Federal Operating Permit
Article 3

This permit is based upon Federal Clean Air Act acid rain permitting requirements of Title IV, federal operating permit requirements of Title V, and Chapter 80, Article 3 and Chapter 140 of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution. Until such time as this permit is reopened and revised, modified, revoked, terminated or expires, the permittee is authorized to operate in accordance with the terms and conditions contained herein. This permit is issued under the authority of Title 10.1, Chapter 13, §10.1-1322 of the Air Pollution Control Law of Virginia. This permit is issued consistent with the Administrative Process Act, 9 VAC 5-80-360 through 9 VAC 5-80-700, and 9 VAC 5-140-10 though 9 VAC 5-140-900 of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution.

Authorization to operate a Stationary Source of Air Pollution as described in this permit is hereby granted to:

Permittee Name:	Virginia Electric and Power Company
Facility Name:	Dominion Generation - Yorktown Power Station
Facility Location:	1600 Waterview Road Yorktown, Virginia 23692
Registration Number:	60137
Permit Number:	TRO - 60137

This permit includes the following programs:
Federally Enforceable Requirements – Clean Air Act (Sections I through VIII)
Federally Enforceable Requirements – Title IV Acid Rain (Section IX)
Federally Enforceable Requirements – NO_x Budget Trading Requirements (Section X)
Federally Enforceable Requirements – Clean Air Interstate Rule (CAIR) (Section XI)
State Only Enforceable Requirements (Section XI)

January 1, 2008
Effective Date

December 31, 2012
Expiration Date

_____
Francis L. Daniel

December 27, 2007
Signature Date

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I. Facility Information

Permittee
Virginia Electric and Power Company
5000 Dominion Boulevard
Glen Allen, Virginia 23060

Responsible Official
Josh Bennett
Dominion - Yorktown Power Station Director

Acid Rain Designated Representative/NO_x Budget Trading Authorized Account Representative
C. D. Holley
Vice-President – Fossil & Hydro
USEPA ATS-AAR ID Number 602099

Facility
Dominion - Yorktown Power Station
1600 Waterview Road
Yorktown, Virginia 23692

Contact Person
Cathy C.Taylor
Director, Environmental Support
(804) 273-2929

County-Plant Identification Number: 51-199-00001
ORIS Code and/or EIA Facility ID (for non-EGU units)**:** 3809

NATS Facility Identification Number: 3809

Facility Description: SIC Code 4911 (Electrical Power Generation) and NAICS ID Code 221112 (Fossil Fuel Electric Power Generation). The facility combusts fossil fuels, for the generation of electrical power, in two (2) coal-fired steam generators and one (1) residual oil fired steam generator. The three utility boilers also fire #2 fuel oil. Two of the three boilers are capable of firing natural gas, two are capable of firing petroleum coke, two are capable of consuming boiler solvent cleaning solution, one is capable of firing refinery gas, and one is capable of firing waste pond bottoms. The two coal-fired boilers have low- NO_x burners, improved overfire air systems and ammonia or urea injection for voluntary NO_x reduction. Other emission units are two fluid heaters, and coal receiving, conveying and reclaim systems. This is a major source subject to Title V and an acid rain source subject to Title IV of the Clean Air Act Amendments of 1990.

The facility is operating under a consent decree from EPA. Specific conditions from the decree associated with this facility have been added to the permit.

II. Emission Units

Equipment to be operated consists of:

Emission Unit ID	Stack ID	Emission Unit Description	Size/Rated Capacity*	Pollution Control Device (PCD) Description	PCD ID	Pollutant Controlled	Applicable Permit Date
Fuel Burning Equipment							
ES-1A *ES-1B* *ES-1C* *ES-1D* *ES-1E*	*EP-0*	*ES-1 – Combustion Engineering tangential-fired boiler (1957). Fires coal (primary), petroleum coke, distillate oil, natural gas and refinery gas. May consume solvent solution or use borate injection, such as GAM-60 to coat furnace walls.*	*1697 mmBtu/hr (nominal)*	*Western Precipitator 9VG12 cold-side ESP and Koppers- Custom Design Multicyclone. Equipped with low-* NO_x *burners, modified overfire air and ammonia or urea injection system for voluntary* NO_x *control.*	*CD-1A* *CD-1B* *CD-1C*	*PM* NO_x	*01/13/94 NSR; 09/03/96 SOP; 05/02/03 Title IV Phase II Acid Rain Permit.*
ES-2A *ES-2B* *ES-2C*	*EP-0*	*Unit ES-2 – Combustion Engineering tangential-fired boiler (1959). Fires coal (primary), petroleum coke and distillate oil. May consume solvent solution, cofire pond bottoms or use borate injection, such as GAM-60 to coat furnace walls.*	*1745 mmBtu/hr (nominal)*	*Environmental Elements – Custom Design cold-side ESP.* *Equipped with low-* NO_x *burners, modified overfire air and ammonia or urea injection system for voluntary* NO_x *control.*	*CD-2* *CD-2B*	*PM* *PM-10* NO_x *Arsenic* *Beryllium* *Cadmium* *Chromium* *Manganese* *Nickel*	*01/13/94 NSR; 09/03/96 SOP; 08/23/99 NSR; 05/02/03 Title IV Phase II Acid Rain Permit.*
ES-3A *ES-3B* *ES-3C* *ES-3D*	*EP-3*	*Unit ES-3 – Combustion Engineering tangential-fired boiler (1974). Fires residual oil (primary), on-specification used oil, natural gas and distillate fuel oil. Fuel oils may contain additives, added either on-site or off-site.*	*8061 mmBtu/hr (nominal)*	*Universal Oil Products – Custom Design Multicyclone*	*CD-3*	*PM*	*09/03/96 SOP; 05/02/03 Title IV Phase II Acid Rain Permit.*
ES-4	*EP-4*	*Struthers distillate oil-fired fluid heater (1972).*	*20.5 mmBtu/hr (nominal)*	*N/A*	*N/A*	*N/A*	*N/A*

