Edgewater Unit 3

88. Commencing with calendar year 2013, and continuing each calendar year thereafter until the Edgewater Unit 3 is Retired, Refueled, or Repowered as required by Paragraph 81, WPL shall not exceed a Unit-Specific Annual Tonnage Cap of 250 tons of NO_x emissions each year at Edgewater Unit 3.

E. Requirement to Cease Burning Petcoke and Commence Burning 100% PRB Coal or Equivalent at Nelson Dewey Units 1 and 2

89. Commencing immediately upon the Date of Entry of this Consent Decree, and continuing thereafter, WPL shall cease burning Petcoke in the boilers of Nelson Dewey Units 1 and 2 and shall commence burning 100% Powder River Basin ("PRB") or equivalent fuel containing ≤ (less than or equal to) 1.00 lb/mmBTU of SO_2.

90. Commencing on the first Day of the month following the Date of Entry of this Consent Decree, and continuing thereafter, WPL shall achieve and maintain a combined 12-Month Rolling Average Emission Rate for NO_x at Nelson Dewey Units 1 and 2 of no greater than 0.300 lb/mmBTU.

F. Plant-Wide Annual Tonnage Limitations for NO_x

91. For each calendar year as specified below, the Unit Owners of each Plant shall, with respect to the Plant(s) in which they have an Ownership Interest, ensure that the following Plant-Wide Annual Tonnage Limitations for NO_x are not exceeded for such Plants:

Plant (Unit Owners)	For the Calendar Year Specified Below	Plant-Wide NO_x Cap (TPY)
Nelson Dewey Units 1 & 2 (WPL)	Each calendar year from 2013 through 2015	2,500
	2016 and continuing each calendar year thereafter	0
Columbia Units 1& 2 (WPL, MGE, and WPSC)	Each calendar year from 2013 through 2018	5,550
	2019 and continuing each calendar year thereafter	4,300
Edgewater Units 3, 4 & 5 (WPL for Units 3 & 5) WPL and WPSC for Unit 4 only)	Calendar year 2013	3,600
	Each calendar year from 2014 through 2018	2,500
	2019 and continuing each calendar year thereafter	1,100[1]

G. Monitoring of NO_x Emissions

92. In determining a 30-Day Rolling Average Emission Rate for NO_x or a 12-Month Rolling Average Emission Rate for NO_x, Unit Owners shall use NO_x emission data obtained from a CEMS in accordance with the procedures of 40 C.F.R. Part 75, except that NO_x emissions data need not be bias adjusted and the missing data substitution procedures of 40 C.F.R. Part 75 shall not apply to such determinations. Diluent capping (*i.e.*, 5% CO_2) will be applied to the NO_x emission rate for any hours where the measured CO_2 concentration is less than 5% following the procedures in 40 C.F.R. Part 75, Appendix F, Section 3.3.4.1.

93. For purposes of determining compliance with any Plant-Wide Annual Tonnage Limitation and Unit-Specific Annual Tonnage Cap for NO_x, Unit Owners shall, with respect to

[1] If Edgewater Unit 4 is Refueled or Repowered to Natural Gas, the Plant-Wide NO_x cap shall be 1,600 TPY. In this event, Unit 4 shall be operated so that the combined emission rate of Units 4 and 5 achieve and maintain a 12-Month Rolling Average Emission Rate for NO_x of no greater than 0.100 lb/mmBTU, commencing on January 1, 2019, and continuing each calendar year thereafter.

the Units in which they have an Ownership Interest, ensure that NO_x emission data are obtained from a CEMS in accordance with the procedures specified in 40 C.F.R. Part 75.

H. Use and Surrender of NO_x Allowances

94. Except as may be necessary to comply with Section XIV (Stipulated Penalties), no Unit Owner shall use NO_x Allowances to comply with any requirement of this Consent Decree at plants in which it has an Ownership Interest, including by claiming compliance with any emission limitation required by this Consent Decree by using, tendering, or otherwise applying NO_x Allowances to offset any excess emissions.

95. Except as provided in this Consent Decree, and specifically in paragraphs 96 and 97, beginning in calendar year 2013 and continuing each calendar year thereafter, no Unit Owner shall sell, bank, trade, or transfer its interest in any NO_x Allowances allocated to Units in the System.

96. Beginning in calendar year 2013, and continuing each calendar year thereafter, the Unit Owners shall ensure the Surrender of all NO_x Allowances allocated to the Units in the System in which they have an Ownership Interest for that calendar year that are not needed to meet federal and/or state CAA regulatory requirements for (a) the System Units, or (b) any electricity generating unit in the State of Wisconsin in which any Unit Owner has an Operational Interest or Ownership Interest, that is subject to a federal consent decree addressing PSD and/or Nonattainment NSR violations to which the United States is a party.

97. Nothing in this Consent Decree shall prevent any Unit Owner from purchasing or otherwise obtaining NOx Allowances from another source or from another Unit Owner for purposes of complying with federal and/or state CAA regulatory requirements to the extent

otherwise allowed by law. The requirements of this Consent Decree pertaining to Unit Owners' use and Surrender of NOx Allowances are permanent and are not subject to any termination provision of this Consent Decree.

I. Super-Compliant NO_x Allowances

98. Notwithstanding Paragraphs 95 and 96, in each calendar year beginning in 2013, and continuing thereafter, each Unit Owner may sell, bank, use, trade, or transfer NO_x Allowances allocated to the Units in the System for which the Unit Owner has an Ownership Interest that are made available in that calendar year solely as a result of:

a. the installation and operation of any NO_x air pollution control equipment that is not otherwise required under this Consent Decree, and is not otherwise required by law;

b. the use of an SCR prior to the date established by this Consent Decree; or

c. achievement and maintenance of an Emission Rate below an applicable 30-Day Rolling Average Emission Rate and 12-Month Rolling Average Emission Rate for NO_x;

provided that such Unit Owner is also in compliance for that calendar year with all emission limitations for NO_x set forth in this Consent Decree. Each Unit Owner shall ensure the reporting of the generation of such Super-Compliant Allowances in accordance with Section XII (Periodic Reporting) of this Consent Decree.

J. Method for Surrender of NO_x Allowances

99. Each Unit Owner shall Surrender, or transfer to a non-profit third-party selected by that Unit Owner for Surrender, all NO_x Allowances required to be Surrendered pursuant to

Paragraph 96 by June 30 of the immediately following calendar year. If any NO_x Allowances required to be Surrendered under this Consent Decree are transferred directly to a non-profit third-party, the Unit Owner shall include a description of such transfer in the next report submitted to EPA pursuant to Section XII (Periodic Reporting) of this Consent Decree. Such report shall: (a) identify the non-profit third-party recipient(s) of the NO_x Allowances and list the serial numbers of the transferred NO_x Allowances; and (b) include a certification by the third-party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the NO_x Allowances and will not use any of the NO_x Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any NO_x Allowances, the Unit Owner shall include a statement that the third-party recipient(s) Surrendered the NO_x Allowances for permanent Surrender to EPA in accordance with the provisions of Paragraph 100 within one year after the Unit Owner transferred the NO_x Allowances to them. The Unit Owner shall not have complied with the NO_x Allowance Surrender requirements of this Paragraph until all third-party recipient(s) have actually Surrendered the transferred NO_x Allowances to EPA.

100. For all NO_x Allowances required to be Surrendered, each Unit Owner shall, with respect to the NO_x Allowances that the Unit Owner is to Surrender, ensure that a NO_x Allowance transfer request form is first submitted to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such NO_x Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. Such NO_x Allowance transfer requests may be made in an electronic manner using the EPA's Clean Air Markets Division Business System, or similar system provided by EPA. As part of submitting these

transfer requests, each Unit Owner shall ensure that the transfer of its NO_x Allowances are irrevocably authorized and that the source and location of the NOx Allowances being Surrendered are identified by name of account and any applicable serial or other identification numbers or station names.

VI. SO_2 EMISSION REDUCTIONS AND CONTROLS

A. SO_2 Emission Limitations and Control Performance Requirements at Columbia Station

101. WPL, MGE, and WPSC shall install DFGDs at Columbia Unit 1 and Columbia Unit 2 on or before December 31, 2014. Commencing on January 1, 2015, and continuing thereafter, WPL, MGE, and WPSC shall ensure the Continuous Operation of the DFGDs. Commencing no later than 30 Operating Days after January 1, 2015, WPL, MGE, and WPSC shall ensure Continuous Operation of the DFGDs so that Units 1 and 2 achieve and maintain a 30-Day Rolling Average Emission Rate for SO_2 of no greater than 0.075 lb/mmBTU at each Unit.

B. SO_2 Emission Limitations and Control Performance Requirements at Edgewater Station

102. WPL shall install a DFGD at Edgewater Unit 5 on or before December 31, 2016. Commencing on January 1, 2017, and continuing thereafter, WPL shall Continuously Operate the DFGD. Commencing no later than 30 Operating Days after January 1, 2017, WPL shall Continuously Operate the DFGD so that Unit 5 achieves and maintains a 30-Day Rolling Average Emission Rate for SO_2 of no greater than 0.075 lb/mmBTU.

103. Commencing no later than 30 Operating Days after the Date of Entry of this Consent Decree, and continuing thereafter, WPL and WPSC shall achieve and maintain a 12-

Month Rolling Average Emission Rate for SO_2 of no greater than 0.700 lb/mmBTU for Edgewater Unit 4.

C. Unit-Specific Annual Tonnage Cap for SO_2 for Edgewater Unit 3

104. Commencing with calendar year 2013, and continuing each calendar year thereafter until the date the Unit is Retired, Refueled, or Repowered as required by Paragraph 81, WPL shall not exceed a Unit-Specific Annual Tonnage Cap of 700 Tons of SO_2 per year at Edgewater Unit 3.

D. SO_2 Emission Limitations and Control Requirements at Nelson Dewey Units 1 and 2

105. Commencing on the first Day of the month following the Date of Entry of this Consent Decree, and continuing thereafter, WPL shall achieve and maintain a combined 12-Month Rolling Average Emission Rate for SO_2 at Nelson Dewey Units 1 and 2 of no greater than 0.800 lb/mmBTU.

E. Plant-Wide Annual SO_2 Tonnage Limitation.

106. For each calendar year as specified below, the Unit Owners of each Plant shall, with respect to the Plant(s) in which they have an Ownership Interest, ensure that the following Plant-Wide Annual Tonnage Limitations for SO_2 are not exceeded for the Plants in which they have an Ownership Interest:

Plant (Unit Owner(s))	For the Calendar Year Specified Below	Plant-Wide Cap (TPY)
Nelson Dewey Units 1 & 2 (WPL)	Each calendar year from 2013 through 2015	6,300
	2016 and continuing each calendar year thereafter	0
	Each calendar year from 2013	28,537

Columbia Units 1 & 2 (WPL, MGE, andWPSC)	through 2014	
	2015 and continuing each calendar year thereafter	3,286
Edgewater Units 3, 4 & 5 (WPL for Units 3 & 5; WPL and WPSC for Unit 4 only)	Each calendar year from 2013 through 2015	14,500
	2016	12,500
	Each calendar year from 2017 through 2018	6,000
	2019 and continuing each calendar year thereafter	1,100

F. Monitoring of SO_2 Emissions

107. In determining a 30-Day Rolling Average Emission Rate for SO_2 or a 12-Month Rolling Average Emission Rate for SO_2, Unit Owners shall, with respect to Units in which they have an Ownership Interest, ensure the use of SO_2 emission data obtained from a CEMS in accordance with the procedures of 40 C.F.R. Part 75, except that SO_2 emissions data need not be bias adjusted and the missing data substitution procedures of 40 C.F.R. Part 75 shall not apply to such determinations. Diluent capping (i.e., 5% CO_2) will be applied to the SO_2 Emission Rate for any hours where the measured CO_2 concentration is less than 5% following the procedures in 40 C.F.R. Part 75, Appendix F, Section 3.3.4.1.

108. For purposes of determining compliance with any Plant-Wide Annual Tonnage Limitation and Unit-Specific Annual Tonnage Cap for SO_2, Unit Owners shall, with respect to Units in which they have an Ownership Interest, ensure the use of SO_2 emission data obtained from a CEMS in accordance with the procedures specified in 40 C.F.R. Part 75.

G. Use and Surrender of SO_2 Allowances

109. Except as may be necessary to comply with Section XIV (Stipulated Penalties), no Unit Owner shall use SO_2 Allowances to comply with any requirement of this Consent

Decree at Plants in which they have an Ownership Interest, including by claiming compliance with any emission limitation required by this Consent Decree by using, tendering, or otherwise applying SO_2 Allowances to offset any excess emissions.

110. Except as provided in this Consent Decree, and specifically in Paragraphs 111 and 112, beginning in calendar year 2013 and continuing each calendar year thereafter, no Unit Owner shall sell, bank, trade, or transfer any SO_2 Allowances allocated to Units in the System.

111. Beginning in calendar year 2013, and continuing each calendar year thereafter, the Unit Owners shall ensure the Surrender of all SO_2 Allowances allocated to the Units in the System in which they have an Ownership Interest for that calendar year that are not needed to meet federal and/or state CAA regulatory requirements for (a) the System Units, or (b) any electricity generating unit in the State of Wisconsin in which any Unit Owner has an Operational Interest or Ownership Interest, that is subject to a federal consent decree addressing PSD and/or Nonattainment NSR violations to which the United States is a party.

112. Nothing in this Consent Decree shall prevent any Unit Owners from purchasing or otherwise obtaining SO_2 Allowances from another source or from another Unit Owner for purposes of complying with federal and/or state CAA regulatory requirements to the extent otherwise allowed by law. The requirements of this Consent Decree pertaining to Unit Owners' use and Surrender of SO_2 Allowances are permanent and are not subject to any termination provision of this Consent Decree.

H. Super-Compliant SO_2 Allowances

113. Notwithstanding Paragraphs 110 and 111, in each calendar year beginning in 2013, and continuing thereafter, each Unit Owner may sell, bank, use, trade, or transfer SO_2

Allowances allocated to the Units in the System for which they have an Ownership Interest that are made available in that calendar year solely as a result of:

a. the installation and operation of any SO_2 air pollution control equipment that is not otherwise required under this Consent Decree, and is not otherwise required by law;

b. the use of DFGD prior to the date established by this Consent Decree; or

c. achievement and maintenance of an Emission Rate below an applicable 30-Day Rolling Average Emission Rate and 12-Month Rolling Average Emission Rate for SO_2;

provided that such Unit Owners are also in compliance for that calendar year with all emission limitations for SO_2 set forth in this Consent Decree. Each Unit Owner shall ensure the reporting of the generation of such Super-Compliant Allowances in accordance with Section XII (Periodic Reporting) of this Consent Decree.

I. Method for Surrender of SO_2 Allowances.

114. Each Unit Owner shall Surrender, or transfer to a non-profit third-party selected by that Unit Owner for Surrender, all SO_2 Allowances required to be Surrendered pursuant to Paragraph 111 by June 30 of the immediately following calendar year. If any SO_2 Allowances required to be Surrendered under this Consent Decree are transferred directly to a non-profit third-party, the Unit Owner shall include a description of such transfer in the next report submitted to EPA pursuant to Section XII (Periodic Reporting) of this Consent Decree. Such report shall: (a) identify the non-profit third-party recipient(s) of the SO_2 Allowances and list the serial numbers of the transferred SO_2 Allowances; and (b) include a certification by the third-

party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the SO_2 Allowances and will not use any of the SO_2 Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any SO_2 Allowances, the Unit Owner shall include a statement that the third-party recipient(s) Surrendered the SO_2 Allowances for permanent Surrender to EPA in accordance with the provisions of Paragraph 115 within one year after the Unit Owner transferred the SO_2 Allowances to them. The Unit Owner shall not have complied with the SO_2 Allowance Surrender requirements of this Paragraph until all third-party recipient(s) have actually Surrendered the transferred SO_2 Allowances to EPA.

115. For all SO_2 Allowances required to be Surrendered, each Unit Owner shall, with respect to its SO_2 Allowances that the Unit Owner is to Surrender, ensure that an SO_2 Allowance transfer request form is first submitted to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such SO_2 Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. Such SO_2 Allowance transfer requests may be made in an electronic manner, using the EPA's Clean Air Act Markets Division Business System, or similar system provided by EPA. As part of submitting these transfer requests, each Unit Owner shall ensure that the transfer of its SO_2 Allowances are irrevocably authorized and that the source and location of the SO_2 Allowances being Surrendered are identified – by name of account and any applicable serial or other identification numbers and station names.

VII. PM EMISSION REDUCTIONS AND CONTROLS

A. Optimization of ESPs and Baghouses

116. By no later than 90 Days from the Date of Entry of this Consent Decree, and continuing thereafter, with respect to each Unit in which they have an Ownership Interest, the Unit Owners shall ensure the Continuous Operation of each PM Control Device on such Unit to maximize PM emission reductions at all times when the Unit is in operation. Notwithstanding the foregoing sentence in this Paragraph, the Unit Owners shall not be required to Continuously Operate an ESP on any Unit if a Baghouse is installed and operating to replace the PM Control Device function of the ESP at that Unit. 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, with respect to each Unit in which they have an Ownership Interest, the Unit Owners shall, at a minimum, ensure that to the extent practicable: (a) where the PM Control Device is an ESP, each section of each ESP at such Unit is fully energized, and where the PM Control Device is a Baghouse, each compartment, except for any compartment specifically designated and designed as a spare compartment, of each Baghouse at such Unit remains operational; (b) repair any failed ESP section or Baghouse compartment at the next planned outage (or unplanned outage of sufficient length); (c) the automatic control systems on each ESP at such Unit are operated to maximize PM collection efficiency, where applicable; (d) each opening in the casings, ductwork, and expansion joints for each ESP and each Baghouse at such Unit is inspected and repaired during the next planned Unit outage (or unplanned outage of sufficient length) to minimize air leakage; (e) the power levels delivered to each ESP at such Unit are maintained, where applicable, consistent with

manufacturers' specifications, the operational design of the Unit, and good engineering practices; (f) the plate-cleaning and discharge-electrode-cleaning systems for each ESP at such Unit are optimized, where applicable, by varying the cycle time, cycle frequency, rapper-vibrator intensity, and number of strikes per cleaning event; and (g) for each such Unit with one or more Baghouses, a bag leak detection program is developed and implemented to ensure that leaking bags are promptly replaced.

