

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
VICINITY ENERGY KANSAS CITY, INC.) No. APCP-2021-007
)
)
)

CONSENT AGREEMENT

The issuance of this voluntary Consent Agreement No. APCP-2020-007 by the Missouri Department of Natural Resources (“Department”) is a formal administrative action taken by the State of Missouri after conference with VICINITY ENERGY KANSAS CITY, INC., formerly known as VEOLIA ENERGY KANSAS CITY, INC. (“Vicinity”). The parties agree this voluntary Consent Agreement is being issued to administer, implement, and enforce the purposes of the Missouri Air Conservation Law, Chapter 643, RSMo, and its implementing regulations, and is not the result of any past or current violations by Vicinity. The parties agree that this Consent Agreement is being issued as an administrative order under 643.060(4), RSMo. Vicinity further agrees that a failure to comply with this Consent Agreement is a violation of the Missouri Air Conservation Law under Section 643.151, RSMo.

BACKGROUND

On June 22, 2010, the U.S. Environmental Protection Agency (“EPA”) revised the primary Sulfur Dioxide (“SO₂”) National Ambient Air Quality Standard (“NAAQS”) or 2010 SO₂ standard by establishing a new 1-hour standard of 75 parts per billion (“ppb”).

Based on ambient monitoring data from 2010-2012, an area in a portion of Jackson County (Kansas City area) was in violation of the 2010 SO₂ standard. Based on the violations the area was designated nonattainment through a final rule published on August 5, 2013.

At the time of designation, there were 24 small sources of SO₂ in the area, each emitting less than 5 tons per year (“tpy”), and one large source: a coal-fired steam generating plant operated by Vicinity. In 2016, Vicinity proactively and voluntarily converted the plant to natural gas. Vicinity completed burning the last remaining inventory of residual coal stock in early 2017. Since the beginning of 2016, when Vicinity switched to natural gas, monitored SO₂ concentrations in the nonattainment area have declined substantially. As a result of Vicinity’s voluntary conversion to gas, the monitored design value in the nonattainment area initially came into compliance with the 2010 SO₂ standard based on the 2015-2017 monitoring data.

On July 9, 2020, EPA promulgated a final rule called a Clean Data Determination for the Jackson County SO₂ nonattainment area. This provided formal acknowledgement that the full nonattainment area had come into compliance with the 2010 SO₂ standard. Following issuance of the Clean Data Determination, the Department developed a maintenance plan and redesignation request for the nonattainment area and submitted them to EPA on February 17, 2021. Once EPA approves the maintenance plan and redesignation request, the area will be formally redesignated from nonattainment to attainment for the 2010 SO₂ standard.

However, EPA has stated they will be unable to approve the maintenance plan for the nonattainment area until the Department submits another State Implementation Plan (“SIP”) revision. EPA states that this additional SIP revision must include an enforceable mechanism to ensure the emission reductions resulting from the fuel change at Vicinity remain permanent. The purpose of this Consent Agreement is to satisfy this request from EPA. This Consent Agreement

supplements the maintenance plan for the Jackson County SO₂ nonattainment area. This supplement to the maintenance plan will allow EPA to approve the maintenance plan and formally redesignate the Jackson County SO₂ nonattainment area to attainment for the 2010 SO₂ standard. This Consent Agreement acknowledges that Vicinity ceased the purchase and burning of coal on its own accord 4 years before this Consent Agreement was requested in order to demonstrate its environmental commitment to the City of Kansas City and the State of Missouri and as a responsible environmental steward. Nothing in this Consent Agreement is intended to constitute an admission or statement by Vicinity that Vicinity has adversely impacted or has the potential to adversely impact the 2010 SO₂ standard in Jackson County, Missouri.

In consideration of the mutual promises contained herein, the Department and Vicinity agree as follows:

AGREEMENT

1. Vicinity agrees to continue the operation of their Boilers 1A, 6, 7 and 8 as set forth below. This program is sufficient to maintain the 2010 SO₂ standard in the Jackson County SO₂ nonattainment area.