Emission Unit ID	Stack ID	Emission Unit Description	Size/Rated Capacity*	Pollution Control Device (PCD) Description	PCD ID	Pollutant Controlled	Applicable Permit Date
ES-5	*EP-5*	*Radco distillate oil-fired fluid heater (1975).*	*40.0 mmBtu/hr (nominal)*	*N/A*	*N/A*	*N/A*	*N/A*
Coal Handling							
ES-6a	*EP-6*	*Coal receiving from coal car unloading*	*600 tons coal/hr (nominal)*	*Enclosures*	*N/A*	*PM PM-10*	*N/A*
ES-6b	*EP-6*	*Coal conveying system (Drop points DP-1 to DP-9)*	*600 tons coal/hr (nominal)*	*Enclosures and fabric filter*	*N/A*	*PM PM-10*	*N/A*
ES-6c	*EP-6*	*Coal crusher (Drop point DP-3)*	*600 tons coal/hr (nominal)*	*Enclosures*	*N/A*	*PM PM-10*	*N/A*
ES-6d	*EP-6*	*Coal pile storage and handling (bulldozer and wind erosion)*	*600 tons coal/hr (nominal)*	*N/A*	*N/A*	*PM PM-10*	*N/A*

*The Size/Rated capacity is provided for informational purposes only, and is not an applicable requirement.

III. Fuel Burning Equipment Requirements – (Units ES-1 to ES-5)

A. Limitations

1. **Fuels for Units ES-1 and ES-2** – The approved fuels for Unit ES-1 are coal (primary), petroleum coke, distillate oil, natural gas and refinery gas. The approved fuels for Unit ES-2 are coal (primary), petroleum coke and distillate oil. Distillate oil is defined as fuel oil that meets the specifications for fuel oil numbers 1 or 2 under the American Society for Testing and Materials, ASTM D396 "Standard Specification for Fuel Oils." Units ES-1 and ES-2 may also consume boiler cleaning solvent solution. Unit ES-2 may also co-fire pond bottoms. A change in the fuels may require a permit to modify and operate.
   (9 VAC 5-80-490 B1)

2. **Fuels for Unit ES-3** – The approved fuels for Unit ES-3 are residual oil (primary), on-specification used oil, natural gas and distillate oil. Residual oil is defined as fuel oil that meets the specifications for fuel oil numbers 4, 5 or 6 under the American Society for Testing and Materials ASTM D396, "Standard Specification for Fuel Oils." Distillate oil is defined as fuel oil that meets the specifications for fuel oil numbers 1 or 2 under the American Society for Testing and Materials, ASTM D396 "Standard Specification for Fuel Oils." A change in the fuels may require a permit to modify and operate.
   (9 VAC 5-80-490 B1)

3. **Fuel for Units ES-4 and ES-5** – The approved fuel for Units ES-4 and ES-5 is distillate oil. Distillate oil is defined as fuel oil that meets the specifications for fuel oil numbers 1 or 2 under the American Society for Testing and Materials, ASTM D396 "Standard Specification for Fuel Oils." A change in the fuels may require a permit to modify and operate.
   (9 VAC 5-80-490 B1)

4. **Emission Controls for Unit ES-1** – Particulate matter emissions and hazardous air pollutants (HAPs) emitted as particulate matter from the consumption of all approved fuels in Unit ES-1 shall be controlled by a multicyclone and an electrostatic precipitator during the combustion of all approved fuels. The multicyclone and electrostatic precipitator shall be provided with adequate access for inspection and shall be operating properly when Unit ES-1 is operating.
   (9 VAC 5-80-490 and Condition 3 of 01/13/94 NSR permit)