B. Operation and Performance Requirements for PM Controls at Columbia Station

117. WPL, MGE, and WPSC shall ensure a Baghouse is installed on each of Columbia Units 1 and 2. Commencing not later than December 31, 2014, and continuing thereafter, WPL, MGE, and WPSC shall ensure each such Baghouse is Continuously Operated so that it achieves and maintains a filterable PM Emission Rate of no greater than 0.015 lb/mmBTU for each Unit based on a 24-Hour Rolling Average Emission Rate determined by PM CEMS. Notwithstanding this PM Emission Rate requirement, WPL, MGE, and WPSC may ensure that each of Columbia Units 1 and 2 achieves a filterable PM Emission Rate of no greater than 0.030 lb/mmBTU during periods of level 3 (high range) correlation testing under PS-11, Section 8.6(4), provided that such correlation testing is conducted in accordance with the procedures approved by EPA as part of the correlation plan required by Paragraph 126. Once a Baghouse is in Continuous Operation at a Unit, the PM optimization requirements of Paragraph 116 related to an ESP at that Unit are no longer applicable.

C. Operation and Performance Requirements for PM Controls at Edgewater Station

118. WPL shall install a Baghouse on Edgewater Unit 5, and commencing on or before December 31, 2016, and continuing thereafter, shall Continuously Operate such Baghouse so

that it achieves and maintains a filterable PM Emission Rate of no greater than 0.015 lb/mmBTU based on a 24-Hour Rolling Average Emission Rate determined by PM CEMS. Notwithstanding this PM Emission Rate requirement, WPL may ensure that Edgewater Unit 5 achieves a filterable PM Emission Rate of no greater than 0.030 lb/mmBTU during periods of level 3 (high range) correlation testing under PS-11, Section 8.6(4), provided that such correlation testing is conducted in accordance with the procedures approved by EPA as part of the correlation plan required by Paragraph 126. Once a Baghouse is in Continuous Operation at a Unit, the PM optimization requirements of Paragraph 116 related to an ESP at that Unit are no longer applicable.

119. Commencing no later than December 31, 2013, and continuing thereafter, WPL and WPSC shall ensure the Continuous Operation of the existing ESP on Edgewater Unit 4 so that it achieves and maintains a filterable PM Emission Rate of no greater than 0.030 lb/mmBTU based on a 3-hour average.

D. Operation and Performance Requirements for PM Controls at Nelson Dewey Units 1 and 2

120. Commencing immediately upon the Date of Entry of this Consent Decree, and continuing thereafter, WPL shall achieve and maintain at Nelson Dewey Units 1 and 2 a filterable PM Emission Rate of no greater than 0.100 lbs/mmBTU at each Unit based on a 3-hour average, and shall also comply with other applicable emission limitations.

E. Annual PM Stack Tests

121. Commencing in calendar year 2013, and continuing annually thereafter, for each Unit in which they have an Ownership Interest, Unit Owners shall ensure that stack tests are conducted for PM once per calendar year pursuant to Paragraphs 122 and 123, unless the Unit is

Retired, Refueled, or Repowered to Natural Gas by December 31 of the prior calendar year, at which point this requirement shall no longer apply.

122. To determine compliance with the PM Emission Rates established in Paragraphs 119 and 120, the Unit Operator shall ensure that EPA Method 5 (filterable portion only), or any alternate method approved by EPA under the terms of this Consent Decree, is employed during stack testing required by Paragraph 121. Each stack test shall consist of three separate runs performed under representative operating conditions not including periods of startup, shutdown, or Malfunction. The sampling time for each run shall be at least 60 minutes and the volume of each run shall be at least 0.85 dry standard cubic meters (30 dry standard cubic feet). The Unit Operator shall ensure that the PM Emission Rate from the stack test results is calculated in accordance with 40 C.F.R. § 60.8(f). The results of each PM stack test shall be submitted to Plaintiffs by the Unit Operator within 60 Days of completion of each test.

123. Commencing in calendar year 2013, and continuing annually thereafter, for each Unit in which they have an Ownership Interest, Unit Owners shall ensure that a PM stack test is conducted for condensable PM using the reference methods and procedures set forth at 40 C.F.R. Part 51, Appendix M, Method 202, or any alternate method approved by EPA under the terms of this Consent Decree. Each test shall consist of three separate runs performed under representative operating conditions not including periods of startup, shutdown, or Malfunction. The sampling time for each run shall be at least 60 minutes and the volume of each run shall be at least 0.85 dry standard cubic meters (30 dry standard cubic feet). The Unit Operator shall ensure that the number of pounds of condensable PM emitted per million BTU of heat input (lb/mmBTU) from the stack test results are calculated in accordance with 40 C.F.R. § 60.8(f).

The results of the PM stack test conducted pursuant to this Paragraph shall not be used for the purpose of determining compliance with the PM Emission Rates required by this Consent Decree. The results of each PM stack test shall be submitted to Plaintiffs by the Unit Operator within 60 Days of completion of each test.

124. When the Unit Operator submits the applications for amendment to the Title V Permits pursuant to Paragraph 202, those applications shall include a Compliance Assurance Monitoring ("CAM") plan, under 40 C.F.R. Part 64, for the PM Emission Rate in Paragraphs 117, 118, 119, and 120. The PM CEMS required under Paragraph 125 may be used in that CAM plan.

F. PM Continuous Emissions Monitoring Systems ("CEMS")

125. By no later than December 31, 2014, WPL, MGE, and WPSC shall ensure that PM CEMS are installed, correlated, maintained, and operating on Columbia Units 1 and 2. By no later than December 31, 2016, WPL shall install, correlate, maintain, and operate a PM CEMS on Edgewater Unit 5. The PM CEMS shall comprise 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 each Unit must be appropriate for the anticipated stack conditions and capable of measuring filterable PM concentrations on an hourly average basis. For each Unit in the System that is subject to this Paragraph, the Unit Owners with an Ownership Interest in such Unit shall ensure that there will be maintained, in an electronic database that maintains data for at least five years, the hourly average emission values of all PM CEMS at such Unit in lb/mmBTU. Except for periods of monitor Malfunction, maintenance, or repair, for each Unit in

the System that is subject to this Paragraph, the Unit Operator shall Continuously Operate the PM CEMS at all times when the Unit it serves is operating.

126. By no later than December 31, 2013, WPL, MGE, and WPSC shall ensure that a plan for the installation and correlation of the PM CEMS for Columbia Units 1 and 2 is submitted to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree. By no later than December 31, 2015, WPL shall submit to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree a plan for the installation and correlation of the PM CEMS for Edgewater Unit 5.

127. By no later than June 30, 2014, WPL, MGE, and WPSC shall ensure that a proposed Quality Assurance/Quality Control ("QA/QC") protocol for Columbia Units 1 and 2 is submitted to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of the Consent Decree. By no later than June 30, 2016, WPL shall submit to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree a proposed Quality Assurance/Quality Control ("QA/QC") protocol that shall be followed for the PM CEMS at Edgewater Unit 5.

128. In developing both the plan for installation and correlation of the PM CEMS and the QA/QC protocol, Unit Owners shall ensure that the criteria set forth in 40 C.F.R. Part 60, Appendix B, Performance Specification 11, and 40 C.F.R. Part 60, Appendix F, Procedure 2 are used. Following EPA's approval of the plan described in Paragraph 126 and the QA/QC protocol described in Paragraph 127, Unit Owners shall thereafter operate the PM CEMS in accordance with the approved plan and QA/QC protocol.

129. By no later than December 31, 2014, for Columbia Units 1 and 2, and by no later than December 31, 2016, for Edgewater Unit 5, WPL, MGE, and WPSC for Columbia Units 1 and 2 and WPL for Edgewater Unit 5 shall ensure that the PM CEMS at the Columbia and Edgewater Generating Stations are installed, correlated, maintained, and Continuously Operated. WPL, MGE, and WPSC for Columbia Units 1 and 2 and WPL for Edgewater Unit 5 shall ensure that performance specification tests on the PM CEMS are conducted, and shall ensure compliance with the PM CEMS installation and correlation plans submitted to and approved by EPA in accordance with Paragraphs 126 and 127 is demonstrated. The PM CEMS shall be operated in accordance with the approved plan and QA/QC protocol. Pursuant to Section XII (Periodic Reporting), the data recorded by the PM CEMS during Unit operation, expressed in lb/mmBTU on a 24-Hour Rolling Average, shall be reported in electronic format to EPA, identifying 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.

130. For purposes of determining compliance with Paragraphs 119 and 120 of this Consent Decree, stack testing using EPA Method 5 (filterable only) or any alternate method approved by EPA under the terms of this Consent Decree shall be the compliance method for the PM Emission Rates established by this Consent Decree.

131. 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. 8,314 (Feb. 24, 1997)), or

monitoring requirements of 40 C.F.R. Part 70, concerning the use of data for any purpose under the Act.

VIII. PROHIBITION ON NETTING CREDITS OR OFFSETS

132. Except as provided in Paragraph 133, emission reductions that result from actions to be taken by Unit Owners 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 CAA's Nonattainment NSR and PSD programs.

133. 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 a particular System Unit that are greater than those required under this Consent Decree for that particular System Unit. For purposes of this Paragraph, emission reductions from a System Unit 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 CAA or the Wisconsin SIP.

134. Nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by the applicable state regulatory agency or EPA for the purpose of attainment demonstrations submitted pursuant to § 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on National Ambient Air Quality Standards, PSD increment, or air quality related values, including visibility, in a Class I area.

IX. ENVIRONMENTAL MITIGATION PROJECTS

135. Each Defendant shall implement one or more of the Environmental Mitigation Projects ("Projects") described in Appendix A to this Consent Decree, or any other Environmental Mitigation Project approved by the EPA pursuant to Section XIII (Review and Approval of Submittals), in compliance with the approved plans and schedules for such Projects and other terms of this Consent Decree. In implementing the Projects, each Defendant shall spend no less than the amount described in Appendix A. The obligation of each Defendant to implement and finance the Projects shall be limited to each individual Defendant's obligation as set forth in Appendix A. Defendants shall not include their own personnel costs in overseeing the implementation of the Projects as Project Dollars.

136. The Projects described in Appendix A to be performed by each Defendant shall be for the purpose of beneficially restoring and/or mitigating the environments that EPA and/or the Sierra Club allege were damaged by the operation of the Defendants' Units, including environments allegedly damaged within the Defendants' service territories.

137. Each Defendant shall maintain, and present to EPA and/or Sierra Club upon request, documents to substantiate the Project Dollars expended to implement the Defendant's Projects described in Appendix A, and shall provide these documents to EPA and/or Sierra Club within 60 Days of a request for the documents.

138. All plans and reports prepared by Defendants for their respective Projects pursuant to the requirements of this Section IX of the Consent Decree and required to be submitted to EPA shall be publicly available from Defendants without charge in paper or electronic format.

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

140. Each Defendant shall use good faith efforts to secure as much environmental benefit as possible for the Project Dollars it expends, consistent with the applicable requirements and limits of this Consent Decree.

141. If a Defendant elects (where such an election is allowed) to undertake a Project by contributing funds to another person or entity that will carry out the Project in lieu of one or more Defendant(s), but not including a Defendant's agents or contractors, that person or instrumentality must, in writing: (a) identify its legal authority for accepting such funding; and (b) identify its legal authority to conduct the Project for which one or more Defendant contributes the funds. Regardless of whether one or more Defendant(s) elects (where such election is allowed) to undertake a Project by itself or to do so by contributing funds to another person or instrumentality that will carry out the Project, Defendant(s) acknowledge that a Defendant will receive credit for the expenditure of such funds as Project Dollars only if the Defendant(s) demonstrates that the funds have been actually spent by either one or more of the Defendants or by the person or instrumentality receiving them, and that such expenditures met all requirements of this Consent Decree.

142. Each Defendant shall comply with the reporting requirements described in Appendix A.

143. Within 90 Days following the completion of each Project required under this Consent Decree (including any applicable periods of demonstration or testing), the Defendant performing the Project shall submit to the United States and Sierra Club a report that documents the date that the Project was completed, Defendant's results of implementing the Project, including the emission reductions or other environmental benefits achieved, and the Project Dollars expended by the Defendant in implementing the Project.

X. CIVIL PENALTY

144. Within 30 Days after the Date of Entry of this Consent Decree, Defendants shall pay to the United States a civil penalty in the amount of $2,450,000. The civil penalty shall be paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing USAO File Number 2010-CV-00328 and DOJ Case Number 90-5-2-1-09878 and the civil action case name and case number assigned to the United States' enforcement action in this case. The costs of such EFT shall be Defendants' responsibility. Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Wisconsin. Any funds received after 2:00 p.m. EDT shall be credited on the next Working Day. At the time of payment, Defendants shall provide notice of payment, referencing the USAO File Number, the DOJ Case Number, and the civil action case name and case number, to the Department of Justice and to EPA in accordance with Section XIX (Notices) of this Consent Decree.

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

146. 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.

147. The obligations of Defendants to pay the civil penalty amount owed the United States under this Consent Decree are joint and several. In the event of the failure of Defendants to make the civil penalty payment amount required under this Consent Decree, the remaining Defendants shall be responsible for such payment.

XI. RESOLUTION OF CLAIMS

A. Resolution of Civil Claims

148. Claims of the United States Based on Modifications Occurring Before the Date of Lodging of this Consent Decree. Entry of this Consent Decree shall resolve all civil claims of the United States against the Defendants that arose from any modifications commenced at any System Unit prior to the Date of Lodging of this Consent Decree, including but not limited to those modifications alleged in the NOV/FOV issued by EPA to Defendants on December 14, 2009, and the Complaint filed in this civil action, under any or all of: (a) Part C or D of Subchapter I of the CAA, 42 U.S.C. §§ 7470-7492, 7501-7515, and the implementing PSD and Nonattainment NSR provisions of the Wisconsin SIP; (b) Section 111 of the CAA, 42 U.S.C. § 7411, and 40 C.F.R. § 60.14; and (c) Title V of the CAA, 42 U.S.C. §§ 7661-7661f, but only to

the extent that such Title V claims are based on Defendants' failure to obtain an operating permit that reflects applicable requirements imposed under Part C or D of Subchapter I of the CAA.

149. Claims of the United States Based on Modifications after the Date of Lodging of this Consent Decree. Entry of this Consent Decree also shall resolve all civil claims of the United States that arise from a modification commenced before December 31, 2018, for pollutants regulated under Part C or D of Subchapter I of the CAA and under regulations, which are promulgated thereunder as of the Date of Lodging, where:

a. such modification is commenced at any System Unit after the Date of Lodging of this Consent Decree, or

b. such modification is one this Consent Decree expressly directs Defendants to undertake.

The term "modification" as used in this Paragraph shall have the meaning that term is given under the CAA, the Wisconsin SIP, and under the regulations in effect as of the Date of Lodging of this Consent Decree. The claims resolved by this Paragraph shall not include claims based on modifications for Greenhouse Gases and sulfuric acid mist.

150. Reopener. The resolution of the United States' civil claims against the Unit Owners, as provided by this Subsection A, is subject to the provisions of Subsection B of this Section. The resolution of claims against We Energies for claims based on modifications prior to the lodging of the Consent Decree is not subject to Subsection B of this Section.

151. Claims of the Sierra Club.

a. Entry of this Consent Decree shall resolve all civil claims of the Sierra Club, and the Sierra Club hereby releases all claims it made or could have made against the

Defendants that arose, directly or indirectly, from any modifications commenced at any System Unit prior to the Date of Lodging of this Consent Decree, including but not limited to those set forth in the NOV/FOV issued by EPA to Defendants on December 14, 2009; the Complaint filed in this civil action, in *Sierra Club v. Wisconsin Power and Light Company*, United States District Court, Western District of Wisconsin, Case No. 3:10-cv-511-wmc; *Sierra Club v. Wisconsin Power and Light Company*, United States District Court, Eastern District of Wisconsin, Case No. 2:10-cv-00835-aeg; and the Notice of Intent to Sue Letters issued by Sierra Club to Defendants on October 10, 2009, December 14, 2009, and December 21, 2009, and related to the System Units, under any or all of: (a) Part C or D of Subchapter I of the CAA, 42 U.S.C. §§ 7470-7492, 7501-7515, and the implementing PSD and Nonattainment NSR provisions of the Wisconsin SIP; (b) Section 111 of the CAA, 42 U.S.C. § 7411, and 40 C.F.R. Section 60.14; (c) Title V of the CAA, 42 U.S.C. §§ 7661-7661f, arising prior to the Date of Lodging of the Consent Decree at any of the System Units.

b. Entry of this Consent Decree shall also resolve all civil claims of the Sierra Club against the Defendants, known or unknown, as to the System Units that arose, directly or indirectly, from violations of opacity standards, carbon monoxide, under 42 U.S.C. § 7412, under the Wisconsin SIP, or any federally-enforceable air pollution control permit through the Date of Lodging of this Consent Decree.

c. Sierra Club further agrees that it will not pursue Best Available Control Technology or Lowest Achievable Emission Rate limits or New Source Review

applicability determinations related to the System Units in any administrative action now pending or contemplated (including in response to EPA Clean Air Act Title V orders related to Columbia and Edgewater) for modifications made prior to the Date of Lodging of this Consent Decree through any filing with a court, any administrative adjudication, or any formal comments submitted to any governmental entity.

d. Sierra Club agrees not to file a legal challenge, including any lawsuit or any petition for a contested case hearing, or take a litigation position or submit comments to any governmental agency in any public forum challenging or criticizing a Unit Owner's or, if applicable, We Energies' request(s) for rate recovery for the costs incurred in achieving compliance with the Consent Decree and/or the issuance of any permits or other regulatory approvals necessary for the construction of any environmental control equipment or Environmental Mitigation Project(s) required by the Consent Decree, except as provided in the section of the Consent Decree concerning dispute resolution. Sierra Club further agrees not to provide legal assistance by any Sierra Club staff, contract with any outside counsel to provide legal assistance, or fund any third parties in any legal challenge, including any lawsuit or any petition for a contested case hearing, or in any public or private initiative challenging or criticizing the Unit Owners' request(s) for rate recovery for the costs incurred in achieving compliance with the Consent Decree and/or the issuance of any permits or other regulatory approvals necessary for the construction of any environmental control equipment

or Environmental Mitigation Project(s) required by the Consent Decree.

e. Sierra Club further releases all claims it made or could have made and will withdraw and cause to be dismissed with prejudice, where appropriate, its petition and related administrative and federal court litigation arising from *In the Matter of Wisconsin Power and Light Columbia Generating Station*, U.S. EPA, Petition No. V-2008-1 (October 8, 2009); *In the Matter of Alliant Energy – WPL Edgewater Generating Station* (August 17, 2010) Petition No. V-2009-2; Petition to Reopen and Correct the Title V Operating Permits Issued By the Wisconsin Department of Natural Resources to the Nelson Dewey Generating Station in Cassville, Grant County, Wisconsin, Permit No. 12201450-P11; and *Sierra Club v. Lisa Jackson*, United States Court, Western District of Wisconsin, Case No. 3:11-cv-00116.

f. Entry of this Consent Decree also shall resolve all civil claims of the Sierra Club related to the System Units that arise from a modification commenced before December 31, 2018, pursuant to Part C or D of the Act or 42 U.S.C. § 7411, that arise prior to December 31, 2018, from the Title V program, 42 U.S.C. §§ 7661-7661d, that arise prior to December 31, 2018, from emissions standards or limitations in the existing Wisconsin SIP, or that arise prior to December 31, 2018, from a hazardous air pollutant standard in effect or proposed as of the date of the entry of this Consent Decree and that is promulgated pursuant to 42 U.S.C. § 7412. The future claims resolved by this Paragraph shall not include claims based on modifications that increase Greenhouse Gases or sulfuric acid mist emissions.

g. Any dispute as to Paragraph 151 is subject to the Dispute Resolution provisions of this Consent Decree, including the written notice and right to cure provisions. Any remedy arising from commitments of Sierra Club pursuant to this Consent Decree is limited to equitable relief (*i.e.*, specific performance) and shall not include monetary damages.