A. Boilers 1A, 6, 7, and 8 Restrictions

- i. Vicinity shall not combust coal in Boilers 1A, 6, 7 and 8.
- ii. According to Special Condition 1.A. of Construction Permit # CP122016-009, Vicinity is currently required to exclusively combust natural gas in Boilers 1A, 6, and 8. Also, according to the Operational Limitation of Permit Condition 006 of Operating Permit #OP2018-006A, Vicinity is currently required to exclusively combust natural gas in Boilers 1A, 6, 7 and 8. Vicinity may pursue future permit modifications to allow the use of

alternative fuels in Boilers 1A, 6, 7 and 8. The Department agrees that if such permit modifications are approved by the permitting authority pursuant to 10 CSR 10-6.060, Vicinity will not be in violation of this agreement so long as the alternative fuels are among those listed below:

- a. Natural gas;
 - b. Ultra-low sulfur fuel oil that contains no more than 15 parts per million (ppm) sulfur content by volume;
 - c. Biofuel that contains no more than 15 ppm sulfur content by volume;
 - d. Any blend of ultra-low sulfur fuel oil and biofuel that contains no more than 15 ppm sulfur content by volume.
- iii. The requirement in paragraph 1.A.ii. of this Consent Agreement shall not imply or suggest that the permitting authority will grant any such future permit modifications. The requirement is only intended to state that Vicinity will not be in violation of this Consent Agreement, which is written for the purpose of supporting the maintenance plan and redesignation request for the Jackson County SO₂ nonattainment area, in the event the permitting authority grants such future permit modifications.

B. Monitoring / Recordkeeping Requirements (Boilers 1A, 6, 7 and 8)

- i. Vicinity shall determine compliance with paragraph 1.A. by using fuel delivery records.
- ii. Vicinity must maintain a record of fuel deliveries.

- iii. Vicinity must maintain the fuel supplier information to certify all fuel deliveries. Bills of lading and/or other fuel delivery documentation containing the following information for all fuel purchases or deliveries are deemed acceptable to comply with the requirements of this agreement:
 - a) The name, address, and contact information of the fuel supplier;
 - b) The type of fuel;
 - c) The sulfur content or maximum sulfur content expressed in percent sulfur by weight or in ppm sulfur; and
 - d) The heating value of the fuel
- iv. Vicinity shall also maintain a record of the current inventory and the date of removal of all coal handling equipment located at the facility.
- v. Vicinity shall maintain all records required by this agreement for not less than five years and shall make them available immediately to any Department personnel upon request.
- vi. Vicinity shall report to the Air Pollution Control Program's Compliance/Enforcement Section, P.O. Box 176, Jefferson City, MO 65102, no later than 10 days after the end of the month during which any fuel not listed in paragraph 1.A.ii. of this Consent Agreement is combusted in Boilers 1A, 6, 7 or 8.

C. Stipulated Penalties

If Vicinity fails to comply with any requirement in paragraphs 1.A or 1.B of this Consent Agreement, Vicinity will be in violation of this Consent Agreement and shall pay stipulated penalties according to the following schedule. The penalties

set forth below are per day penalties, which are to be assessed beginning with the first day of the violation. The Department has the discretion to waive or defer any stipulated penalties.

Period of Noncompliance	Penalty
1 st through 30 th day	\$100.00 a day
31 st through 60 th day	\$500.00 a day
Beyond 61 days	\$1,000.00 a day

All penalties shall be paid within 45 calendar days of the date of notice of noncompliance. All penalties shall be paid by check made payable to “Jackson County Treasurer, as custodian for the Jackson County School Fund”, and delivered to

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, Missouri 65201-0477

If any violation of this Consent Agreement is also enforceable by another agreement or regulatory requirement, the Department agrees that it may only seek to enforce either the stipulated penalties discussed in this paragraph, or the penalty for the violation of the specified regulatory requirement, not both, against Vicinity.