5. **Emission Controls for Unit ES-2** – Particulate matter emissions and hazardous air pollutants (HAPs) emitted as particulate matter from the consumption of all approved fuels in Unit ES-2 shall be controlled by an electrostatic precipitator. The electrostatic precipitator shall be provided with adequate access for inspection and shall be operating properly when Unit ES-2 is operating.
   (9 VAC 5-80-490, Condition 4 of 01/13/94 NSR permit and Condition 3 of 08/23/99 NSR permit)

6. **Emission Controls for Unit ES-3** – Particulate matter emissions from Unit ES-3 shall be controlled by a multicyclone. The multicyclone shall be provided with adequate access for inspection and shall be operating properly when Unit ES-3 is operating.
   (9 VAC 5-80-490)

7. **Maximum Pond Bottoms Hourly Combustion Rate for Unit ES-2** – Waste pond bottoms shall be co-fired with coal only in Unit ES-2 and shall be delivered to the boiler from a bunker predesignated for a coal and bottoms blend at a rate not exceeding ten (10) tons of bottoms per hour, expressed on a dry weight basis.
(9 VAC 5-80-490 and Condition 5 of 08/23/99 NSR permit)

8. **Maximum Pond Bottoms Annual Combustion Rate for Unit ES-2** – Waste pond bottoms combustion shall not exceed 10,000 tons, expressed on a dry weight basis, of onsite waste pond bottoms per year, calculated monthly as the sum of each consecutive 12-month period. Use of any sources of bottoms other than the "Finger" ponds and "Oil Retention" pond may require additional sampling and hazardous air pollutant (HAP) analyses and a modification to this permit.
(9 VAC 5-80-490 and Condition 6 of 08/23/99 NSR permit)

9. **Cleaning Solution Consumption Restriction in Units ES-1 and ES-2** – The consumption of boiler cleaning solvent solution shall only be conducted in one unit at a time.
(9 VAC 5-80-490 and Condition 5 of 01/13/94 NSR permit)

10. **Maximum Solvent Consumption Rate for Units ES-1 and ES-2** – Units ES-1 and ES-2, combined, shall consume no more than 360,000 gallons per year of boiler cleaning solvent solution, calculated each month boiler cleaning solvent solution is consumed as the sum of the previous twelve consecutive months (90,000 gallons of boiler cleaning solvent solution + 270,000 gallons of water added during 3 rinses of 90,000 gallons.)
(9 VAC 5-80-490 and Condition 5 of 01/13/94 NSR permit)

11. **PM Emission Limits for Units ES-1 to ES-5** – No owner or other person shall cause or permit to be discharged into the atmosphere from any fuel burning equipment installation any gaseous products of combustion containing particulate emissions in excess of the following limits:

Emissions Unit	Heat Input (mmBtu/hr)	Allocated Particulates (lbs/hr)
Unit ES-1	1697.0	306.0
Unit ES-2	1745.0	188.5
Unit ES-3	8061.0	661.0
Unit ES-4 (Oil Tank Heater)	20.5	0.3
Unit ES-5 (Oil Tank Heater)	40.0	0.6

For fuel burning equipment installations with total capacity in excess of 10 billion Btu per hour, the maximum allowable emission ratio, E, in pounds of particulate per million Btu input, shall be 0.1 pounds of particulate per million Btu input. Maximum allowable particulate emissions for each fuel burning equipment unit shall be the product of the rated capacity and the emission ratio. The individual unit particulate emissions allocations may be revised by the permittee in accordance with 9 VAC 5-40-910.
(9 VAC 5-40-900, 9 VAC 5-40-910 and 9 VAC 5-80-490)

12. **SO_2 Emission Limit for Units ES-1 to ES-5** – No owner or other person shall cause or permit to be discharged into the atmosphere from any fuel burning equipment installation any sulfur dioxide emissions in excess of the following limit:

SO_2 (for Units ES-1 to ES-5, combined)	30,528 lbs/hr

The maximum emissions shall be determined by the equation S=2.64K, where S = allowable emission of sulfur dioxide expressed in pounds per hour and K = heat input capacity expressed in million Btu per hour. Compliance with this condition shall be demonstrated using a continuous emissions monitoring system in accordance with 40 CFR Part 75 and shall be based on a 30-day rolling average.
(9 VAC 5-40-930 and 9 VAC 5-80-490)

13. **PM/PM_{10} Emission Limit for Unit ES-2 Pond Bottoms Combustion** – Criteria pollutant and hazardous air pollutant (HAP) emissions from combustion of waste pond bottoms in Unit ES-2 shall not exceed the limits specified below:

	Hourly	Annual
Particulate Matter/PM_{10}	25.0 lbs/hr	12.5 tons/yr

Exceedance of either pond bottoms combustion rate limit specified in Conditions 7 or 8 of this section shall be considered credible evidence of the exceedance of emission limits.
(9 VAC 5-80-110, 9 VAC 5-80-490 and Condition 7 of 08/23/99 NSR permit)

14. **NO_x Emission Limit for Units ES-1 and ES-2 Solvent Consumption** – Emissions from disposal of solvent solution in Units ES-1 and ES-2, combined, shall not exceed limits specified below:

	Hourly	Annual
Nitrogen Dioxide (as NO_2)	700.0 lbs/hr	21.0 tons/yr

Noncompliance with the solvent combustion limitations specified in Condition 10 of this section shall be considered credible evidence of the exceedance of emission limits.
(9 VAC 5-80-490 and Condition 10 of 01/13/94 NSR permit)

15. **Facility Ozone Season NO_x Emission Limits Beginning 2008** – The total nitrogen oxide (NO_x) emissions from Dominion – Yorktown Power Station, and Dominion - Chesapeake Energy Center, combined, shall not exceed 5,000 tons from June 1 to August 31 (inclusive) per calendar year, starting in the year 2008. Virginia Electric and Power Company shall determine the actual NO_x emission released from the Dominion - Yorktown Power Station from June 1 to August 31 of each calendar year by the use of emission rates in lbs/million Btu collected in accordance with the provisions of 40 CFR 60, and the total heat input during the period for each unit (from fuel consumption and fuel analysis data.) The results and any supporting data the Department may request shall be submitted to the Director, Tidewater Regional Office by October 15 of each calendar year.
(9 VAC 5-80-490 and Condition 4 of 09/03/96 State Operating Permit)

16. **Visible Emission Limits for Units ES-1, ES-2, ES-3, ES-4 and ES-5** – Visible emission at boiler stack EP-0 while burning any approved fuel in Units ES-1 or ES-2, except during the co-firing of boiler cleaning solvent solution or waste pond bottoms; boiler stack EP-3 while burning any approved fuel in Unit ES-3; stack EP-4 for fluid heater ES-4; and stack EP-5 for fluid heater ES-5 shall not exceed twenty (20) percent opacity, except during one six-minute period in any one hour in which visible emissions shall not exceed sixty (60) percent opacity, as determined by continuous opacity monitoring system (COMS) or EPA Method 9 (reference 40 CFR 60, Appendix A.)
(9 VAC 5-40-80, 9 VAC 5-40-490B and 9 VAC 5-80-490)

17. **Visible Emission Limit for Solvent Consumption in Units ES-1 or ES-2, or Pond Bottoms Combustion in Unit ES-2** – Visible emissions at boiler stack EP-0 during the combined burning of coal and consumption of boiler cleaning solvent solution, in Units ES-1 or ES-2, or during the co-firing of coal and waste pond bottoms in Unit ES-2, shall not exceed twenty (20) percent opacity, except during one six-minute period in any one hour in which visible emissions shall not exceed thirty (30) percent opacity, as determined by COMS, or EPA Method 9 (reference 40 CFR 60, Appendix A.)
(9 VAC 5-80-490, Condition 12 of 01/13/94 NSR permit and Condition 8 of 08/23/99 NSR permit)

18. **Solvents Approved for Consumption** – Solvents and their concentrations approved for consumption in Units ES-1 and ES-2 are as follows:

Solvents	Maximum Concentrations
Ethylenediamine Tetracetic Acid (EDTA)	(333.3 lbs EDTA) per 1000 gallons of water
Ammoniated EDTA	(333.3 lbs EDTA + 148.4 lbs NH_4OH) per 1000 gallons of water
EDTA and Sodium Nitrite	(333.3 lbs EDTA + 115.71 $NaNO_2$) per 1000 gallons of water
Citric Acid	(200 lbs Citric Acid) per 1000 gallons water
Ammoniated Citric Acid	(200 lbs Citric Acid + 205.75 lbs NH_4OH) per 1000 gallons of water
Citric Acid and Sodium Nitrite	(200 lbs Citric Acid + 115.71 lbs $NaNO_2$) per 1000 gallons of water
Ammoniated Citric Acid and Sodium Nitrite	(200 lbs Citric Acid + 148.4 lbs NH_4OH + 115.71 lbs $NaNO_2$) per 1000 gallons of water
Ammoniated Bifluoride	(20.8 lbs NH_5F_2) per 1000 gallons of water