B. Pursuit of Civil Claims Otherwise Resolved by Subsection A

152. Bases for Pursuing Resolved Claims for the System. If: i) a Unit Owner or Owners violate a Plant-Wide Annual Tonnage Limitation for SO_2 or NO_x applicable to a Plant in which it or they have an Ownership Interest; or ii) if a Unit Owner or Owners fail by more than 90 Days to Retire, Refuel, or Repower a Unit as required by this Consent Decree; or iii) if a Unit Owner or Owners fail by more than 90 Days to install, upgrade, or commence Continuous Operation of any emission control device required pursuant to this Consent Decree; or iv) if a Unit Owner or Owners fail by more than 90 Days to achieve any Emission Rate or other obligation or limitation required pursuant to this Consent Decree for a Unit or Plant in which it or they have an Ownership Interest; then the United States may pursue any claim against that Unit Owner or Owners with respect to the Unit or Plant at issue that is otherwise resolved under Subsection XI.A. (Resolution of Civil Claims) against the Unit Owner or Owners of that affected Unit or Plant, subject to subparagraphs a. and b. below.

a. For any claims based on modifications undertaken at an Other Unit (*i.e.,* any unit of the System that is not an Improved Unit for the pollutant in question), claims may be pursued only regarding the pollutant that causes the Unit's designation as an Other Unit where the modification(s) on which such claim is based was

commenced within the 5 years preceding the violation or failure specified in this Paragraph.

b. For any claims based on modifications undertaken at an Improved Unit, claims may be pursued only regarding the pollutant that causes the Unit's designation as an Improved Unit where the modification(s) on which such claim is based was commenced: (1) after the Date of Lodging of this Consent Decree, and (2) within the 5 years preceding the violation or failure specified in this Paragraph.

153. Additional Bases for Pursuing Resolved Claims for Modifications at an Improved Unit. Solely with respect to the pollutant that causes the Unit's designation as an Improved Unit, the United States may also pursue claims against a Unit Owner of an Improved Unit arising from the Unit Owner's modification (or collection of modifications) at the Improved Unit that have otherwise been resolved under Subsection XI.A. (Resolution of Civil Claims), if the modification (or collection of modifications) at the Improved Unit on which such claim is based (a) was commenced after the Date of Lodging, and (b) individually (or collectively) increased the maximum hourly Emission Rate of that Unit for the pollutant that caused the Unit's designation as an Improved Unit (as measured by 40 C.F.R. §§ 60.14(b) and (h)) by more than 10%.

154. Additional Bases for Pursuing Resolved Claims for Modification at an Other Unit. Solely with respect to the pollutant that causes the Unit's designation as an Other Unit, the United States may also pursue claims against a Unit Owner of an Other Unit arising from the Unit Owner's modification (or collection of modifications) at the Other Unit that have otherwise been resolved under Subsection XI.A. (Resolution of Civil Claims), if the modification (or

collection of modifications) at the Other Unit which such claims are based was commenced within 5 years preceding any of the following events:

a. A modification (or collection of modifications) at such Other Unit commenced after the Date of Lodging of this Consent Decree that increases the maximum hourly Emission Rate for such pollutant that caused the Unit's designation as an Other Unit (NO_x or SO_2), as measured by 40 C.F.R. §§ 60.14(b) and (h);

b. The aggregate of all Capital Expenditures made at such Other Unit exceeds $150/kW on the Other Unit's Boiler Island (based on the generating capacities identified in this Consent Decree) during the period from the Date of Entry of this Consent Decree through December 31, 2018 (Capital Expenditures shall be measured in calendar year 2012 constant dollars, as adjusted by the McGraw-Hill Engineering News-Record Construction Cost Index); or

c. A modification (or collection of modifications) at such Other Unit commenced after the Date of Lodging of this Consent Decree that results in an emissions increase for such pollutant that caused the Unit's designation as an Other Unit (NO_x and/or SO_2) at such Other Unit, and such increase of such pollutant: (i) presents, by itself, or in combination with other emissions or sources, "an imminent and substantial endangerment" within the meaning of Section 303 of the Act, 42 U.S.C. § 7603; (ii) causes or contributes to violation of a NAAQS in any Air Quality Control Area that is in attainment with that NAAQS; (iii) causes or contributes to violation of a PSD increment; or (iv) causes or contributes to any adverse impact on any formally-recognized air quality and related values in any

Class I area. The introduction of any new or changed NAAQS shall not, standing alone, provide the showing needed under this Subparagraph (c) to pursue any claim for modification at an Other Unit resolved under Subsection A of this Section.

XII. PERIODIC REPORTING

155. After entry of this Consent Decree, the Unit Owners shall, with respect to Units in which they have an Ownership Interest, ensure that there shall be submitted to Plaintiffs a single periodic report, within 60 Days after the end of each half of the calendar year (January through June and July through December). We Energies will join in this report for the purpose of reporting progress on completing its Environmental Mitigation Projects as set forth in Appendix A until the completion of the Project(s). 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 Emission Rates for NO_x, 30-Day Rolling Average Emission Rates for SO_2, and 24-Hour Rolling Average Emission Rates for PM; all applicable 12-Month Rolling Average Emission Rates for NO_x and all 12-Month Rolling Average Emission Rates for SO_2; all applicable 3-hour average PM Emission Rates; all applicable Unit-Specific Annual Tonnage Caps; all applicable Plant-Wide Annual Tonnage Caps; the obligation to monitor NO_x, SO_2, and PM emissions; the obligation to optimize PM emission controls; and the obligation to Surrender NO_x Allowances and SO_2 Allowances;

b. all periods of monitor Malfunction, maintenance, and/or repair as provided in Paragraph 125;

c. emission reporting and Allowance accounting information necessary to determine Super-Compliant NO_x and SO_2 Allowances that a Unit Owner claims to have generated in accordance with Paragraphs 98 and 113 through control of emissions beyond the requirements of this Consent Decree;

d. 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 the Unit Owners to mitigate such delay;

e. all affirmative defenses asserted pursuant to Paragraphs 172 to 180 during the period covered by the progress report;

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

g. a summary of each Defendant's actions implemented and expenditures (cumulative and in the current reporting period) made pursuant to implementation of the Environmental Mitigation Projects required pursuant to Section IX.

156. In any periodic report submitted pursuant to this Section XII, Unit Owners may incorporate by reference information previously submitted under its Title V permitting requirements, provided that the Unit Owners 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.

157. In addition to the reports required pursuant to this Section, any Defendant that violates or deviates from any provision of this Consent Decree shall submit to Plaintiffs a report on the violation or deviation within 15 Working Days after such Defendant knew or should have known of the event. In the report, the Defendant shall explain the cause or causes of the violation or deviation and all measures taken or to be taken by the applicable Defendant to cure the reported violation or deviation or to prevent such violations or deviations 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.

158. Each report required by this Consent Decree shall be signed by the Responsible Official as defined in Title V of the Clean Air Act for Columbia, Edgewater, or Nelson Dewey, as appropriate, or other authorized representative for the Unit Owner or We Energies (with respect to other Consent Decree requirements, *e.g.*, Environmental Mitigation Project status), and shall contain the following certification:

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

XIII. REVIEW AND APPROVAL OF SUBMITTALS

159. The Unit Owners shall, with respect to the Units in which they have an Ownership Interest, ensure the submission of each plan, report, or other submission required by this Consent Decree to Plaintiffs whenever and in the manner such a document is required to be submitted for review or approval pursuant to this Consent Decree. EPA may approve the submittal or decline to approve it and provide written comments explaining the bases for declining such approval as soon as reasonably practicable. Within 60 Days of receiving written comments from EPA, the applicable Unit Owner or Owners 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.

160. Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, the applicable Unit Owner or Owners shall ensure implementation of the approved submittal in accordance with the schedule specified therein or another EPA-approved schedule.

161. We Energies shall comply with this Section regarding reporting related to the Environmental Mitigation Projects undertaken by We Energies as set forth in Appendix A and the payment of the civil penalty.

XIV. STIPULATED PENALTIES

162. For any failure by one or more Defendants to comply with the terms of this Consent Decree, and subject to the provisions of Sections XV (Force Majeure) and XVI (Dispute Resolution) and the other paragraphs in this Section of the Consent Decree, such Defendant or

Defendants shall pay, within 30 Days after receipt of written demand to such Defendant or Defendants by the United States, the following stipulated penalties to the United States, as specified in this Consent Decree.

Consent Decree Violation	**Stipulated Penalty**
a. Failure to pay the civil penalty as specified in Section X (Civil Penalty) of this Consent Decree	$10,000 per Day
b. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO_x or SO_2	$2,500 per Day per violation where the violation is less than 5% in excess of the lb/mmBTU limits $5,000 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 $10,000 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 any applicable 12-Month Rolling Average SO_2 Emission Rate, where the violation is less than 5% in excess of the limits set forth in this Consent Decree	$200 per Day per violation
d. Failure to comply with any applicable 12-Month Rolling Average SO_2 Emission Rate, where the violation is equal to or greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree	$400 per Day per violation
e. Failure to comply with any applicable 12-Month Rolling Average SO_2 Emission Rate, where the violation is equal to or greater than 10% in excess of the limits set forth in this Consent Decree	$800 per Day per violation

f. Failure to comply with the applicable Plant-Wide Annual Tonnage Limitations for NO_x established by this Consent Decree	(1) $5,000 per ton for first 100 tons, $10,000 per ton for each additional ton above 100 tons, plus (2) at the option of the Owner(s) of the Unit at issue either the Surrender of NO_x Allowances in an amount equal to two times the number of tons of NO_x emitted that exceeded the Plant-Wide Annual Tonnage Limitation for NO_x, or 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 Plant-Wide Annual Tonnage Limitation for NO_x
g. Failure to comply with Unit-Specific Annual NO_x Tonnage Cap for Edgewater Unit 3	(1) $5,000 per ton for first 100 tons, $10,000 per ton for each additional ton above 100 tons, plus (2) at the option of the Owner(s) of the Unit at issue either the Surrender of NO_x Allowances in an amount equal to two times the number of tons of NO_x emitted that exceeded the Unit-Specific Annual Tonnage Cap, or 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-Specific Annual Tonnage Cap

h. Failure to comply with any applicable Plant-Wide Annual SO_2 Tonnage Limitation required by this Consent Decree.	(1) $5,000 per ton for the first 100 tons over the limit, and $10,000 per ton for each additional ton over the limit, plus (2) at the option of the Owner(s) of the Unit at issue either the Surrender of SO_2 Allowances in an amount equal to two times the number of tons of SO_2 emitted that exceeded Plant-Wide Annual Tonnage Limitation, or the payment of $2,500 per ton for an amount of tons equal to two times the number of tons of SO_2 emitted that exceeded the Plant-Wide Annual Tonnage Limitation
i. Failure to comply with any applicable Unit-Specific Annual SO_2 Tonnage Cap for Edgewater Unit 3	(1) $5,000 per ton for the first 100 tons over the limit, and $10,000 per ton for each additional ton over the limit, plus (2) at the option of the Owner(s) of the Unit at issue either the Surrender of SO_2 Allowances in an amount equal to two times the number of tons of SO_2 emitted that exceeded Unit-Specific Annual Tonnage Cap, or the payment of $2,500 per ton for an amount of tons equal to two times the number of tons of SO_2 emitted that exceeded the Unit-Specific Annual Tonnage Cap

j. Failure to comply with any applicable PM Emission Rate, where the violation is less than 5% in excess of the lb/mmBTU limit	$2,500 per Unit Operating Day per violation, starting on the Unit Operating Day that a stack test result demonstrates a violation and continuing each Unit Operating Day thereafter until and excluding such Unit Operating Day on which a subsequent stack test demonstrates compliance with the applicable PM Emission Rate
k. Failure to comply with any applicable PM Emission Rate, where the violation is equal to or greater than 5% but less than 10% in excess of the lb/mmBTU limit	$5,000 per Unit Operating Day per violation, starting on the Unit Operating Day a stack test result demonstrates a violation and continuing each Unit Operating Day thereafter until and excluding such Unit Operating Day on which a subsequent stack test demonstrates compliance with the applicable PM Emission Rate
l. Failure to comply with any applicable PM Emission Rate, where the violation is equal to or greater than 10% in excess of the lb/mmBTU limit	$10,000 per Unit Operating Day per violation, starting on the Unit Operating Day a stack test result demonstrates a violation and continuing each Unit Operating Day thereafter until and excluding such Unit Operating Day on which a subsequent stack test demonstrates compliance with the applicable PM Emission Rate
m. Failure to install, commence Continuous Operation, or Continuously Operate a NO_x, SO_2, or PM control device as required under this Consent Decree	$10,000 per Day per violation during the first 30 Days; $37,500 per Day per violation thereafter

n. Failure to Retire, Refuel, or Repower a Unit as required under this Consent Decree	$10,000 per Day per violation during the first 30 Days; $37,500 per Day per violation thereafter
o. Failure to cease burning petcoke in a Unit and instead burn 100% PRB coal or equivalent fuel	$10,000 per Day per violation during the first 30 Days; $37,500 per Day per violation thereafter
o. Failure to conduct a stack test for PM as required by Paragraphs 121 to 123 of this Consent Decree	$5,000 per Day per violation
p. Failure to install or operate NO_x, SO_2, and/or PM CEMS as required in this Consent Decree	$1,000 per Day per violation
q. Failure to apply for any permit required by Section XVII (Permits)	$1,000 per Day per violation
r. Failure to timely submit or implement, as approved, the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree	$750 per Day per violation during the first 10 Days; $1,000 per Day per violation thereafter
s. Failure to Surrender SO_2 Allowances as required under this Consent Decree	$37,500 per Day. In addition, $1,000 per SO_2 Allowance not Surrendered
t. Failure to Surrender NO_x Allowances as required under this Consent Decree	$37,500 per Day. In addition, $1,000 per NO_x Allowance not Surrendered
u. Using, selling, banking, trading, or transferring NO_x Allowances or SO_2 Allowances except as permitted under this Consent Decree	At the option of the Owner(s) of the Unit at issue either the Surrender of Allowances in an amount equal to four times the number of Allowances used, sold, banked, traded, or transferred in violation of this Consent Decree, or the payment of $2,500 per ton for an amount of tons equal to four times the number of Allowances used, sold, banked, traded, or transferred in violation of this Consent Decree
v. Failure to optimize ESPs as required by Paragraph 116.	$1,000 per Day per violation

w. Failure to undertake and complete as described in Appendix A any of the Environmental Mitigation Projects in compliance with Section IX (Environmental Mitigation Projects) of this Consent Decree	$1,000 per Day per violation during the first 30 Days; $5,000 per Day per violation thereafter
x. Any other violation of this Consent Decree	$1,000 per Day per violation

163. Violations of any limit based on a 30-Day Rolling Average Emission Rate constitutes 30 Days of violation, provided, however, that where such a violation (for the same pollutant and from the same Unit) recurs within periods less than 30 Days, Unit Owners 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.

164. Violations of any limit based on a 12-Month Rolling Average Emission Rate constitutes 365 Days of violation, provided, however, that where such a violation (for the same pollutant and from the same Unit) recurs within periods less than 12 months, Unit Owners 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.

165. 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. For example, emissions for one Day may be included in only one 30-Day Rolling Average calculation. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree. The stipulated penalties provided for in this section are cumulative and shall not be increased due to a Unit having more than one Owner.

166. For purposes of the stipulated penalty for failure to make any Allowance Surrender required pursuant to Subparagraphs 162.s to 162.u, a Unit Owner shall make the Surrender of any Allowances required by such Subparagraph by June 30 of the immediately following calendar year.

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

168. Stipulated penalties shall continue to accrue as provided in accordance with Paragraph 165 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, the applicable Defendant(s) 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, the applicable Defendant(s) shall, within 15 Days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined to be owed, together with interest accrued on such stipulated penalties determined to be owed by the appellate court.

Notwithstanding any other provision of this Consent Decree, the accrued stipulated penalties agreed to by the United States and the applicable Defendants, or determined by the United States through Dispute Resolution to be owed, may be less than the stipulated penalty amounts set forth in Paragraph 162.

169. All monetary stipulated penalties shall be paid in the manner set forth in Section X (Civil Penalty) of this Consent Decree and all Allowance Surrender stipulated penalties shall comply with the Allowance Surrender procedures of Paragraphs 96 to 97 and 111 to 112. The obligations of Defendants to pay stipulated penalties under subparagraph 162.a are joint and several. The remaining obligations to pay stipulated penalties, including with respect to subparagraph 162.p, are joint and several as to the Unit Owners with an Ownership Interest in the Unit at issue, and individual as to the Defendant responsible for each Environmental Mitigation Project at issue.

170. Should one or more 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 from such Defendant(s), as provided for in 28 U.S.C. § 1961.

171. 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 and/or Sierra Club 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.