D. Upon request of Vicinity, the Department may in its unreviewable discretion impose a lesser penalty or no penalty at all for violations subject to stipulated penalties

OTHER PROVISIONS

2. By signing this Consent Agreement, all signatories assert that they have read and understand the terms of this Consent Agreement, that they had the opportunity to consult with legal counsel, and that they have the authority to sign this Consent Agreement on behalf of their respective parties.

3. The provisions of this Consent Agreement shall apply and be binding upon the parties of this Consent Agreement, their heirs, assignees, successors, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties agreeing hereto. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not affect the responsibilities of Vicinity under this Consent Agreement. If Vicinity sells all or the majority of its assets, then Vicinity shall cause as a condition of such sale, that the buyer will assume the obligations of Vicinity under this Consent Agreement in writing. In such event, Vicinity shall provide 30 days prior written notice of such assumption to the Department. This provision shall have no bearing on any change of control of Vicinity or Vicinity's parent.

4. This Consent Agreement may only be modified upon the mutual written agreement of Vicinity and the Department.

5. The parties agree that the Department will submit this Consent Agreement to EPA as a SIP revision, and as such, is subject to EPA approval. The parties further agree that after EPA has approved the SIP revision that contains this Consent Agreement, any subsequent modifications to this Consent Agreement, will require approval from EPA before such modifications would take effect.

6. The parties agree that this Consent Agreement shall not be construed as a waiver or a modification of any requirements of the Missouri Air Conservation Law and regulations or any other source of law, and that this Consent Agreement does not resolve any claims based on any failure by Vicinity to meet the requirements of this Consent Agreement, or claims for past, present, or future violations of any statutes or regulations.

7. This Consent Agreement is intended to update the federally enforceable requirements for Vicinity based on the current and actual conditions at the facility.

8. This Consent Agreement shall be construed and enforced according to the laws of the State of Missouri, and the terms stated herein shall constitute the entire and exclusive agreement of the parties hereto with respect to the matters addressed herein. This Consent Agreement may not be modified orally.

9. If any provision of this Consent Agreement is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

10. This Consent Agreement will become final, effective, and fully enforceable by the Department once it is executed by both parties. The Department shall send a fully executed copy of this Consent Agreement to Vicinity.

TERMINATION

11. This Consent Agreement shall be terminated upon mutual written agreement of Vicinity and the Department.

CORRESPONDENCE AND DOCUMENTATION

12. Correspondence or documentation with regard to this Consent Agreement shall be directed to the following persons, subject to change upon written notification from either party:

For the Department:

Compliance and Enforcement Section Chief
Air Pollution Control Program
P.O. Box 176
Jefferson, City, Missouri 65102-0176

For Vicinity:

Environmental Department
Vicinity Energy Kansas City, Inc.
115 GRAND AVE
Kansas City, Missouri 64106

Legal Department
Vicinity Energy Kansas City, Inc.
115 GRAND AVE
Kansas City, Missouri 64106

RIGHT OF APPEAL

By signing this Consent Agreement, Vicinity waives any right to appeal, seek judicial review, or otherwise challenge this Consent Agreement pursuant to Sections 643.130, 643.085, or 621.250, RSMo, Chapters 536, 643, RSMo, or any other source of law.

AGREED TO AND ORDERED

MISSOURI DEPARTMENT OF
NATURAL RESOURCES

Kyra L. Moore

Ms. Kyra L. Moore, Deputy Director
Division of Environmental Quality
Missouri Department of
Natural Resources

Date: 6/25/2021

VICINITY ENERGY KANSAS
CITY, INC.

Sean Caldwell

Mr. Sean Caldwell, Dir of EHS
Vicinity Energy

Date: 6/24/21

6/24/21