All combinations of these solvents at or below the above specified concentrations are acceptable. A change in the concentration of these solutions or the use of additional solutions may require a permit to modify and operate.
(9 VAC 5-80-490 and Condition 6 of 01/13/94 NSR permit)

19. **Limits on Metals Contamination in Solvents** – The metal contaminant level per 1000 gallons of solvent boiler cleaning solution shall not exceed the following:

Metal	Maximum Contamination Level (lbs per 1000 gallons of solvent boiler cleaning solution)
Iron (Fe)	104.3
Copper (Cu)	9.63
Nickel (Ni)	4.05
Zinc (Zn)	5.64
Calcium (Ca)	1.6
Magnesium (Mg)	0.62
Manganese (Mn)	0.43

(9 VAC 5-80-110, 9 VAC 5-80-490 and Condition 7 of 01/13/94 NSR permit)

20. **Solvent Solution Analysis** - A representative sample of each batch of solvent boiler cleaning solution to be consumed in Units ES-1 and ES-2 shall be obtained and forwarded for analysis for the above metals to a qualified laboratory. Test results shall be expressed in pounds of each metal per 1000 gallons of solvent boiler cleaning solution.
(9 VAC 5-80-490 and Condition 8 of 01/13/94 NSR permit)

21. **Emission Limits for Solvent Solution Consumption** – Hazardous air pollutant (HAP) emissions from the consumption of the solvent solution in Unit ES-1 and ES-2, combined, shall not exceed the limits specified below:

HAP	Hourly (lbs/hr)	Annual (tons/yr)
Iron Oxide	8.1	0.12
Copper Oxide	0.6	0.01
Nickel Oxide	0.3	0.01
Zinc Oxide	0.4	0.01
Hydrogen Fluoride	46.5	N/A

These emissions are derived from the estimated overall emission contribution. Compliance shall be determined by specific Conditions 19 and 20 above.
(9 VAC 5-80-490 and Condition 10 of 01/13/94 NSR permit)

22. **Emission Limits for Pond Bottoms Combustion** – Hazardous air pollutant (HAP) emissions from combustion of waste pond bottoms in Unit ES-2 shall not exceed the limits specified below:

HAP	Hourly (lbs/hr)	Annual (tons/yr)
Arsenic	0.30	0.15
Beryllium	0.01	0.01
Cadmium	0.01	0.01
Chromium	0.30	0.15
Manganese	3.60	1.80
Mercury	0.02	0.01
Nickel	18.0	9.0
Selenium	0.24	0.12
Total of HAP limits	23.0	11.5

These emissions are derived from the estimated overall emission contribution from expected operating conditions. Exceedance of either bottoms combustion rate limit in specific Conditions 7 or 8 of this section shall be considered credible evidence of the exceedance of emission limits.
(9 VAC 5-80-490 and Condition 7 of 08/23/99 NSR permit)

23. **Facility or Control Equipment Malfunction–Hazardous Air Pollutant Processes** - Waste pond bottoms combustion in Unit ES-2 shall, upon request of the Department, shut down immediately if its emissions may increase in any amount because of a bypass, malfunction, shutdown or failure of the combustion unit or its associated air pollution control equipment. Co-firing shall not recommence until the combustion unit and associated air pollution control equipment are operating in a proper manner.
(9 VAC 5-80-490 and Condition 16 of 08/23/99 NSR permit)

24. **Fuel Certification** – The permittee shall obtain a certification from the fuel supplier for each shipment of distillate oil. Each fuel supplier certification shall include the following:

    a. The name of the fuel supplier;

    b. The date on which the distillate oil was received;

    c. The volume of distillate oil delivered in the shipment; and

    d. A statement that the distillate oil complies with the American Society for Testing and Materials specifications (ASTM D396) for fuel oil numbers 1 and 2.

    (9 VAC 5-80-490)

25. **Consent Decree** - The Consent Decree entered by the United States District Court for the Eastern District of Virginia, Civil Action Nos. 03-CV-517-A and 03-CV-603-A, on October 10, 2003 between Virginia Electric and Power Company and the United States of America, et al. (the "Consent Decree"), as such Consent Decree might be amended or modified from time to time in accordance with its terms, is incorporated in its entirety into this permit by reference and is attached as Appendix B to this permit. The permittee's obligations under this permit shall be to comply with the terms and conditions of the Consent Decree that relate to the operation of Dominion - Yorktown Power Station exclusively, and such compliance shall be determined exclusively by reference to the terms and conditions of the Decree. Whenever any conflict or ambiguity arises between the Consent Decree and this permit, the terms and conditions of the Consent Decree control. Compliance with the monitoring, recordkeeping, reporting, testing and compliance certification requirements in the Consent Decree that relate to the operation of Dominion - Yorktown Power Station shall be deemed to satisfy the monitoring, recordkeeping, reporting, testing, and compliance certification requirements of this permit arising out of the terms and conditions of the Consent Decree.
(9 VAC 5-80-490 and Appendix B)