172. Affirmative Defense as to Stipulated Penalties for Excess Emissions Occurring During Malfunctions. If any of the Units in the System exceed an applicable 30-Day Rolling Average Emission Rate set forth in this Consent Decree, due to Malfunction, the Unit Owner(s) operating or owning such Units, bearing the burden of proof by a preponderance of the evidence, have an affirmative defense to a claim for stipulated penalties under this Consent Decree, if such Unit Owners have complied with the reporting requirements of Paragraphs 177 and 178 and demonstrate all of the following:

a. the excess emissions were caused by a sudden, unavoidable breakdown of technology, beyond the control of the Unit Operator;

b. the excess emissions (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 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 good

practice for minimizing emissions in accordance with manufacturers' specifications and good engineering and maintenance practices;

d. repairs were made in an expeditious fashion when Unit Owners knew or should have known that an applicable 30-Day Rolling Average Emission Rate was being or would be exceeded. 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 in accordance with manufacturers' specifications and good engineering and maintenance practices;

f. all possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

g. all emission monitoring systems were kept in operation if at all possible in accordance with manufacturers' specifications and good engineering and maintenance practices;

h. Unit Operator's actions in response to the excess emissions were documented by properly signed or otherwise validated, 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. Unit Owners properly and promptly notified EPA and Sierra Club as required by this Consent Decree.

173. To assert an affirmative defense for Malfunction under Paragraph 172, the applicable Unit Owners shall submit all data demonstrating the actual emissions for the Day the Malfunction occurs and the 29-Unit Operating Day period following the Day the Malfunction occurs. Unit Owners may, if they elect, submit emissions data for the same 30-Unit Operating Day period but that excludes the excess emissions.

174. Affirmative Defense as to Stipulated Penalties for Excess Emissions Occurring During Startup and Shutdown. If any of the Units in the System exceed an applicable 30-Day Rolling Average Emission Rate set forth in this Consent Decree, due to startup or shutdown, the Unit Owners with an Ownership Interest in such Units, bearing the burden of proof by a preponderance of the evidence, have an affirmative defense to a claim for stipulated penalties under this Consent Decree, if the Unit Owners have complied with the reporting requirements of Paragraphs 177 and 178 and demonstrate 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 in accordance with manufacturers' specifications and good engineering and maintenance practices;

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 in accordance with manufacturers' specifications and good engineering and maintenance practices;

f. all possible steps were taken to minimize the impact of the excess emissions on ambient air quality in accordance with manufacturers' specifications and good engineering and maintenance practices;

g. All emissions monitoring systems were kept in operation if at all possible in accordance with manufacturers' specifications and good engineering and maintenance practices;

h. The Unit Operator's actions during the period of excess emissions were documented by properly signed or otherwise validated, contemporaneous operating logs or other relevant evidence; and

i. The applicable Unit Owners properly and promptly notified EPA as required by this Consent Decree.

175. To assert an affirmative defense for startup or shutdown under Paragraph 174, the applicable Unit Owners shall submit all data demonstrating the actual emissions for the Day the

excess emissions from startup or shutdown occurs and the 29-Unit Operating Day period following the Day the excess emissions from startup or shutdown occurs. Unit Owners may, if they elect, submit emissions data for the same 30-Unit Operating Day period but that excludes the excess emissions.

176. If excess emissions occur due to a Malfunction during routine startup and shutdown, then those instances shall be treated as other Malfunctions subject to Paragraphs 172 and 173.

177. For an affirmative defense under Paragraphs 172 and 174, applicable Unit Owners, bearing the burden of proof by a preponderance of the evidence, 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 the Unit Operator's control were implemented to prevent the occurrence of the excess emissions.

178. Defendant(s) shall provide notice to Plaintiffs in writing of Defendant's intent to assert an affirmative defense for Malfunction, startup, or shutdown under Paragraphs 172 and 174 in Defendants semi-annual progress reports as required by Paragraph 155(e). 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;

d. The identity of the equipment causing the excess emissions;

e. The nature and suspected cause of the excess emissions;

f. The steps taken, if the excess emissions 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; 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.

179. 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).

180. 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

181. 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 one or more the Unit Owners, their contractors, or any entity controlled by a Unit Owner that delays or prevents the performance of any obligation under this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite the Unit Owners' best efforts to fulfill the obligation. "Best efforts to fulfill the obligation" include using best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring

and (b) after it has occurred, such that the delay and/or violation are minimized to the greatest extent possible and the emissions during such event are minimized to the greatest extent possible. Specific references to Force Majeure in other parts of this Consent Decree do not restrict the ability of the Unit Owners to assert Force Majeure pursuant to the process described in this Section. Without limiting the applicability of this Section to an activity of any other Defendant, the Force Majeure provisions apply to We Energies to the extent that a claim relates to an Environmental Mitigation Project undertaken by We Energies.

182. Notice of Force Majeure Events. If any event occurs or has occurred that may delay or prevent compliance with or otherwise cause a violation of any obligation under this Consent Decree, as to which one or more Unit Owners intend to assert a claim of Force Majeure, then the applicable Unit Operator or Unit Owners shall notify Plaintiffs in writing as soon as practicable, but in no event later than 14 Working Days following the date the Unit Operator or the Unit Owners 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, the Unit Operator or the applicable Unit Owners 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 Force Majeure Event, all measures taken or to be taken by the Unit Operator or the Unit Owners to prevent or minimize the delay or violation, the schedule by which the Unit Operator or Unit Owners propose to implement those measures, and the applicable Unit Operator's or Unit Owners' rationale for attributing the failure, delay, or violation to a Force Majeure Event. A copy of this Notice shall be sent electronically, as soon as practicable, to Plaintiffs. The applicable Unit Operator and Unit Owners shall adopt all reasonable measures to avoid or

minimize such failures, delays, or violations. The Unit Operator and Unit Owners shall be deemed to know of any circumstance which they, their contractors, or any entity controlled by them, knew or should have known.

183. Failure to Give Notice. If the applicable Unit Operator or one or more of the applicable Unit Owners fail to comply with the notice requirements of this Section, the United States (after consultation with the Sierra Club) may void such Unit Owner's claim for Force Majeure as to the specific event for which the Unit Operator or Unit Owners have failed to comply with such notice requirement.

184. Plaintiffs' Response. The United States shall notify the applicable Unit Owners in writing regarding Unit Owners' claim of Force Majeure as soon as reasonably practicable. If the United States (after consultation with Sierra Club) agrees that a delay in performance has been or will be caused by a Force Majeure Event, the Plaintiffs and the Unit Owners 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 which case the delay at issue shall be deemed not to be a violation of the affected requirement(s) of this Consent Decree. In such circumstances, an appropriate modification shall be made pursuant to Section XXIII (Modification) of this Consent Decree.

185. Disagreement. If the United States (after consultation with Sierra Club) does not agree with the Unit Owners' claim of Force Majeure, or if the United States and the Unit Owners 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.

186. Burden of Proof. In any dispute regarding Force Majeure, the applicable Unit Owner(s) of the Unit at issue 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. The applicable Unit Owners shall also bear the burden of proving that the Unit Owners gave the notice required by this Section and the anticipated duration and extent of any failure, delay, or violation(s) attributable to a Force Majeure Event. An extension of one compliance date may, but will not necessarily, result in an extension of a subsequent compliance date.

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

188. Potential Force Majeure Events. The Parties agree that, depending upon the circumstances related to an event and the applicable Unit Owners' response to such circumstances, the kinds of events listed below are among those that could qualify as Force Majeure Events within the meaning of this Section: construction, labor, or equipment delays; Malfunction of a Unit or emission control device; unanticipated coal supply or pollution control reagent delivery interruptions; acts of God; acts of war or terrorism; and orders by a government official, government agency, other regulatory authority, or a regional transmission organization (e.g., the Midwest Independent System Operator), acting under and authorized by applicable law or tariff as accepted by the Federal Energy Regulatory Commission, that directs the Unit Owners to supply electricity so long as such order is a response to a state-wide or regional emergency or is necessary to preserve the reliability of the bulk power system. Depending upon the

circumstances and the Unit Owners' response to such circumstances, failure of a permitting authority or the Public Service Commission of Wisconsin to issue a necessary permit or order with sufficient time for the Unit Owners to achieve compliance with this Consent Decree may constitute a Force Majeure Event where the failure of the authority to act is beyond the control of the Unit Owners and the Unit Owners have taken all steps available to them to obtain the necessary permit or order, including, but not limited to: submitting a complete permit application or request; responding to requests for additional information by the 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 authority.

189. Extended Schedule. As part of the resolution of any matter submitted to this Court under Section XVI (Dispute Resolution) of this Consent Decree regarding a claim of Force Majeure, the United States and one or more Unit Owners by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work and/or obligations under this Consent Decree to account for the delay in the work and/or obligations that occurred as a result of any delay agreed to by the United States or approved by the Court. The applicable Unit Owners shall be liable for stipulated penalties pursuant to Section XIV (Stipulated Penalties) for their failure thereafter to complete the work and/or obligations in accordance with the extended or modified schedule (provided that the applicable Unit Owners shall not be precluded from asserting that a further Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule).

XVI. DISPUTE RESOLUTION

190. 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.

191. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Party, as well as all other Defendants, 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.

192. 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.

193. If the Parties are unable to reach agreement during the informal negotiation period, the Plaintiff or Plaintiffs shall provide those Defendants seeking dispute resolution with a written summary of their position(s) regarding the dispute. The written position provided by the Plaintiff or Plaintiffs, or by the United States if Plaintiffs have different positions, shall be considered binding unless, within 45 Days thereafter, the applicable Defendants, or Sierra Club if Plaintiffs have different positions, seeks judicial resolution of the dispute by filing a petition with

this Court. Any Party opposing such petition may submit a response to the petition within 45 Days of filing.

194. 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.

195. 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.

196. 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. The applicable 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, provided that such Defendants shall not be precluded from asserting that a Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule.

197. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their filings with the Court under Paragraph 193, the Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

XVII. PERMITS

198. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires one or more of the Unit Owners or the Unit Operator to secure a permit to authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under State law, the Unit Operator or, where appropriate, the Unit Owners shall ensure that such application is made in a timely manner. Recognizing that the Wisconsin Department of Natural Resources is the SIP-approved permitting authority, EPA will use best efforts to review expeditiously, to the extent applicable, all permit applications submitted by Unit Owners to meet the requirements of this Consent Decree. Sierra Club agrees not to submit any agency comments in a public forum, file a legal challenge, take a litigation position, file a request for a contested case hearing, a request for state circuit court review, or a petition pursuant to 42 U.S.C. § 7661d(b), regarding, criticizing and/or challenging the issuance of any permits or other regulatory approvals necessary for the construction or operation of any environmental control equipment or Environmental Mitigation Project(s) required by this Consent Decree, except as provided in the Dispute Resolution provisions in Section XVI of this Consent Decree. Any disputes regarding Sierra Club's compliance with this provision is subject to the Dispute Resolution provisions in Section XVI, including written notice and period to cure, and Unit Owners' remedies for alleged breaches by Sierra Club shall be limited to specific performance and shall exclude any monetary damages.

199. Notwithstanding the previous Paragraphs, nothing in this Consent Decree shall be construed to require one or more Unit Owners or the Unit Operator to apply for, amend, or obtain a PSD or Nonattainment NSR permit or permit modification for any physical change in,

or any change in the method of operation of, any System Unit that would give rise to claims resolved by Section XI (Resolution of Claims) of this Consent Decree.

200. When permits are required, the applicable Unit Owners 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 Unit Owners to submit a timely permit application for a System Unit in which they have an Ownership Interest, as required by permitting requirements under state and/or federal regulations, shall bar any use of Section XV (Force Majeure) of this Consent Decree where a Force Majeure claim is based on permitting delays.

201. Notwithstanding the reference to the Title V Permits for the System Units in this Consent Decree, the enforcement of such permits shall be in accordance with their own terms and the CAA and its implementing regulations. Such Title V Permits shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of a Title V Permit, subject to the terms of Section XXVII (Conditional Termination of Enforcement Under Decree) of this Consent Decree.

202. Within 180 Days after the Date of Entry of this Consent Decree, the Unit Operator shall amend any applicable Title V Permit application(s), or apply for amendments of its Title V Permits, to include a schedule for all Unit-specific, Plant-specific, and System-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, any (a) 12-Month Rolling Average Emission Rate,

(b) 30-Day Rolling Average Emission Rate for NO_x, (c) 30-Day Rolling Average Emission Rate for SO_2, (d) Plant-Wide Annual Tonnage Limitation, (e) Unit-Specific Annual Tonnage Cap, (f) requirements pertaining to the Surrender of SO_2 and NO_x Allowances, (g) requirements to cease burning petcoke and commence burning 100% PRB coal or equivalent, (h) PM Emission Rate and annual stack test requirements, (i) PM CEMS monitoring equipment, and (j) the Retirement, Refueling, or Repowering of any Unit as required under this Consent Decree.

203. Within one year from the Date of Entry of this Consent Decree, with respect to any Unit in which they have an Ownership Interest, Unit Owners shall either apply to permanently include the requirements and limitations enumerated in this Consent Decree into a federally enforceable permit or request a site-specific amendment to the Wisconsin SIP, such that the requirements and limitations enumerated in this Consent Decree become and remain 'applicable requirements' as that term is defined in 40 C.F.R. Part 70.2. The permit or Wisconsin SIP amendment shall require compliance with the following: any applicable (a) 12-Month Rolling Average Emission Rate, (b) 30-Day Rolling Average Emission Rate for NO_x, (c) 30-Day Rolling Average Emission Rate for SO_2, (d) Plant-Wide Annual Tonnage Limitation, (e) Unit-Specific Annual Tonnage Cap, (f) requirements pertaining to the Surrender of SO_2 and NO_x Allowances, (g) requirements to cease burning petcoke and commence burning 100% PRB coal or equivalent, (h) PM Emission Rate and annual stack test requirements, (i) PM CEMS monitoring equipment, and (j) Retirement requirements.

204. Unit Owners shall ensure that the Plaintiffs are provided with a copy of each application for a federally enforceable permit or Wisconsin SIP amendment filed by them in relation to any Unit in which they have an Ownership Interest, 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.

205. Prior to conditional termination of enforcement through this Consent Decree, Unit Owners shall ensure that enforceable provisions are obtained in their respective Title V Permits that incorporate all applicable Unit-specific, Plant-specific, and System-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, any applicable (a) 12-Month Rolling Average Emission Rate, (b) 30-Day Rolling Average Emission Rate for NO_x, (c) 30-Day Rolling Average Emission Rate for SO_2, (d) Plant-Wide Annual Tonnage Limitation, (e) Unit-Specific Annual Tonnage Cap, (f) the requirements pertaining to the Surrender of SO_2 and NO_x Allowances, (g) requirement to cease burning petcoke and commence burning 100% PRB coal or equivalent, (h) PM Emission Rate and annual stack test requirements, (i) PM CEMS monitoring equipment, and (j) the Retirement, Refueling, or Repowering of any Unit as required or elected under this Decree.

XVIII. INFORMATION COLLECTION AND RETENTION

206. Any authorized representative of the United States, including its attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the premises of a System Unit 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 Unit Owners or their representatives, contractors, or consultants; and

d. assessing Unit Owners' compliance with this Consent Decree.

207. Where applicable, Defendants shall retain, and instruct their contractors and agents to preserve, all non-identical copies of all records and documents (including records and documents in electronic form) now in their or their contractors' or agents' possession or control, and that directly relate to Defendants' performance of their respective obligations under this Consent Decree for the following periods: (a) until December 31, 2023, for records concerning physical or operational changes undertaken in accordance with Section V (NO_x Emission Reductions and Controls), Section VI (SO_2 Emission Reductions and Controls), and Section VII (PM Emission Reductions and Controls); and (b) until December 31, 2021, for all other records. This record retention requirement shall apply regardless of any corporate document retention policy to the contrary.

208. 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 claim and substantiate in accordance with 40 C.F.R. Part 2 that the information and documents contain confidential business information.

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

XIX. NOTICES

210. 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# 90-5-2-1-09878

(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# 90-5-2-1-09878

(if by mail or commercial delivery service)
Chief, Civil Division
United States Attorney's Office
Western District of Wisconsin
660 W. Washington Ave., Suite 303
Madison, WI 53703

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

Director, Air Division
U.S. EPA Region 5
77 W. Jackson Blvd. (AE-17J)
Chicago, IL 60604

As to the Sierra Club:

Director, Environmental Law Program
Sierra Club
85 Second Street, 2nd Fl.
San Francisco, CA 94105

and

David C. Bender
Pamela McGillivray
McGillivray Westerberg & Bender LLC
211 S. Paterson St., Ste 320
Madison, WI 53703

As to Defendants:

As to Wisconsin Power and Light Company:

President, Wisconsin Power and Light Company
4902 N. Biltmore Lane
Madison, WI 53718

and

General Counsel, Wisconsin Power and Light Company
4902 N. Biltmore Lane
Madison, WI 53718

and

Vice President, Environmental Affairs, Wisconsin Power and Light Company
4902 N. Biltmore Lane
Madison , WI 53718

As to We Energies:

Vice President, Environmental
Wisconsin Electric Power Company
231 W. Michigan St.
Milwaukee, WI 53203

and

General Counsel
Wisconsin Electric Power Company
231 W. Michigan St.
Milwaukee, WI 53203

As to Madison Gas and Electric Company:

President
Madison Gas and Electric Co.
P.O. Box 1231
Madison, WI 53701-1231

and

Vice President and General Counsel
Madison Gas and Electric Co.
P.O. Box 1231
Madison, WI 53701-1231

and

Director of Safety and Environmental Affairs
Madison Gas and Electric Co.
P.O. Box 1231
Madison, WI 53701-1231

As to Wisconsin Public Service Corporation:

President
Wisconsin Public Service Corporation
700 N. Adams
Green Bay, WI 54301

and

General Counsel
Wisconsin Public Service Corporation
700 N. Adams
Green Bay, WI 54301

211. 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, or (b) certified or registered mail, return receipt requested. All notifications, communications, and transmissions (a) sent by overnight, certified, or registered mail shall be deemed submitted on the date they are postmarked, or (b) sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service.

212. 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

213. If a Unit Owner proposes to sell or transfer an Operational Interest or Ownership Interest to any entity other than another Unit Owner or to a Unit Owner's successors or assigns ("Third Party Purchaser"), such Unit Owner 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 and a copy of any written agreement proposing the transfer of an Operation

or Ownership Interest to the EPA pursuant to Section XIX (Notices) of this Consent Decree at least 60 Days before such proposed sale or transfer. Recipients of this notice shall treat it as confidential for the 60 days if requested by the notifying Unit Owner.

214. No earlier than 30 days after providing the notice in Paragraph 213, the Unit Owner may file a motion with the Court to modify this Consent Decree to make the terms and conditions of this Consent Decree applicable to the Third Party Purchaser. No sale or transfer to a Third Party Purchaser of an Operational Interest or Ownership Interest shall take place before the Third Party Purchaser has 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 liable for the selling Defendant's applicable requirements of this Consent Decree.

215. This Consent Decree shall not be construed to impede the transfer of any Operational Interests or Ownership Interests between a Unit Operator or Unit Owner and any Third Party Purchaser so long as the requirements of this Consent Decree are met. This Consent Decree shall not be construed to prohibit a contractual allocation – as between a Unit Operator or Unit Owner and any Third Party Purchaser of Operational Interests or Ownership Interests – of the burdens of compliance with this Consent Decree.

216. No sale or transfer of an Operational or Ownership Interest, whether in compliance with the procedures of this Section or otherwise, shall relieve a Unit Owner of its obligation to ensure that the terms of this Consent Decree are implemented, unless (1) the transferee agrees to undertake all of the obligations required by this Consent Decree that may be applicable to the transferred or purchased Operational or Ownership Interests, and to be

substituted for the Unit Owner as a Party under the Decree pursuant to Section XXIII (Modification) and thus be bound by the terms thereof, and (2) the United States consents to relieve the Unit Owner of its obligations. The United States may refuse to approve the substitution of the transferee for the Unit Owner if it determines that the proposed transferee does not possess the requisite technical abilities or financial means to comply with the Consent Decree. Notwithstanding the foregoing, however, Defendants 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 Interest or Ownership Interests, including the obligations set forth in Sections IX (Environmental Mitigation Projects) and X (Civil Penalty).

217. Plaintiffs expressly acknowledge that a Unit Owner may sell or transfer an Operational Interest or Ownership Interest to another existing Unit Owner, or a Unit Owner's successors or assigns, at any time and without Plaintiffs' pre-approval and without any obligation to comply with the requirements of this Section. The selling or transferring Unit Owner shall promptly (but not later than 30 Days after such sale or transfer) notify in writing the Plaintiffs and other Unit Owners. Upon the consummation of the sale or transfer, all applicable requirements of this Consent Decree related to the applicable Unit or Units that are being sold or transferred shall apply to the new Unit Owner and all such applicable requirements shall terminate and no longer be applicable to the selling or transferring Unit Owner, with the exception of the obligations set forth in Sections IX (Environmental Mitigation Projects) and X (Civil Penalty).

218. Paragraphs 213 to 214 of this Consent Decree do not apply if an Ownership Interest is sold or transferred solely as collateral security in order to consummate a financing

arrangement (not including a sale-leaseback), so long as the transferring Unit Owner: (a) remains the Owner or Operator (as those terms are used and interpreted under the Clean Air Act) of the subject Unit(s); (b) remains subject to and liable for all obligations and liabilities of this Consent Decree; and (c) supplies Plaintiffs with the following certification within 30 Days of the sale or transfer:

> "Certification of Change in Ownership Interest Solely for Purpose of Consummating Financing. We, the Chief Executive Officer and General Counsel of [insert name of Unit Owner], hereby jointly certify under Title 18 U.S.C. Section 1001, on our own behalf and on behalf of [insert name of Unit Owner], that any change in [insert name of Unit 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 Unit 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 Unit Owner]'s ability, legally or otherwise, to comply timely with all terms and provisions of the Consent Decree entered in *United States v. Wisconsin Power and Light Company, et al.,* Civil Action 13-cv-266; c) does not affect [insert name of Unit Owner]'s ownership or operational control of any Unit covered by that Consent Decree in a manner that is inconsistent with [insert name of Unit Owner]'s performance of its obligations under the Consent Decree; and d) in no way affects the status of [insert name of Unit Owner]'s obligations or liabilities under that Consent Decree."

XXI. EFFECTIVE DATE

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

XXII. RETENTION OF JURISDICTION

220. 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.

XXIII. MODIFICATION

221. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by Plaintiffs and the applicable 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. This section shall not apply to any Defendant for which this Consent Decree has been terminated.

XXIV. GENERAL PROVISIONS

222. When this Consent Decree specifies that a Unit Owner or Unit Owners 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.

223. When this Consent Decree specifies that a Unit Owner or Unit Owners shall achieve and maintain a 12-Month Rolling Average Emission Rate, then the Month containing that Day if that Day is the first Day of the Month, or if that Day is not the first Day of the Month then the next complete Month, shall be the first Month used in the calculation of the specified 12-Month limitation. For example, if the specified 12-Month Rolling Average Emission Rate is to be achieved starting January 1, 2013, then January 2013 is the first Month used in the calculation of the first applicable 12-Month Rolling Average Emission Rate, such that the first complete 12-Month Rolling Average Emission Rate period would, provided that the Unit fires Fossil Fuel in each month, include January 2013 through December 2013.

224. This Consent Decree is not a permit. Compliance with the terms of this Consent Decree does not guarantee compliance with all applicable federal, state, or local laws or regulations. The emission rates set forth herein do not relieve Unit Owners from any obligation to comply with other state and federal requirements under the CAA, including Unit Owners' obligation to satisfy any State modeling requirements set forth in the Wisconsin SIP.

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

226. In any subsequent administrative or judicial action initiated by the United States or Sierra Club for injunctive relief or civil penalties relating to the Columbia Station, Edgewater Station, or Nelson Dewey Station, as covered by this Consent Decree, Unit Owners shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, or claim splitting, or any other defense based upon the contention that the claims raised by the United States or Sierra Club 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 Claims) or in any way compromise or diminish the waivers, releases, and covenants provided by Plaintiffs in Section XI (Resolution of Claims).

227. Nothing in this Consent Decree shall relieve Unit Owners from their obligations to comply with all applicable federal, state, and local laws and regulations, including laws, regulations, and compliance deadlines that become applicable after the Date of Entry of the Consent Decree. Such laws and regulations include, but are not limited to, the Utility MACT, the Utility NSPS requirements, and the obligation to apply for a Clean Water Act NPDES permit(s) for the discharge of wastewater, and in connection with any such application or

application for permit renewal, to provide the NPDES permitting authority with all information necessary to appropriately characterize effluent from their operations and develop appropriate effluent limitations, including but not limited to all information necessary for the NPDES permitting authority to appropriately evaluate discharges of total dissolved solids ("TDS") for their operations. Nothing in this Consent Decree should be construed to provide any relief from the emission limits or deadlines specified in such regulations, including, but not limited to, deadlines for the installation of pollution controls required by any such regulations, nor shall this Decree be construed as a pre-determination of eligibility for the one year extension that may be provided under 42 U.S.C. § 7412(i)(3)(B).

228. Subject to the provisions in Section XI (Resolution of Claims), Section XVI (Dispute Resolution), and XIV (Stipulated Penalties) nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the Plaintiffs to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits. However, in addition to the provisions of Paragraph 151(d), Sierra Club agrees not to file a legal challenge, take a litigation position, file a request for a contested case hearing, a request for state circuit court review, or a petition pursuant to 42 U.S.C. § 7661d(b), challenging the issuance of any permits or other regulatory approvals that are necessary for the construction or operation of environmental control equipment, or for any Environmental Mitigation Project identified in Appendix A, which is required by this Consent Decree. Nothing in this Paragraph prevents Sierra Club from making use of the Dispute Resolution provisions in section XVI of this Consent Decree. Any disputes regarding Sierra Club's compliance with this provision is subject to the Dispute Resolution provisions in Section XVI, including written notice and period to cure, and

Unit Owners' remedies for alleged breaches by Sierra Club shall be limited to specific performance and shall exclude any monetary damages.

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

230. 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. Unit Owners 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. Unit Owners shall report data to the number of significant digits in which the standard or limit is expressed.

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

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

233. Except as provided below, each Party to this action shall bear its own costs and attorneys' fees. Defendants shall pay Sierra Club's reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 7604(d), for the time and expenses incurred in this case, in *Sierra Club v. Wisconsin Power and Light Company*, United States District Court, Western District of Wisconsin, Case No. 3:10-cv-511-wmc, and in *Sierra Club v. Wisconsin Power and Light Company*, United States District Court, Eastern District of Wisconsin, Case No. 2:10-cv-00835-aeg. The deadline for Sierra Club to file a motion for costs of litigation (including attorneys' fees) for activities prior to entry of this Consent Decree by the Court is hereby extended until 30 Days after this Consent Decree is entered by the Court. Prior to and/or during this 30-Day period, Sierra Club and Defendants shall seek to resolve informally any claim for costs of litigation (including attorneys' fees), and, if they cannot, will submit that issue to the Court for resolution. An award of fees for activities prior to entry of this Consent Decree by the Court under this Paragraph does not waive Sierra Club's ability to seek recovery for costs of litigation (including attorneys' fees) incurred to monitor and/or enforce the provisions of this Consent Decree.

234. As a former owner of Edgewater Unit 5, We Energies is subject to the requirements of Section IX (Environmental Mitigation Projects) and Section X (Civil Penalty). The requirements of Sections XII (Periodic Reporting), XIII (Review and Approval of Submittals), XIV (Stipulated Penalties), XV (Force Majeure), XVI (Dispute Resolution) and XVIII (Information Collection and Retention) only apply to We Energies to the extent that they relate to We Energies' obligations as set forth in Sections IX and X.

XXV. SIGNATORIES AND SERVICE

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

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

237. 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.

238. Unless otherwise ordered by the Court, the United States agrees that none of the Defendants will 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 each Defendant shall have no less than 30 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

239. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments

disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Neither the Sierra Club nor Defendants shall oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified the Sierra Club and Defendants, in writing, that the United States no longer supports entry of this Consent Decree. Additionally, the Parties agree and acknowledge that final approval of this Consent Decree by the Court is subject to 42 U.S.C. § 7604(c)(3), which provides that a consent judgment in a citizen suit action must provide for review and comment by the Attorney General and the U.S. EPA Administrator for 45 Days.

XXVII. CONDITIONAL TERMINATION OF ENFORCEMENT UNDER CONSENT DECREE

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

241. Termination as to We Energies. Following the successful completion of its obligations under Sections IX (Environmental Mitigation Projects) and X (Civil Penalty), including all associated reporting obligations, We Energies may so certify these facts to the Plaintiffs, all other Defendants and this Court, and We Energies may move the Court for termination of the provisions of this Consent Decree as to We Energies. If the Plaintiffs do not object in writing with specific reasons within 45 Days of receipt of We Energies' certification, then We Energies shall be terminated from the requirements of this Consent Decree.

242. Conditional Termination of Enforcement Through this Consent Decree. Subject to the provisions of Paragraph 243, after all projects, tasks, or requirements of this Consent

Decree have been completed as to a Unit Owner(s), a Unit Owner(s) may, by motion to this Court, seek termination of this Consent Decree if the Unit Owner(s):

a. have successfully completed construction, and have maintained operation, of all pollution controls on Units owned or operated by them as required by this Consent Decree for a period of two years and have successfully completed all actions necessary to Retire, Refuel, or Repower any Unit as required by this Consent Decree; and

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

Unit Owner(s) may so certify these facts to the Plaintiffs and this Court. If the Plaintiffs do not object in writing with specific reasons within 45 Days of receipt of Unit Owner'(s) certification, then, for any violations of this Consent Decree that occur after the filing of notice, the Plaintiffs shall pursue enforcement of the requirements through the applicable permits and/or other enforcement authorities and not through this Consent Decree. If Plaintiffs object, the dispute will be resolved pursuant to the procedures in Section XVI (Dispute Resolution).

243. Enforcement under this Consent Decree. Notwithstanding Paragraph 242, if enforcement of a provision in this Consent Decree cannot be pursued by the United States under the applicable permit(s) issued pursuant to the CAA or its implementing regulations ("CAA Permit"), or if a Consent Decree requirement was intended to be part of a CAA Permit and did

not become or remain part of such permit, then such requirement may be enforced under the terms of this Consent Decree at any time.

XXVIII. FINAL JUDGMENT

244. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the Plaintiffs and each and all of the Defendants.

Signature Page for *United States of America v. Wisconsin Power and Light, et al.* Consent Decree, and *Sierra Club v. Wisconsin Power and Light* Consent Decree

FOR THE UNITED STATES DEPARTMENT OF JUSTICE

Respectfully submitted,

JOHN W. VAUDREUIL
United States Attorney

[redacted]

LESLIE K. HERJE
Assistant U.S. Attorney
Chief, Civil Division
United States Attorney's Office
Western District of Wisconsin
660 W. Washington Ave.
Suite 303
Madison, WI 53703
(608) 264-5158

Signature Page for *United States of America v. Wisconsin Power and Light, et al.* Consent Decree, and *Sierra Club v. Wisconsin Power and Light* Consent Decree

FOR THE UNITED STATES DEPARTMENT OF JUSTICE

Respectfully submitted,

[redacted]

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

[redacted]

JAMES A. LOFTON
Counsel to the Chief
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-2750

[redacted]

JASON DUNN
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-1111

Signature Page for *United States of America v. Wisconsin Power and Light, et al.* Consent Decree, and *Sierra Club v. Wisconsin Power and Light* Consent Decree

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respectfully submitted,

[redacted]

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

[redacted]

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

[redacted]

KELLIE ORTEGA
Attorney-Advisor
United States Environmental
Protection Agency
1200 Pennsylvania Ave, N.W. (2242A)
Washington, DC 20460

Signature Page for *United States of America v. Wisconsin Power and Light, et al.* Consent Decree, and *Sierra Club v. Wisconsin Power and Light* Consent Decree

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respectfully submitted,

[redacted]

SUSAN HEDMAN
Regional Administrator, Region 5
United States Environmental
Protection Agency

[redacted]

TERENCE BRANIGAN
Associate Regional Counsel
United States Environmental
Protection Agency, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604

Signature Page for *United States of America v. Wisconsin Power and Light, et al.* Consent Decree, and *Sierra Club v. Wisconsin Power and Light* Consent Decree

FOR SIERRA CLUB

By its Counsel:

[redacted]

DAVID C. BENDER
McGillivray Westerberg & Bender LLC
211 S. Paterson Street, Ste 320
Madison, WI 53703

Signature Page for *United States of America v. Wisconsin Power and Light, et al.* Consent Decree, and *Sierra Club v. Wisconsin Power and Light* Consent Decree

FOR WISCONSIN POWER AND LIGHT COMPANY

By: [redacted]

President – Wisconsin Power and Light Company

[redacted]

ROBERT R. CLARK
Taft, Stettinius & Hollister, LLP
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204-2023

Counsel for Wisconsin Power and Light

Signature Page for *United States of America v. Wisconsin Power and Light, et al.* Consent Decree, and *Sierra Club v. Wisconsin Power and Light* Consent Decree

FOR MADISON GAS AND ELECTRIC COMPANY

By: [redacted]
Gary J. Wolter

Title: Chairman, President and CEO

[redacted]
TODD E. PALMER
Michael Best & Friedrich LLP
One South Pinckney Street, Suite 700
Madison, WI 53701-1806

Counsel for Madison Gas and Electric

Signature Page for *United States of America v. Wisconsin Power and Light, et al.* Consent Decree, and *Sierra Club v. Wisconsin Power and Light* Consent Decree

FOR WISCONSIN ELECTRIC POWER COMPANY

[redacted]

ALLEN L. LEVERETT
Executive Vice President

[redacted]

CYNTHIA A. FAUR
Quarles & Brady LLP
300 N. LaSalle Street, Suite 4000
Chicago, Illinois 60654-3422

Counsel for Wisconsin Electric Power Company

Signature Page for *United States of America v. Wisconsin Power and Light, et al.* Consent Decree, and *Sierra Club v. Wisconsin Power and Light* Consent Decree

FOR WISCONSIN PUBLIC SERVICE CORPORATION

By: [redacted]

Title: Chairman and C.E.O.

LINDA E. BENFIELD
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306

Counsel for Wisconsin Public Service Corp.

Signature Page for *United States of America v. Wisconsin Power and Light, et al.* Consent Decree, and *Sierra Club v. Wisconsin Power and Light* Consent Decree

FOR WISCONSIN PUBLIC SERVICE CORPORATION

By:_____

Title:_____

[redacted]

LINDA E. BENFIELD
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306

Counsel for Wisconsin Public Service Corp.

APPENDIX A

ENVIRONMENTAL MITIGATION PROJECTS

To fulfill each Defendant's individual obligations to comply with the requirements in Section IX (Environmental Mitigation Projects) of the Consent Decree, Defendants shall spend no less than $8,500,000 in total Project Dollars, consistent with the requirements of this Appendix. Defendants shall spend no less than, and nothing in the Consent Decree or this Appendix shall require a Defendant to spend any more than, each Defendant's respective amounts listed below on Environmental Mitigation Projects:

- Wisconsin Power and Light Company: $6,583,500
- Wisconsin Public Service Corporation: $1,272,167
- Madison Gas and Electric Company: $623,333
- Wisconsin Electric Power Company: $21,000

I. Schedule and Budget for Environmental Mitigation Projects Other Than Payments to the National Park Service and United States Park Service (Each Defendant)

A. Within 120 Days from the Date of Entry of this Consent Decree, as further described below, each Defendant shall submit proposed project plan(s) to EPA for review and approval pursuant to Section XIII of the Consent Decree (Review and Approval of Submittals) for completing each Defendant's Environmental Mitigation Project expenditure commitments over a period of not more than 5 years from the date of plan approval. The Project Dollars shall be spent on Projects outlined in Sections II through V of this Appendix. Each Defendant also may elect to spend Project Dollars on Projects pursuant to Section VI of this Appendix. EPA reserves the right to disapprove any of the proposed plans should the Agency determine, based on an analysis of the plans submitted by a Defendant and all the potential environmental impacts, that the project is not consistent with the requirements of this Consent Decree. If a Defendant opts not to or is unable to perform one of the Projects detailed in Sections II through IV of this Appendix, Defendant shall not have any obligation for such Project pursuant to this Consent Decree, including performance, reporting, or closure requirements for that Project, provided that the Defendant is otherwise in compliance with the Environmental Mitigation Project requirements of this Consent Decree, which may include performing one or more Projects approved by EPA pursuant to Section VI of this Appendix or Paragraph 135 of the Consent Decree. If a Defendant subsequently opts not to perform a Project for which it has submitted a plan that has been approved by EPA, then it shall indicate withdrawal from the

Project in its next periodic report pursuant to Paragraph 155 of the Consent Decree. Defendants that commit to make specific payments to the National Park Service or United States Forest Service in this Appendix A are not required to submit a project plan for those payments.

B. Each Defendant may, at its election, consolidate the Project plans for which it is responsible under this Consent Decree into a single plan. Where expressly authorized in the Project descriptions in Sections II – V, upon approval of EPA of its project plan, each Defendant may complete, in whole or in part, the Project through a third-party non-profit organization or through a foundation to which that Defendant would provide the funds required for the implementation or funding of the Project(s).