26. **Consent Decree** - The facility shall operate Dominion - Yorktown Power Station Units 1 and 2 ESPs to maximize PM emission reductions through the following procedures:

    a. Commence ESP operation no later than two hours after commencement of combustion of any amount of coal, for all ESP-equipped units. "Combustion of any amount of coal" shall not include combustion of coal that is the result of clearing out a Unit's coal mills as the Unit is returned to service.

    b. Fully energize each available portion of each ESP, except those ESP fields that have been out of service since at least January 1, 2000, consistent with manufacturer's specifications, the operational design of the Unit, and good engineering practices, and repair such fields that go out of service consistent with the requirements of this Paragraph.

    c. Maintain power levels delivered to the ESPs, consistent with manufacturers' specifications, the operational design of the Unit, and good engineering practices.

    d. Continuously operate Dominion - Yorktown Power Station Units 1 and 2 ESPs in compliance with manufacturers' specifications, the operational design of the Unit, and good engineering practices. Whenever any element of any ESP that has been in service at any time since January 1, 2000 fails, does not perform in accordance with manufacturers' specifications and good engineering practices, or does not operate in accordance with the standards set forth in this Paragraph, permittee shall use best efforts to repair the element no later than the next available Unit outage appropriate to the repair task.

    (9 VAC 5-80-490 and Paragraph 78 of Appendix B)

27. **Consent Decree** - Permittee shall conduct ESP Optimization Studies per Paragraph 79 of the Decree by April 21, 2009.
(9 VAC 5-80-490 and Paragraph 79 of Appendix B)

28. **Consent Decree** - Within 270 days after approval of the ESP Optimization Studies by the United States, Permittee shall operate and maintain the ESPs in compliance with the approved ESP optimization plan, and the PM emission limit for each Unit shall be 0.030 lb/mmBtu, either commencing immediately or on and after the date required by the Decree for completion of FGD installations or improvements at that Unit. Otherwise, permittee shall comply with Paragraph 82 of the Decree.
(9 VAC 5-80-490 and Paragraph 80 of Appendix B)

29. **Consent Decree** - PM Emission Rates established under Paragraph 80 of the Decree shall not apply during periods of "startup" and "shutdown" or during periods of control equipment or Unit malfunction. Periods of "startup" shall not exceed two hours after any amount of coal is combusted. Periods of "shutdown" shall only commence when the Unit ceases burning any amount of coal. Coal shall not be deemed to be combusted if it is burned as a result of clearing out a Unit's coal mills as the Unit is returned to service.
(9 VAC 5-80-490 and Paragraph 82 of Appendix B)

B. Monitoring

1. **Condition Assessment of Multicyclones for Units ES-1 and ES-3** – A condition assessment shall be conducted on the multicyclones for Units ES-1 and ES-3 annually by the permittee to insure the equipment is in proper operating condition.
(9 VAC 5-80-490 and Condition 3 of 01/13/94 NSR permit)

2. **Opacity Monitors for Units ES-1, ES-2 and ES-3** – A continuous opacity monitoring system (COMS) shall be installed and operated to measure and record opacity of emissions from stack EP-0, serving Units ES-1 and ES-2, and from stack EP-3, serving Unit ES-3. Each COMS shall be maintained and calibrated in accordance with 9 VAC 5-40-40 and 9 VAC 5-40-41 of State Regulations.
(9 VAC 5-40-100 and 9 VAC 5-80-490)

3. **Opacity Measurements for Units ES-1, ES-2 and ES-3** – The permittee shall review the recorded opacity data from opacity monitors serving Units ES-1, ES-2 and ES-3 daily. If the data indicate opacity approaching the applicable standard, the permittee shall check boiler operating parameters to determine if parameters are within normal range. If boilers are not operating within normal parameters, adjustments shall be made to return the unit(s) to proper operation. Opacity data shall be reviewed again to confirm proper operations. Recorded data shall be kept on-site for a minimum of five years.
(9 VAC 5-40-940 and 9 VAC 5-80-490)

4. **Visual Emission Observations for Emissions Units ES-4 and ES-5** – Visible emission observation shall be used by the permittee to assist in determining whether emissions Units ES-4 and ES-5 are operating properly. Each unit shall be observed for visible emissions on a monthly basis during months in which each unit is operated. The results of the observations shall be recorded and records retained on site for review. Whenever either unit appears to be exceeding normal visible emissions, the permittee shall check the unit's operating parameters and proceed as follows:

   a. If unit parameters are not within normal range, then;

      (1) Corrective action shall be taken to return the unit to proper operation.