C. The Parties agree that each Defendant is entitled to spread its payments for Environmental Mitigation Projects over the 5-year period commencing upon the date of plan approval. Each Defendant is not, however, precluded from accelerating payments to better effectuate a proposed mitigation plan, provided that the Defendant shall not be entitled to any reduction in the nominal amount of the required payments by virtue of the early expenditures.

D. All proposed project plans shall include the following:

1. A plan for implementing the project;

2. A summary level budget for the project;

3. A time line for implementation of the project;

4. A description of the anticipated environmental benefits of the project, including an estimate of any emission reductions or emission mitigation (*e.g.*, SO_2, NO_x, PM, CO_2) expected to be realized, and the methodology and any calculations used in the derivation of such expected benefits, reductions, or mitigation; and

5. For each Project undertaken, a certification, as part of each plan submitted to EPA for the Project, that prior to the Date of Lodging of this Consent Decree, Defendant had not otherwise committed to perform the Project generally described in the plan, that Defendant is unaware of any other person who is committed to perform the same Project, and that Defendant will not use any portion of the Project to satisfy any obligations that it may have under other applicable requirements of law, including but not limited to any applicable renewable or energy efficiency portfolio standards.

E. As qualified by Section I.A. of this Appendix, upon EPA approval of the Project plan(s) required by this Appendix, each Defendant shall complete the

approved Projects according to the approved plan(s). Nothing in this Consent Decree shall be interpreted to prohibit any Defendant from completing the Projects ahead of schedule.

F. Commencing with the first periodic report due pursuant to Section XII (Periodic Reporting) of the Consent Decree, and continuing biannually thereafter until completion of the Project(s), each Defendant shall include in the periodic report information describing the progress of the Project and the Project Dollars expended on the Project.

G. In accordance with the requirements of Paragraph 143 of the Consent Decree, within 90 Days following the completion of each Project, the Defendant responsible for that Project shall submit to EPA for approval of Project closure, a Project completion report that documents:

1. The date the Project was completed;

2. The results and documentation of implementation of the Project, including an estimate of any emission reductions or emission mitigation (*e.g.*, SO_2, NO_x, PM, CO_2) expected to be realized, and the methodology and any calculations used in the derivation of such expected benefits, reductions, or mitigation;

3. The Project Dollars incurred by the Defendant in implementing the Project; and

4. Certification by an authorized representative in accordance with Paragraph 158 of the Consent Decree that the Project has been completed in full satisfaction of the requirements of the Consent Decree and this Appendix.

H. If EPA (after consultation with the Sierra Club) concludes based on the Project completion report or subsequent information provided by a Defendant that a Project has been performed and completed in accordance with the Consent Decree, then EPA will approve completion of the Project for purposes of the Consent Decree.

II. WPL's Potential Environmental Mitigation Projects

A. National Park Service and United States Forest Service Land and Ecological Restoration ($500,000 total)

1. National Park Service Mitigation: Within 45 Days from the Date of Entry of this Consent Decree or 10 Working Days from the receipt of payment instructions from the National Park Service, whichever is later, WPL shall pay $250,000 to the National Park Service in

accordance with 16 U.S.C. § 19jj, for the restoration of land, watersheds, vegetation, and forests using techniques designed to improve ecosystem health and mitigate harmful effects from air pollution. The Project(s) shall focus on one or more areas alleged by Plaintiffs to have been injured by emissions from a Plant covered by the Consent Decree, including but not limited to, Indiana Dunes National Lakeshore, Sleeping Bear Dunes National Lakeshore, Mississippi National River and Recreation Area, Saint Croix National Scenic Waterway, Herbert Hoover National Historic Park, and Effigy Mounds National Monument.

2. Payment of the amount required by Section II.A.1 of this Appendix shall be made to the Natural Resources Damage and Assessment Fund managed by the United States Department of the Interior. Instructions for transferring funds will be provided to WPL by the National Park Service. Upon payment of the required funds into the Natural Resource Damage and Assessment Fund, WPL shall have no further responsibilities regarding the implementation of any Project selected by the National Park Service in connection with this provision.

3. United States Forest Service Mitigation: Within 45 Days from the Date of Entry of this Consent Decree or 10 Working Days from the receipt of payment instructions from the United States Forest Service, whichever is later, WPL shall pay $250,000 to the United States Forest Service in accordance with 16 U.S.C. § 579c, for the improvement, protection, or rehabilitation of lands under the administration of the United States Forest Service. The Project(s) shall focus on one or more areas alleged by Plaintiffs to have been injured by emissions from a Plant in the System, including but not limited to, the Chequamegon-Nicolet National Forest and the Manistee National Forest.

4. Payment of the amount required by Section II.A.3 of this Appendix shall be made to the Forest Service pursuant to payment instructions provided to WPL. Upon payment of the required funds, WPL shall have no further responsibilities regarding the implementation of any Project selected by the Forest Service in connection with this provision.

B. Land Acquisition and Restoration Projects (Up to $1,000,000)

1. Consistent with the requirements of Section I of this Appendix, WPL may submit a plan to EPA for review and approval for the use of up to $1,000,000 in Project Dollars for acquisition and restoration of ecologically significant lands, watersheds, vegetation, and/or forests that are part of, adjacent to, or near WPL's service territories ("Land

Acquisition and Restoration Project"). The Project Dollars for this Project are in addition to the funding described in Section II.A. of this Appendix (Forest Service/Park Service Mitigation).

2. The goal of the Land Acquisition and Restoration Project is the protection through acquisition and/or restoration of ecologically significant lands, watersheds, vegetation, and/or forests using adaptive management techniques designed to improve ecosystem health and mitigate harmful effects from air pollution. In addition, the funding shall be used to provide for public use of acquired areas in a manner consistent with the ecology of the area.

3. For purposes of this Appendix and Section IX of this Consent Decree (Environmental Mitigation Projects), land acquisition means purchase (on behalf of the Defendant or a third-party) of interests in land, including fee ownership, easements, or other restrictions that run with the land that provide for the perpetual protection of the acquired land. Restoration may include, but is not limited to, reforestation or revegetation (using plants native to the area) and/or removal of non-native, invasive plant species. Any restoration action must incorporate the acquisition of an interest in the restored lands sufficient to ensure perpetual protection of the restored land.

4. In addition to the requirements of Section I of this Appendix, the proposed Land Acquisition and Restoration Project plan shall also satisfy the following criteria:

    a. Describe generally the areas proposed to be acquired or restored, including a map clearly identifying the location of the land relative to the Units addressed in this Consent Decree and all city, state, or federal publicly protected lands/parks in the area surrounding the proposed land to be acquired/restored.

    b. Provide a justification of why the area should be considered ecologically and/or environmentally significant and warrants preservation and/or restoration.

    c. Provide the projected cost of the project and a schedule for completing and funding each portion of the project.

    d. Identify any person or entity(s) other than WPL that will be involved in the project, including all owners with interests in the land. WPL shall describe all third-party roles in the action and the basis for asserting that such entity is able and suited to perform the intended role. Any proposed third-party must be legally authorized to perform the proposed action and to

receive Project Dollars.

5. Upon EPA's approval of the Land Acquisition and Restoration Project plan, WPL may transfer up to $1,000,000 of Project Dollars to one or more land acquisition funds, provided that the use of such funds by the recipient is conditioned to use for partial or full implementation of the land acquisition and restoration described in the Land Acquisition and Restoration Project plan. If WPL elects to transfer funds as described in this Paragraph, all Project Dollars shall be transferred within 2 years of the Date of Entry of the Consent Decree.

6. In addition to the information required to be included in the report pursuant to Section I.G of this Appendix, WPL shall include in that report any reports related to this Land Acquisition and Restoration Project that any applicable third-party fund or organization provided to WPL.

7. All Land Acquisition and Restoration Project lands shall be acquired within 5 years of plan approval. If all Land Acquisition and Restoration Project lands are acquired earlier than 5 years after plan approval, WPL shall have no further responsibilities regarding the implementation of the Land Acquisition and Restoration Project upon EPA approval of the report described in Section I.G of this Appendix.

C. Major Solar Photovoltaic Development Project (Up to $5,000,000 total across solar Projects covered by this Section II of Appendix A, less any expenditures on hydro boost or wind boost Projects under Sections II.F. and G. of this Appendix A)

1. Consistent with the requirements of Section I of this Appendix, WPL may propose a plan to execute a long-term power purchase agreement ("PPA") with one or more third-party project developers (the "Project Developers") with respect to the development of a new or an expansion of an existing major solar photovoltaic ("PV") installation or installations located in WPL's service territory.

2. WPL shall execute the PPA as quickly as practicable, but in any event, no later than 2 years after plan approval. WPL shall only be credited Project Dollars on this Project within the first 5 years of performance (as measured from the day that power is first purchased under each PPA). For purposes of calculating the Project Dollars, Defendant shall only count the increment between the wholesale price of solar generated electricity (including the cost of Renewable Resource

Credits ("RECs")[1]) that Defendant is charged under the PPA(s) with respect to any period, minus Defendant's average market clearing price at the Midwest Independent Transmission System Operator ("MISO") system level for such period.

3. The PPA will include a term of at least 10 years for which WPL commits to purchase the power generated and, if generated, acquire associated RECs from the solar PV installations. The PPA shall allow the developer to recoup all of its investment costs within the first 5 years of performance.

4. WPL shall not use and will retire all RECs generated during the first 10 years of performance (as measured from the day that power is first purchased under each PPA) (the "Initial 10 Years") in accordance with all applicable rules, and shall identify these RECs as retired in the Midwest Renewable Energy Tracking System ("M-RETS") or any other tracking system designated as acceptable by the program recognizing the RECs. WPL shall not use the RECs generated during the Initial 10 Years of the PPA(s) for compliance with any renewable portfolio standard ("RPS") or for any other compliance purpose during or after the Initial 10 Years.

5. The Project shall be considered completed for purposes of this Consent Decree after the Initial 10 Years. WPL may choose to continue to purchase power or otherwise continue the project(s) following the Initial 10 Years, but will no longer be bound by the terms governing Environmental Mitigation Projects identified in Section IX of the Consent Decree and this Appendix, including but not limited to limitations on the use of RECs. RECs generated following the Initial 10 Years may be used for any purpose authorized by law, including but not limited to satisfying regulatory requirements or sales of RECs to help offset the additional costs of the PPA.

6. In addition to the requirements of Section I of this Appendix, the plan required to be submitted pursuant to this Section of this Appendix shall satisfy the following criteria:

    a. Describe how the proposed project in the plan is consistent with the requirements of this Section and the Consent Decree, and how the project will result in the emission reductions projected to be reduced pursuant to this Section.

[1] RECs refer to a program in which credits are generated from the creation of renewable power sources, such as solar or wind developments. RECs are known as Renewable Resource Credits in Wisconsin and Renewable Energy Credits in Minnesota, and may have another name in different states.

b. Provide that WPL will enter into a long term PPA with one or more major solar PV developers by no later than 2 years after the date of plan approval.

c. Include an anticipated schedule for issuing Requests for Proposals ("RFP") for major solar PV developments and an overall schedule for implementing this project.

d. Describe the process that WPL will use to solicit bids and select appropriate PV development(s) to participate in the project.

e. Identify the Project Developer that WPL proposes for the PPA, including any proposed third-party who would have a coordination or project management role in the project, but not including prospective developers who would respond to a RFP.

f. Provide that each major solar PV development will have at least 500 kW of capacity (direct current) and will be interconnected with the utility grid with appropriate metering and monitoring to track the net power output and identify the expected capacity (kW) and energy output of the major PV development(s); and

g. Provide that WPL shall report the actual kW hours generated each year for the Initial 10 Years in each report required by Paragraph 155 of the Consent Decree.

7. In addition to the information required to be included in the report pursuant to Section I.G of this Appendix, WPL shall include in that report details of the major PV developments including the total capacity (kW) of each system, components installed, total cost, expected energy output and environmental benefits, and the actual kW hours generated for the Initial 10 Years.

D. Solar Photovoltaic Panel Installation Projects to be Owned by Third-Parties (Up to $2,000,000, but no more than $5,000,000 total across solar Projects covered in this Section II of Appendix A)

1. Consistent with the requirements of Section I of this Appendix, WPL may propose a plan to spend up to $2,000,000 Project Dollars to install conventional flat panel or thin film solar photovoltaics ("PV Project(s)") at state, local, or Tribal government-owned buildings, schools, and/or buildings owned by nonprofit organizations at any location within WPL's service territory. WPL shall implement the PV

Project(s) as described below.

2. A PV Project shall, at a minimum, consist of: (1) the installation of solar panels at a single location with unrestricted solar access, producing at least 10 kW direct current, or, provided WPL can demonstrate in its Project plan that it has the same cost-effectiveness of a 10 kW direct current project (e.g., kW capacity per Project Dollar expenditure), producing at least 5 kW direct current, but not to exceed the total annual electricity baseload of the building the project serves; (2) a grid-tied inverter, appropriately sized for the capacity of the solar panels installed at the location; (3) the appropriate solar panel mounting equipment for the type of roof or project site location; (4) wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator to the utility grid; and (5) appropriate monitoring equipment supported by kiosk-delivered educational software (or comparable educational method) to enable the school students and/or staff to monitor the total and hourly energy output of the system (kW hours), environmental benefits delivered (e.g., approximate pounds of NO_x, SO_2, CO_2 avoided), hourly ambient temperature and cell temperature (C°), irradiance (W/M^2), as well as time sensitive voltage, power, and current metrics.

3. The PV Project shall be installed on the customer side of the meter and ownership of the system, and any environmental benefits that result from the installation of the PV Project(s), including associated RECs, shall be conveyed to the building owner at the site (the "Project Beneficiary").

4. Defendant shall use North American Board of Certified Energy Practitioners ("NACEP") to perform the design and installation of the PV Project(s) to ensure the highest quality installation and performance of the system.

5. Defendant shall ensure that there is a manufacturer parts warranty ("Parts Warranty") in place for the major subcomponents of the PV Project(s), which, at a minimum, covers the solar panels for 25 years and the invertors for 10 years.

6. Defendant also shall fund one or more service contracts ("Project Service Contract(s)") for the benefit of the Project Beneficiary that provides for operation and maintenance of the PV Project(s) for 25 years from the date of its installation. The Project Service Contract(s) shall, at a minimum, provide for annual system checkups and solar module cleaning, and for normal component replacements, including installation of new system components as needed to ensure the ongoing maintenance and performance of the PV Project(s) for no less

than 25 years.

7. Defendant shall fund the Project Service Contract(s) by depositing funds in an escrow account ("Project Escrow") that limits the use of the Project Escrow funds by the Project Beneficiary to use for purposes of maintaining the system for the life of the PV Project.

8. Services under the Parts Warranty and the Project Service Contract shall be performed by third-party provider(s) but be administered by the Project Beneficiary by way of payment from the Project Escrow. Other than with respect to its funding of the escrow, WPL is not responsible for any repair and maintenance costs for the PV Project(s).

9. In addition to the requirements of Section I of this Appendix, the proposed PV Project(s) plan shall also satisfy the following criteria:

    a. Describe how the proposed project(s) in the plan are consistent with the requirements of this Section and the Consent Decree, and how the project(s) will result in the emission reductions projected to be reduced pursuant to this Section.

    b. Include a schedule and budget for completing each portion of the project(s).

    c. Describe the process that Defendant will use to notify potential Project Beneficiaries that they are eligible to participate in the project(s) and solicit their participation.

    d. Describe the process and criteria Defendant will use to select potential Project Beneficiaries, including such factors as base electricity usage, solar access availability, and other relevant criteria.

    e. Provide detailed accounting supporting the costs and activities associated with the Project Service Contract, including the schedule and monetary installments for deposits to the Project Escrow to support the operation and maintenance activities over the life of the system and a demonstration that the Project Escrow includes appropriate restrictions on the Service Contract Beneficiary's use of escrow funds, in accordance with the requirements of this Section.

    f. Identify any person or entity other than WPL that will be involved in the project and describe the third-party's role in the project, the basis for asserting that such entity is able and suited to perform the intended role, and the competitive bidding

process used to solicit third-party interest, if applicable. Any proposed third-party must be legally authorized to perform the proposed role and to receive Project Dollars.

10. In addition to the information required by Section II.D.9 of this Appendix, WPL's final report for the Project(s) shall also identify the government/nonprofit owned buildings where the PV Project(s) were installed, the size of the system(s), the components installed, the total cost(s), and expected energy output and environmental benefits.

E. Fleet Replacement Program (Up to $1,250,000)

1. Consistent with the requirements of Section I of this Appendix, WPL may propose to spend up to $1,250,000 to replace its or publicly owned gasoline and diesel powered fleet vehicles (passenger cars, light trucks, and heavy duty service vehicles) with newly manufactured Alternative Fuels Vehicles (as defined below) and/or compressed natural gas ("CNG") vehicles. The replacement of gasoline and diesel vehicles with such vehicles will reduce emissions of NOx, PM, VOCs, and other air pollutants. Such vehicles shall be owned by WPL or shall be publicly-owned motor vehicles.

2. Definitions:

a. "Alternative Fuels Vehicle" means a Hybrid Vehicle, Plug-in Hybrid Vehicle, Plug-in Battery Vehicle, or Electric Vehicle.

b. "Hybrid Vehicle" means a vehicle that can generate, store, and utilize electric power to reduce the vehicle's consumption of fossil fuel.

c. "Plug-in Hybrid Vehicle" means a vehicle that can be charged from an external source and can generate, store, and utilize electric power to reduce the vehicle's consumption of fossil fuel. These vehicles typically include a larger battery pack to allow an extended range of operation without the use of the gasoline or diesel engine.

d. "Plug-in Battery Vehicle" means a vehicle that does not utilize an internal combustion engine and instead relies entirely on battery power for propulsion.

3. With respect to costs associated with vehicles, Defendant shall only receive credit toward Project Dollars for the incremental cost of Alternative Fuels Vehicles or CNG Vehicles, as compared to the cost of a newly manufactured, similar motor vehicle powered by

conventional diesel or gasoline engines.

4. In addition to the requirements of Section I of this Appendix, the plan required to be submitted pursuant to this Section of this Appendix shall satisfy the following criteria:

    a. Describe how the plan is consistent with the requirements of this Section and the Consent Decree, and how the projects will result in the emission reductions projected to be reduced pursuant to this Section.

    b. Prioritize the replacement or retrofit of diesel powered vehicles to the greatest extent practical and available.

    c. Identify the portions of WPL's fleet and/or publicly-owned fleets in WPL's service territory for participation in this project.

    d. Provide that all vehicles proposed for inclusion in this program will be regular production models that meet all applicable engine standards, certifications, or verifications.

    e. Describe the process and criteria WPL will use to select any fleet operators and owners to participate in the program, consistent with the requirements of this Section.

    f. Describe the rationale and basis (including a discussion of cost) for selecting the make and model of the Alternative Fuel Vehicle(s), CNG Vehicle(s) chosen for this project, including information about other available vehicles and why such vehicles were not selected.

    g. Describe the final disposition of the vehicles that are being replaced.

    h. Propose a method to account for the amount of Project Dollars that will be credited for each replaced vehicle, in accordance with the requirements of this Section.

    i. Certify that the replacement program vehicles will be retained and operated for their useful life.

    j. Identify any person or entity, other than WPL, that will be involved in the project, including any proposed third-party who would have a coordination or project management role, but not including vehicle manufacturers or dealers who would provide

vehicles.

F. Wind Boost Projects (Up to $2,000,000, but no more $2,000,000 total across wind and hydro Projects covered in this Section II of Appendix A)

1. Consistent with the requirements of Section I of this Appendix, WPL may propose a plan to spend up to $2,000,000 in Project Dollars on Projects designed to increase the renewable power production potential of existing wind farms in Wisconsin that are owned by WPL. Producing additional MW generation from renewable wind power is expected to offset coal generation. As required by Paragraph 139 of the Consent Decree, such projects shall be in addition to any other legal obligations, including WPL's obligations under any state Renewable Portfolio Standard ("RPS").

2. Prior to implementation of the project, WPL shall complete a study of equipment, historic production, and wind conditions to customize optimizations and maximize production from individual turbines and the wind site as a whole. The potential improvements may include a control system upgrade, blade tip extensions, winter icing prevention, turbine pitch optimization, and turbine control software.

3. Project Dollar credit shall reflect the difference between WPL's cost in implementing the Project and any economic benefit resulting from the Project. Project Dollar credit shall include those improvements necessary to increase the actual energy output of the resource and shall exclude any regular maintenance costs, Project studies or feasibility analysis. Any additional RECs generated from such Projects (due to such Projects) shall not be available for sale or use toward any State RPS obligation.

G. Hydro Boost Projects (Up to $2,000,000, but no more $2,000,000 total across wind and hydro Projects covered in this Section II of Appendix A)

1. Consistent with the requirements of Section I of this Appendix, WPL may propose a plan to spend up to $2,000,000 in Project Dollars on activities designed to increase the existing hydroelectric facility water utilization and energy output. Producing additional MW generation from renewable hydro power is expected to offset coal generation. As required by Paragraph 139 of the Consent Decree, such Projects shall be in addition to any other legal obligations, including WPL's obligations under any state RPS.

2. The potential improvements may include improving the water wheel design for increased energy output while maintaining the current river water flow and making control system enhancements to maintain

water levels at lower flow rates while continuing electrical generation. The intent of the Projects would be to gain electrical energy production from the renewable resource without changing the river flow characteristics. Such Projects shall comply with the eligibility requirements of EPA's Green Power Partnership (http://www.epa.gov/greenpower/documents/gpp_partnership_reqs.pdf).

3. Project Dollar credit shall reflect the difference between WPL's cost in implementing the Project and any economic benefit resulting from the Project. Project Dollar credit shall include those improvements necessary to increase the actual energy output of the resource and shall exclude any regular maintenance costs, Project studies, or feasibility analysis. Any additional RECs generated from such Projects (due to such Projects) shall not be available for sale or use toward any State RPS obligation.

H. Manure Digester Projects (Up to $750,000)

1. Consistent with the requirements of Section I of this Appendix, WPL may propose a plan for the reduction of pollutants through conversion of food and/or animal waste to biogas or electricity within one or more of WPL's service territories. In its plan, WPL shall propose the purchase and installation of a manure digester for electric production. The manure digester will be owned by a public or nonprofit entity. Installation at a farm, at a school (*e.g.* a university-owned farm), government-owned facilities, or farms or facilities owned by nonprofit groups will be prioritized, but the manure digester may be installed at any farm within WPL's service territory. WPL may spend up to $750,000 in Project Dollars on the manure digester to be expended within 5 years of the date of plan approval. Such a Project will promote solutions to the water quality issues posed by phosphorus and nutrient-containing runoff and generate a biogas that would be used to generate renewable electricity for offsite or facility use.

2. In undertaking this Project, WPL may partner with third-party organizations to handle funding and selection of locations in WPL's service territory. Locations sought shall maximize the "brown power" generation displaced and the phosphorus loading reduced in the host watershed.

3. In addition to the requirements of Section I of this Appendix, the plan required to be submitted pursuant to this Section of this Appendix shall satisfy the following criteria:

    a. Describe how the proposed project is consistent with the

requirements of this Section and the Consent Decree, and how the project will result in the emission reductions projected to be reduced pursuant to this Section.

b. Include a budget and schedule for completing the project on a phased schedule, and the supporting methodologies and calculations for the budget.

I. Energy Efficiency Projects (Up to $200,000)

1. Consistent with the requirements of Section I of this Appendix, WPL may propose a plan to spend Project Dollars in an amount up to $200,000 for the purchase and installation of environmentally beneficial energy efficiency technologies designed to have long-lasting benefits and to minimize the use of electricity and/or natural gas at state, local, or Tribal government-owned buildings, schools, buildings owned by nonprofit organizations, commercial, and/or industrial buildings within WPL's service territory.

2. In addition to the requirements of Section I of this Appendix, the plan required to be submitted pursuant to this Section II of this Appendix A shall satisfy the following criteria:

a. Describe how the proposed projects in the plan are consistent with the requirements of this Section and the Consent Decree, and how the projects will result in the emission reductions projected to be reduced pursuant to this Section.

b. Include a budget and schedule for completing the project on a phased schedule, and the supporting methodologies and calculations for the budget.

c. Describe how WPL shall achieve and maintain the emission reductions associated with the energy efficiency projects.

III. WPSC Potential Environmental Mitigation Projects

A. Grandfather Falls Penstock Upgrade Project (Up to $1,100,000)

1. WPSC may submit a plan to replace two 1310-foot-long, 13.5-foot and 11-foot-diameter wood stave penstocks at the Grandfather Falls hydroelectric facility in accordance with the requirements of this Section ("Grandfather Falls Penstock Upgrade Project"). The Grandfather Falls facility has a total installed capacity of 17.240 MW and is located on the Wisconsin River, Section 31, Rock Falls Township, Lincoln County, Wisconsin. The Grandfather Falls facility

was originally constructed in 1907 and reconstructed in 1938 by WPSC to its current configuration. The Grandfather Falls Penstock Upgrade Project is designed to significantly modernize the facility by replacing the wood stave, concrete cradle suspended construction of the current penstocks with that of steel construction founded on earthen ballast. The current penstocks, by the nature of their construction, have exhibited excessive waste of the water resource through leakage at the many seams formed by the wood staves. The leakage bypasses the two hydroelectric turbines and is returned to the river system, unused. The leakage is measured by monitoring instruments and has ranged between 2,000 to 4,000 gallons per minute, which equates to 0.6% of penstock flow or approximately 0.1 MW. The Grandfather Falls Penstock Upgrade Project is expected to increase the gross generating capacity of the facility by over 400,000 kW hours/year, without changing current river flow characteristics, and to offset fossil fuel generation, thereby reducing emission of SO_2, NO_x, PM and other air pollutants.

2. Up to $1,100,000 in Project Dollars may be credited towards Grandfather Falls Penstock Upgrade Project. These Project Dollars shall act as seed funding for the entire Grandfather Falls Penstock Upgrade Project, which is expected to cost significantly more. The total expected cost of the Grandfather Falls Penstock Upgrade Project is expected to be over $17,000,000 dollars, on the order of 15 to 18 times the Project Dollar amount.

3. Project Dollar credit shall reflect the difference between WPSC's cost in implementing the Project and any economic benefit resulting from the Project. Project Dollar credit shall include those improvements necessary to increase the actual energy output of the resource and shall exclude any regular maintenance costs, Project studies, or feasibility analysis. Any additional RECs generated from such Projects (due to such Projects) shall not be available for sale or use toward any State RPS obligation. Other such work may be performed by WPSC along with the work required by the Grandfather Falls Penstock Upgrade Project, in which case WPSC shall not count its expenditures for any other such work as Project Dollars.

4. Notwithstanding Paragraph 139 of the Consent Decree, nothing in this Consent Decree or Appendix shall prevent WPSC from using the Grandfather Falls Penstock Upgrade Project to satisfy capacity reserve or other similar requirements that it may have, including but not limited to obligations imposed by a regional transmission operator such as the Midwest Independent Transmission System Operator. Furthermore, for purposes of the last clause of Paragraph 139 of the Consent Decree only (*i.e.*, "Defendant will not use any Project, or

portion thereof, to satisfy any obligations that it may have under other applicable requirements of law, including but not limited to any applicable renewable or energy efficiency portfolio standards"), the Project shall be construed as including the equipment and/or work funded by the expenditure of up to $1,100,000 in Project Dollars only.

5. Under existing Wisconsin Law (Act 141), the Grandfather Falls facility is considered a "baseline" hydro facility, which means its ability to generate RECs for RPS compliance is assumed to be fixed at the average of its 2001, 2002, and 2003 annual generation. In accordance with Act 141, if a baseline hydroelectric facility is modified to increase its generation capability, that amount of additional capacity resulting from such modification can be certified to create RECs above the facility's baseline. WPSC shall not seek to certify any additional capacity resulting from penstock replacement, thereby ensuring additional RECs are not available for sale or use towards any state RPS obligation.

B. Land Acquisition and Restoration Projects (Up to $1,100,000)

1. Consistent with the requirements of Section I of this Appendix, WPSC may submit a plan to EPA for review and approval for the use of up to $1,100,000 in Project Dollars for acquisition and restoration of ecologically significant lands, watersheds, vegetation, and/or forests that are part of, adjacent to, or near WPSC's service territories ("Land Acquisition and Restoration Project").

2. The goal of the Land Acquisition and Restoration Project is the protection through acquisition and/or restoration of ecologically significant lands, watersheds, vegetation, and/or forests using adaptive management techniques designed to improve ecosystem health and mitigate harmful effects from air pollution. In addition, the funding shall be used to provide for public use of acquired areas in a manner consistent with the ecology of the area.

3. For purposes of this Appendix and Section IX of this Consent Decree (Environmental Mitigation Projects), land acquisition means purchase (on behalf of the Defendant or a third-party) of interests in land, including fee ownership, easements, or other restrictions that run with the land that provide for the perpetual protection of the acquired land. Restoration may include, but is not limited to, reforestation or revegetation (using plants native to the area) and/or removal of non-native, invasive plant species. Any restoration action must incorporate the acquisition of an interest in the restored lands sufficient to ensure perpetual protection of the restored land.

4. In addition to the requirements of Section I of this Appendix, the proposed Land Acquisition and Restoration Project plan shall also satisfy the following criteria:

    a. Describe generally the areas proposed to be acquired or restored, including a map clearly identifying the location of the land relative to the Units addressed in this Consent Decree and all city, state, or federal publicaly protected lands/parks in the area surrounding the proposed land to be acquired/restored.

    b. Provide a justification of why the area should be considered ecologically and/or environmentally significant and warrants preservation and/or restoration.

    c. Provide the projected cost of the project and a schedule for completing and funding each portion of the project.

    d. Identify any person or entity(s) other than WPSC that will be involved in the project, including all owners with interests in the land. WPSC shall describe all third-party roles in the action and the basis for asserting that such entity is able and suited to perform the intended role. Any proposed third-party must be legally authorized to perform the proposed action and to receive Project Dollars.

5. Upon EPA's approval of the Land Acquisition and Restoration Project plan, WPSC may transfer up to $1,100,000 of Project Dollars to one or more land acquisition funds, provided that the use of such funds by the recipient is conditioned to use for partial or full implementation of the land acquisition and restoration described in the Land Acquisition and Restoration Project plan. If WPSC elects to transfer funds as described in this Paragraph, all Project Dollars shall be transferred within 2 years of the Date of Entry of the Consent Decree.

6. In addition to the information required to be included in the report pursuant to Section I.G of this Appendix, WPSC shall include in that report any reports related to this Land Acquisition and Restoration Project that any applicable third-party fund or organization provided to WPSC.

7. All Land Acquisition and Restoration Project lands shall be acquired within 5 years of plan approval. If all Land Acquisition and Restoration Project lands are acquired earlier than 5 years after plan approval, WPSC shall have no further responsibilities regarding the implementation of the Land Acquisition and Restoration Project upon EPA approval of the report described in Section I.G of this Appendix.

C. Fleet Replacement Program (Up to $1,100,000)

1. Consistent with the requirements of Section I of this Appendix, WPSC may propose to spend up to $1,100,000 to replace its or publicly-owned gasoline and diesel powered fleet vehicles (passenger cars, light trucks, and heavy duty service vehicles) with newly manufactured Alternative Fuels Vehicles (as defined below) and/or compressed natural gas ("CNG") vehicles. The replacement of gasoline and diesel vehicles with such vehicles will reduce emissions of NO_x, PM, VOCs, and other air pollutants. Such vehicles shall be owned by WPSC or shall be publicly-owned motor vehicles.

2. Definitions:

    a. "Alternative Fuels Vehicle" means a Hybrid Vehicle, Plug-in Hybrid Vehicle, Plug-in Battery Vehicle, or Electric Vehicle.

    b. "Hybrid Vehicle" means a vehicle that can generate, store, and utilize electric power to reduce the vehicle's consumption of fossil fuel.

    c. "Plug-in Hybrid Vehicle" means a vehicle that can be charged from an external source and can generate, store, and utilize electric power to reduce the vehicle's consumption of fossil fuel. These vehicles typically include a larger battery pack to allow an extended range of operation without the use of the gasoline or diesel engine.

    d. "Plug-in Battery Vehicle" means a vehicle that does not utilize an internal combustion engine and instead relies entirely on battery power for propulsion.

3. With respect to costs associated with vehicles, Defendant shall only receive credit toward Project Dollars for the incremental cost of Alternative Fuels Vehicles or CNG Vehicles, as compared to the cost of a newly manufactured, similar motor vehicle powered by conventional diesel or gasoline engines.

4. In addition to the requirements of Section I of this Appendix, the plan required to be submitted pursuant to this Section of this Appendix shall satisfy the following criteria:

    a. Describe how the plan is consistent with the requirements of this Section and the Consent Decree, and how the projects will result in the emission reductions projected to be reduced

pursuant to this Section.

b. Prioritize the replacement or retrofit of diesel powered vehicles to the greatest extent practical and available.

c. Identify the portions of WPSC's fleet and/or publicly owned fleets in WPSC's service territory for participation in this project.

d. Provide that all vehicles proposed for inclusion in this program will be regular production models that meet all applicable engine standards, certifications, or verifications.

e. Describe the process and criteria WPSC will use to select any fleet operators and owners to participate in the program, consistent with the requirements of this Section.

f. Describe the rationale and basis (including a discussion of cost) for selecting the make and model of the Alternative Fuel Vehicle(s), CNG Vehicle(s) chosen for this project, including information about other available vehicles and why such vehicles were not selected.

g. Describe the final disposition of the vehicles that are being replaced.

h. Propose a method to account for the amount of Project Dollars that will be credited for each replaced vehicle, in accordance with the requirements of this Section.

i. Certify that the replacement program vehicles will be retained and operated for their useful life.

j. Identify any person or entity, other than WPSC, that will be involved in the project, including any proposed third party who would have a coordination or project management role, but not including vehicle manufacturers or dealers who would provide vehicles.

D. Energy Efficiency Projects (Up to $200,000)

1. Consistent with the requirements of Section I of this Appendix, WPSC may propose a plan to spend Project Dollars in an amount up to $200,000 for the purchase and installation of environmentally beneficial energy efficiency technologies designed to have long-lasting benefits and to minimize the use of electricity and/or natural gas at

state, local, or Tribal government-owned buildings, schools, buildings owned by nonprofit organizations, commercial and/or industrial buildings within WPSC's service territory.

2. In addition to the requirements of Section I of this Appendix, the plan required to be submitted pursuant to this Section III of this Appendix A shall satisfy the following criteria:

    a. Describe how the proposed projects in the plan are consistent with the requirements of this Section and the Consent Decree, and how the projects will result in the emission reductions projected to be reduced pursuant to this Section.

    b. Include a budget and schedule for completing the project on a phased schedule, and the supporting methodologies and calculations for the budget.

    c. Describe how WPSC shall achieve and maintain the emission reductions associated with the energy efficiency projects.

IV. MGE's Potential Environmental Mitigation Projects

A. Fleet Replacement Program (Up to $250,000)

1. Consistent with the requirements of Section I of this Appendix, MGE may propose to spend up to $250,000 to replace its or publicly-owned gasoline and diesel powered fleet vehicles (passenger cars, light trucks, and heavy duty service vehicles) with newly manufactured Alternative Fuels Vehicles (as defined below) and/or compressed natural gas ("CNG") vehicles. The replacement of gasoline and diesel vehicles with such vehicles will reduce emissions of NO_x, PM, VOCs, and other air pollutants. Such vehicles shall be owned by MGE or shall be publicly-owned motor vehicles.

2. Definitions:

    a. "Alternative Fuels Vehicle" means a Hybrid Vehicle, Plug-in Hybrid Vehicle, Plug-in Battery Vehicle, or Electric Vehicle.

    b. "Hybrid Vehicle" means a vehicle that can generate, store, and utilize electric power to reduce the vehicle's consumption of fossil fuel.

    c. "Plug-in Hybrid Vehicle" means a vehicle that can be charged from an external source and can generate, store, and utilize electric power to reduce the vehicle's consumption of fossil

fuel. These vehicles typically include a larger battery pack to allow an extended range of operation without the use of the gasoline or diesel engine.

d. "Plug-in Battery Vehicle" means a vehicle that does not utilize an internal combustion engine and instead relies entirely on battery power for propulsion.

3. With respect to costs associated with vehicles, Defendant shall only receive credit toward Project Dollars for: (1) the incremental cost of Alternative Fuels Vehicles, CNG Vehicles, hybrid gasoline electric vehicles, and/or hybrid diesel electric vehicles, as compared to the cost of a newly manufactured, similar motor vehicle powered by conventional diesel or gasoline engines; and (2) costs associated with infrastructure needed to support such Project.