(2) The visible emission observation shall be repeated to confirm proper operation.

b. If unit parameters are within the proper range or corrective action did not adequately reduce visible emissions, then a visible emissions evaluation (VEE), in accordance with 40 CFR Part 60, Appendix A, Method 9, shall be conducted.

(9 VAC 5-80-490E)

5. **NO_x from Combustion of Solvent Cleaning Waste in Units ES-1 and ES-2** – The permittee shall calculate NO_x emissions resulting from the disposal of boiler solvent cleaning waste in Unites ES-1 and ES-2. Combined emissions of Units ES-1 and ES-2 shall be determined for the period of each event and totaled each month boiler cleaning solvent solution is consumed as the sum of the previous twelve consecutive months.
(9 VAC 5-80-490)

6. **Emissions Calculations** – The permittee shall calculate emissions of PM in lbs/mmBtu (combined) and lbs/hr (for each unit) from Units ES-1, ES-2, ES-3, ES-4 and ES-5 to demonstrate compliance with the combined PM limitations specified in specific Condition A.11 of this section. The permittee shall calculate emissions of SO_2 in lbs/mmBtu from fuel heaters ES-4 and ES-5 and use recorded CEMS data for SO_2 emissions in lbs/mmBtu from Units ES-1, ES-2 and ES-3 to demonstrate compliance with the combined SO_2 limitations specified in specific Condition A.12 of this section. The permittee shall calculate such emissions weekly utilizing hourly heat input data or hourly fuel throughput, control equipment efficiency and appropriate F-factors or AP-42 emission factors or CEMS data where appropriate. In lieu of a weekly calculation, the permittee may elect to make a one-time demonstration of the relationship between maximum hourly heat input or fuel throughput and maximum hourly emissions using appropriate F-factors or AP-42 emission factors. Such a one-time demonstration shall be maintained on-site for the life of the units and shall demonstrate compliance with the emission limitations set forth in specific Conditions A.11 and A.12 of this section.
(9 VAC 5-80-490)

7. The permittee shall monitor, operate, calibrate and maintain the ESPs controlling Units 1, 2, and 3 according to the following table:

Electrostatic Precipitator Compliance Assurance Monitoring (CAM) Plan
(Units: ES-1 and ES-2)

Indicator	**Indicator 1** **Opacity**	**Indicator 2** **Transformer Rectifiers**	**Indicator 3** **Precipitator Rappers**
Measurement approach	Opacity is continuously monitored by a Continuous Opacity Monitoring System (COMS). Continuous values are reduced to six-minute block averages.	Daily observation of each available[1] rectifier or rectifier alarm status by a qualified employee.	Daily observation of each available[1] rapper or its controls by a qualified employee.
Indicator range	Continuous operation between 0% and 20% opacity. An excursion is defined as average opacity greater than 20% during one six-minute period in any one hour, with the exception of one six-minute period per hour not to exceed 60% opacity.	An excursion is defined as a non-energized available[1] rectifier or a rectifier alarm or failure to perform the daily inspection of the rectifier.	An excursion is defined as an available[1] rapper failure or failure to perform the daily inspection of rappers.
<u>Performance criteria:</u> **Verification of operational status**	COMS were installed in accordance with 40 CFR 60, Appendix B, Performance Specification 1 (PS-1).	Rectifier observations verify that adequate electrical power is supplied to the ESPs.	Rapper observations verify that scheduled cleaning is performed on the ESPs.
QA/QC practices and criteria	COMS were installed and evaluated in accordance with 40 CFR 60, Appendix B, PS-1. Trained personnel to perform daily checks of zero and span drift and filter audits in accordance with PS-1.	ESPs are energized within 2 hours after commencement of combustion of any amount of coal (except when clearing out coal mills). Each available[1] portion of the ESP is fully energized and power levels delivered to the ESPs are maintained consistent with manufacturers' specifications, operational design of the equipment and good engineering practices. All startups and events for which the unit is on-line and the ESP is powered off are recorded.	Rapper equipment for each ESP is checked daily by station personnel who fill out an electronic equipment inspection report that indicates whether or not the equipment is operating..
Monitoring frequency and data collection procedure	Continuous for COMS. The opacity data are collected and retained by a computerized Data Acquisition And Handling System (DAHS).	Any failure of the ESP equipment is recorded in an event log. For all equipment failures that cannot be repaired the same day, best efforts are made to repair the element no later than the next available unit outage appropriate to the repair task. The log also includes a history of the actions taken to correct the problem and restore the equipment back to operation.	Any failure of the rapper system is recorded in an event log. For all equipment failures that cannot be repaired the same day, best efforts are made to repair the element no later than the next available unit outage appropriate to the repair task. The log also includes a history of the actions taken to correct the problem and restore the equipment back to operation.