4. In addition to the requirements of Section I of this Appendix, the plan required to be submitted pursuant to this Section of this Appendix shall satisfy the following criteria:

a. Describe how the plan is consistent with the requirements of this Section and the Consent Decree, and how the projects will result in the emission reductions projected to be reduced pursuant to this Section.

b. Prioritize the replacement or retrofit of diesel powered vehicles to the greatest extent practical and available.

c. Identify the portions of MGE's fleet and/or publicly owned fleets in MGE's service territory for participation in this project.

d. Provide that all vehicles proposed for inclusion in this program will be regular production models that meet all applicable engine standards, certifications, or verifications.

e. Describe the process and criteria MGE will use to select any fleet operators and owners to participate in the program, consistent with the requirements of this Section.

f. Describe the rationale and basis (including a discussion of cost) for selecting the make and model of the Alternative Fuel Vehicle(s), CNG Vehicle(s) chosen for this project, including information about other available vehicles and why such vehicles were not selected.

g. Describe the final disposition of the vehicles that are being replaced.

h. Propose a method to account for the amount of Project Dollars that will be credited for each replaced vehicle, in accordance with the requirements of this Section.

i. Certify that the replacement program vehicles will be retained and operated for their useful life.

j. Identify any person or entity, other than MGE, that will be involved in the project, including any proposed third party who would have a coordination or project management role, but not including vehicle manufacturers or dealers who would provide vehicles.

B. Source Separated Organic Waste Project (Up to $100,000)

1. Consistent with the requirements of Section I of this Appendix, MGE may spend up to $100,000 to help support a source separated organics Project within MGE's service territory. The money shall be used to develop a program to separately collect organic refuse material (*e.g.*, food waste, soiled paper products, diapers, and pet waste) and convert the separated organics to methane gas for electric generation or vehicle fuel.

2. In addition to the information required by Section I of this Appendix, MGE's final report for the Project shall also identify the total cost(s) and expected energy output and environmental benefits.

C. Residential Woodstove/Fireplace Change-Out Program (Up to $250,000)

1. Consistent with the requirements of Section I of this Appendix, MGE may propose a plan to spend no less than $75,000 and up to $250,000 to sponsor a wood burning appliance (*e.g.*, stoves, boilers and fireplaces) replacement and retrofit program that would be implemented by one or more third-party nonprofit organizations or a government entity (the "Woodstove/Fireplace Program").

2. Defendant shall sponsor the implementation of the Woodstove/Fireplace Program within MGE's service territories in Dane County and within MGE's extended service territories in Columbia, Crawford, Iowa, Juneau, Monroe and Vernon Counties, but with a prioritization to funding in Dane County.

3. The air pollutant reductions shall be obtained by replacing, retrofitting,

or upgrading inefficient, higher polluting wood burning appliances, including fireplaces, with cleaner burning appliances and technologies, such as: (1) retrofitting older hydronic heaters (aka outdoor wood boilers) to meet EPA Phase II hydronic heater standards; (2) replacing older hydronic heaters with EPA Phase II hydronic heaters, EPA-certified woodstoves, other cleaner burning, more energy efficient hearth appliances (*e.g.*, wood pellet, gas or propane appliances), or EPA Energy Star qualified heating appliances; (3) replacing non EPA-certified woodstoves with EPA-certified woodstoves or cleaner burning, more energy-efficient hearth appliances; (4) replacing spent catalysts in EPA-certified woodstoves; and (5) replacing/retrofitting wood burning fireplaces with EPA Phase 2 Qualified Retrofit devices or cleaner burning natural gas fireplaces. To qualify for replacement, retrofitting, or upgrading, the wood burning appliance/fireplace must be in regular use in a primary residence during the home-heating season, and preference shall be given to replacement, retrofitting, or upgrading wood burning appliances/fireplaces that are a primary or significant source of residential heat.

4. MGE and the nonprofit organization(s) or government entity that will implement the Woodstove/Fireplace Program shall consult with EPA's Residential Wood Smoke Reduction Team and shall implement the Woodstove/Fireplace Program consistent with the materials available on EPA's Burn Wise website at http://www.epa.gov/burnwise.

5. MGE shall limit the use of Woodstove/Fireplace Program Dollars for third-party administrative costs associated with implementation of the Woodstove/Fireplace Program to no greater than 10% of the Project Dollars that MGE provides to a third-party.

6. The Woodstove/Fireplace Program shall provide incentives for the wood burning appliance and fireplace replacements, retrofits, and upgrades described above in this Section through rebates, vouchers, and/or discounts.

7. The Woodstove/Fireplace Program shall provide educational information and outreach regarding the energy efficiency, health, and safety benefits of cleaner wood burning appliances and the proper operation of appliances. The costs associated with this element of the Woodstove/Fireplace Program shall count towards Project Dollars and will not be considered part of the 10% administrative costs described in Section IV.C.5; however, the costs associated with this element of the Woodstove/Fireplace Program shall be marginal as compared to the total Project Dollars attributed to the Woodstove/Fireplace Program.

8. In addition to the requirements of Section I of this Appendix, the Woodstove/Fireplace Program plan proposed by MGE shall:

    a. Describe how the plan is consistent with the requirements of this Section and the Consent Decree, and how the project will result in the emission reductions projected to be reduced pursuant to this Section.

    b. Identify the governmental entity or nonprofit organization(s) that have agreed to implement the proposed Woodstove/Fireplace Program.

    c. Describe the schedule and the budgetary increments in which MGE shall provide the necessary funding to implement the proposed Woodstove/Fireplace Program.

    d. Describe all of the elements of the proposed Woodstove/Fireplace Program, including measures, to ensure that it is implemented in accordance with the requirements of this Appendix, and that the Program Dollars will be used to support the actual replacement, retrofitting, and/or upgrading of wood burning appliances and fireplaces currently in regular use in a primary residence during the home-heating season.

    e. If the plan proposes to provide rebates or vouchers for the full cost of replacing older hydronic heaters or non EPA-certified woodstoves for income-qualified residential homeowners, describe and estimate the number of energy efficient appliances it intends to make available, the cost per unit, and the criteria the government entity will use to determine which residential homeowners should be eligible for such full cost replacement.

    f. If applicable, identify any organizations or entities with which the governmental entity or nonprofit organization(s) will partner to implement the proposed Woodstove/Fireplace Program, including wood burning appliance trade associations, national or local health organizations, facilities that will dispose of old stoves so that they cannot be resold or reused, individual woodstove/fireplace retailers, propane dealers, housing assistance agencies, local fire departments, and local green energy organizations.

    g. Describe how the program will ensure the inefficient, higher polluting wood burning stoves and fireplaces that are replaced under the proposed Woodstove/Fireplace Program will be properly recycled or disposed.

h. Describe how the government entity or nonprofit organization(s) will conduct outreach within the geographic area of the proposed Woodstove/Fireplace Program.

9. Performance. Upon approval of the Woodstove/Fireplace Program plan by EPA, MGE shall complete the Program according to the approved plan and schedule. Should MGE, despite its best efforts to fund the Woodstove/Fireplace Program at the levels required by and in compliance with this Section, be unable to spend at least $75,000 on the Program, MGE may request EPA's approval to allocate such Program Dollars towards another of the Projects specified in this Appendix pursuant to Section VI.

D. Nitrogen Impact Mitigation in the Yahara River Watershed (Up to $100,000)

1. Consistent with the requirements of Section I of this Appendix, MGE may propose a plan for the mitigation of adverse impacts of nitrogen on the Yahara River Watershed ("Yahara River Watershed Project"). MGE shall spend a total not to exceed $100,000 in Project Dollars on the Yahara River Watershed Project.

2. In addition to the requirements of Section I of this Appendix, the plan required to be submitted pursuant to this Section of this Appendix shall satisfy the following criteria:

a. Describe how the proposed plan is consistent with the requirements of this Section and the Consent Decree, and is projected to mitigate adverse impacts, pursuant to this Section.

b. Provide that project(s) proposed under the plan shall reduce nitrogen loading in the Yahara River Watershed or otherwise mitigate the adverse effects of nitrogen in the Yahara River Watershed that maximize the expected ecological/environmental benefit(s) in relation to the cost and maximize the permanence of the expected benefit(s). Projects that may be approved include, by way of illustration, projects to address eutrophication of the Yahara River or lakes in the watershed from nitrogen loading.

c. Describe generally the expected environmental benefit of the proposed Yahara River Watershed Project, including, to the extent practicable, any expected loading benefits and any co-benefits that would result from reducing nitrogen runoff such as reducing phosphorous runoff and preventing algal blooms.

d. Describe the expected cost of each element of the proposed Yahara River Watershed Project, including the fair market value of any interests in land to be acquired, as applicable.

e. Identify any person or entity other than MGE that will be involved in any aspect of the proposed Yahara River Watershed Project. MGE shall describe the third-party's role in the action and the basis for asserting that such entity is capable of and suited to perform the intended role. For purposes of this Section of the Appendix, third-parties shall only include nonprofits; federal, state, and local agencies; special purpose districts; or universities. Any proposed third-party must be legally authorized to perform the proposed action and to receive Project Dollars.

f. Include a budget and schedule for completing the project on a phased schedule, and the supporting methodologies and calculations for the budget.

3. Actions taken under this Section shall not be counted as a reduction for purposes of offsetting, reducing, or eliminating the pollution control required of any point source discharge National Pollution Discharge Elimination System/Wisconsin Pollution Discharge Elimination System permittee in the Yahara River Watershed. Without limitation because of listing here, the pollution reduction steps taken under this Section may not be counted as a method of phosphorus and nitrogen reduction in any point source's alternative effluent limitation; may not be counted as a verifiable reduction in any adaptive management option; may not generate credits for use in any water quality trading program; and may not be used to comply with cropland or livestock performance standards.

E. Solar Photovoltaic Panel Installation Projects to be Owned by Third-Parties (Up to $500,000 less any expenditures on energy efficiency Projects under Section IV.F of this Appendix A)

1. Consistent with the requirements of Section I of this Appendix, MGE may propose a plan to spend up to $500,000 Project Dollars to install conventional flat panel or thin film solar photovoltaics ("PV Project(s)") at state, local, or Tribal government owned buildings, schools, and/or buildings owned by non-profit organizations at any location within MGE's service territory. MGE shall implement the PV Project(s) as described below.

2. A PV Project shall, at a minimum, consist of: (1) the installation of solar panels at a single location with unrestricted solar access,

producing at least 10 kW direct current, or, provided MGE can demonstrate in its Project plan that it has the same cost-effectiveness of a 10 kW direct current project (*e.g.*, kW capacity per Project Dollar expenditure), producing at least 5 kW direct current, but not to exceed the total annual electricity baseload of the building the project serves; (2) a grid-tied inverter, appropriately sized for the capacity of the solar panels installed at the location; (3) the appropriate solar panel mounting equipment for the type of roof or project site location; (4) wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator to the utility grid; and (5) appropriate monitoring equipment supported by kiosk-delivered educational software (or comparable educational method) to enable the school students and/or staff to monitor the total and hourly energy output of the system (kW hours), environmental benefits delivered (*e.g.*, approximate pounds of NO_x, SO_2, CO_2 avoided), hourly ambient temperature and cell temperature (C°), irradiance (W/M^2), as well as time sensitive voltage, power, and current metrics.

3. The PV Project shall be installed on the customer side of the meter and ownership of the system, and any environmental benefits that result from the installation of the PV Project(s), including associated RECs, shall be conveyed to the building owner at the site (the "Project Beneficiary").

4. Defendant shall use North American Board of Certified Energy Practitioners ("NACEP") to perform the design and installation of the PV Project(s) to ensure the highest quality installation and performance of the system.

5. Defendant shall ensure that there is a manufacturer parts warranty ("Parts Warranty") in place for the major subcomponents of the PV Project(s), which, at a minimum, covers the solar panels for 25 years and the invertors for 10 years.

6. Defendant also shall fund one or more service contracts ("Project Service Contract(s)") for the benefit of the Project Beneficiary that provides for operation and maintenance of the PV Project(s) for 25 years from the date of its installation. The Project Service Contract(s) shall, at a minimum, provide for annual system checkups and solar module cleaning, and for normal component replacements, including installation of new system components as needed to ensure the ongoing maintenance and performance of the PV Project(s) for no less than 25 years.

7. Defendant shall fund the Project Service Contract(s) by depositing funds in an escrow account ("Project Escrow") that limits the use of

the Project Escrow funds by the Project Beneficiary to use for purposes of maintaining the system for the life of the PV Project.

8. Services under the Parts Warranty and the Project Service Contract shall be performed by third-party provider(s) but be administered by the Project Beneficiary by way of payment from the Project Escrow. Other than with respect to its funding of the escrow, MGE is not responsible for any repair and maintenance costs for the PV Project(s).

9. In addition to the requirements of Section I of this Appendix, the proposed PV Project(s) plan shall also satisfy the following criteria:

    a. Describe how the proposed project(s) in the plan are consistent with the requirements of this Section and the Consent Decree, and how the project(s) will result in the emission reductions projected to be reduced pursuant to this Section.

    b. Include a schedule and budget for completing each portion of the project(s).

    c. Describe the process that Defendant will use to notify potential Project Beneficiaries that they are eligible to participate in the project(s) and solicit their participation.

    d. Describe the process and criteria Defendant will use to select potential Project Beneficiaries, including such factors as base electricity usage, solar access availability, and other relevant criteria.

    e. Provide detailed accounting supporting the costs and activities associated with the Project Service Contract, including the schedule and monetary installments for deposits to the Project Escrow to support the operation and maintenance activities over the life of the system and a demonstration that the Project Escrow includes appropriate restrictions on the Service Contract Beneficiary's use of escrow funds, in accordance with the requirements of this Section.

    f. Identify any person or entity other than MGE that will be involved in the project and describe the third-party's role in the project, the basis for asserting that such entity is able and suited to perform the intended role, and the competitive bidding

process used to solicit third-party interest, if applicable. Any proposed third-party must be legally authorized to perform the proposed role and to receive Project Dollars.

10. In addition to the information required by Section IV.E.9 of this Appendix, MGE's final report for the Project(s) shall also identify the government/nonprofit owned buildings where the PV Project(s) were installed, the size of the system(s), the components installed, the total cost(s), and expected energy output and environmental benefits.

F. Energy Efficiency Projects (Up to $200,000, but no more $500,000 total across solar and energy efficiency Projects covered in this Section IV of Appendix A)

1. Consistent with the requirements of Section I of this Appendix, MGE may propose a plan to spend Project Dollars in an amount up to $200,000 for the purchase and installation of environmentally beneficial energy efficiency technologies designed to have long-lasting benefits and to minimize the use of electricity and/or natural gas at state, local, or Tribal government owned buildings, schools, buildings owned by nonprofit organizations, commercial and/or industrial buildings within MGE's service territory.

2. In addition to the requirements of Section I of this Appendix, the plan required to be submitted pursuant to this Section of this Appendix shall satisfy the following criteria:

a. Describe how the proposed projects in the plan are consistent with the requirements of this Section and the Consent Decree, and how the projects will result in the emission reductions projected to be reduced pursuant to this Section.

b. Include a budget and schedule for completing the project on a phased schedule, and the supporting methodologies and calculations for the budget.

c. Describe how MGE shall achieve and maintain the emission reductions associated with the energy efficiency projects.

V. We Energies' Potential Environmental Mitigation Projects

A. National Park Service or United States Forest Service Land and Ecological Restoration ($21,000)

1. National Park Service Mitigation: Within 45 Days from the Date of Entry of this Consent Decree or 10 Working Days from the receipt of

payment instructions from the National Park Service, whichever is later, We Energies shall pay $10,500 to the National Park Service in accordance with 16 U.S.C. § 19jj for the restoration of land, watersheds, vegetation, and forests using techniques designed to improve ecosystem health and mitigate harmful effects from air pollution. The project(s) shall focus on one or more areas alleged by Plaintiffs to have been injured by emissions from a Plant covered by the Consent Decree, including but not limited to, Indiana Dunes National Lakeshore, Sleeping Bear Dunes National Lakeshore, Mississippi National River and Recreation Area, Saint Croix National Scenic Waterway, Herbert Hoover National Historic Park, and Effigy Mounds National Monument.

2. Payment of the amount required by Section V.A.1 of this Appendix shall be made to the Natural Resources Damage and Assessment Fund managed by the United States Department of the Interior. Instructions for transferring funds will be provided to We Energies by the National Park Service. Upon payment of the required funds into the Natural Resource Damage and Assessment Fund, We Energies shall have no further responsibilities regarding the implementation of any project selected by the National Park Service in connection with this provision.

3. United States Forest Service Mitigation: Within 45 Days from the Date of Entry of this Consent Decree or 10 Working Days from the receipt of payment instructions from the United States Forest Service, whichever is later, We Energies shall pay $10,500 to the United States Forest Service in accordance with 16 U.S.C. § 579c, for the improvement, protection, or rehabilitation of lands under the administration of the United States Forest Service. The project(s) shall focus on one or more areas alleged by Plaintiffs to have been injured by emissions from a Plant covered by the Consent Decree, including but not limited to, the Chequamegon-Nicolet National Forest and the Manistee National Forest.

4. Payment of the amount required by Section V.A.3 of this Appendix shall be made to the Forest Service pursuant to payment instructions provided to We Energies. Upon payment of the required funds, We Energies shall have no further responsibilities regarding the implementation of any project selected by the Forest Service in connection with this provision.

VI. Unspent Project Dollars (Each Defendant)

A. If, as of 5 years from Date of Entry of this Consent Decree, there are any funds allocated for a Defendant's individual Project Dollar obligations to

comply with the requirements in Section IX (Environmental Mitigation Projects) and this Appendix of the Consent Decree that have not been expended, and are not expected to be expended ("Unspent Project Dollars"), the Defendant may, upon approval of EPA (in consultation with Sierra Club), allocate those "Unspent Project Dollars" towards another of the Projects specified in this Appendix, whether or not such Defendant was originally designated to perform such Project. Defendant shall provide notice pursuant to Section XIX (Notices) and Section XIII (Review and Approval of Submittals) of the Consent Decree of the amount of such Unspent Project Dollars and provide a proposed plan and schedule for one or more new Environmental Mitigation Projects to satisfy the requirements of this Consent Decree.

B. In addition to the requirements of Section I of this Appendix, the plan required to be submitted pursuant to this Section of this Appendix shall satisfy the following criteria:

1. Provide for the expenditure of all remaining Unspent Project Dollars.

2. Describe the reason all remaining Unspent Project Dollars have not been allocated and/or spent.

3. Describe how the proposed projects in the plan are consistent with the requirements of this Section and the Consent Decree, and how the projects will result in the emission reductions projected to be reduced pursuant to this Section.

4. Include a budget and schedule for completing the project on a phased schedule, and the supporting methodologies and calculations for the budget.