[1] Available is defined as currently in service.

8. **Compliance Assurance Monitoring (CAM) -** The permittee shall conduct the monitoring and fulfill the other obligations specified in 40 CFR 64.7 through 40 CFR 64.9.
(9 VAC 5-80-490 E and 40 CFR 64.6 (c))

9. **Compliance Assurance Monitoring (CAM) -** At all times, the permittee shall maintain the monitoring equipment, including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.
(9 VAC 5-80-490 E and 40 CFR 64.7 (b))

10. **Compliance Assurance Monitoring (CAM) -** Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the permittee shall conduct all monitoring in continuous operation (or shall collect data at all required intervals) at all times that Units ES-1, ES-2 and ES-3 are operating. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of compliance assurance monitoring, including data averages and calculations, or fulfilling a minimum data availability requirement, if applicable. The permittee shall use all the data collected during all other periods in assessing the operation of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by inadequate maintenance or improper operation are not malfunctions.
(9 VAC 5-80-490 E and 40 CFR 64.7 (c))

11. **Compliance Assurance Monitoring (CAM) -** Upon detecting an excursion or exceedance, the permittee shall restore operation of Units ES-1, ES-2 or ES-3 (including the control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance (other than those caused by excused startup and shutdown conditions). Such actions may include initial inspection and evaluation, recording that operations returned to normal without operator action (such as through response by a computerized distribution control system), or any necessary follow-up actions to return operation to within the indicator, designated condition, or below the applicable emission limitation or standard, as applicable.
(9 VAC 5-80-490 E and 40 CFR 64.7 (d)(1))

12. **Compliance Assurance Monitoring (CAM) -** Determination that acceptable procedures were used in response to an excursion or exceedance based on information available, which may include but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process.
(9 VAC 5-80-490 E and 40 CFR 64.7(d)(2))

13. **Compliance Assurance Monitoring (CAM) -** If the permittee identifies a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not provide an indication of an excursion or exceedance while providing valid data, or the results of compliance or performance testing document a need to modify the existing indicator ranges or designated conditions, the permittee shall promptly notify the Director, Tidewater Regional Office and, if necessary, submit a proposed modification to this permit to address the necessary monitoring changes. Such a modification may include, but is not limited to, reestablishing indicator ranges or designated conditions, modifying the frequency of conducting monitoring and collecting data, or the monitoring of additional parameters.
(9 VAC 5-80-490 E and 40 CFR 64.7(e))

14. **Compliance Assurance Monitoring (CAM) -** If the number of exceedances or excursions exceeds 5 percent duration of the operating time for Units ES-1, ES-2 and ES-3 for a semiannual reporting period, the permittee shall develop, implement and maintain a Quality Improvement Plan (QIP) in accordance with 40 CFR 64.8. If a QIP is required, the permittee shall have it available for inspection. The QIP initially shall include procedures for evaluating the control performance problems and, based on the results of the evaluation procedures, the permittee shall modify the plan to include procedures for conducting one or more of the following, as appropriate:

    a. Improved preventative maintenance practices;

    b. Process operation changes;

    c. Appropriate improvements to control methods;

    d. Other steps appropriate to correct control performance; and

    e. More frequent or improved monitoring.

    (9 VAC 5-80-490 E and 40 CFR 64.8(a) and (b))

C. Recordkeeping

1. **On Site Records for Units ES-1, ES-2 and ES-3** - The permittee shall maintain records of all emission data and operating parameters necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Director, Tidewater Regional Office. These records shall include, but are not limited to:

    a. Records of calculated or measured ozone season (June 1 to August 31 inclusive) NO_x emissions, in tons, to support specific reporting requirements in Section III.E of this permit;

    b. Records of the types and amounts of fuels combusted in each of Units ES-1, ES-2 and ES-3, calculated monthly as the sum of each consecutive 12-month period;

    c. All fuel supplier certifications;

    d. Annual average ash content, calculated as the BTU-weighted average ash content of coal combusted in each calendar year;

    e. All emission calculations relied on by the permittee to demonstrate compliance with the emission limits set forth in this permit, including DEQ-approved pollutant-specific emission factors, equations and assumptions used;

f. Any emissions data measured by continuous emissions monitoring systems (CEMS) and continuous opacity monitoring systems (COMS);

g. Records of boiler or air pollution control equipment (APCE) performance measurements or emissions testing;

h. Records of annual multicyclone condition assessments for Units ES-1 and ES-3; and

i. All stack test data.

These records shall be available on site for inspection by the DEQ and shall be current for the most recent (5) years.

(9 VAC 5-80-490 C and F)

2. **Consumption in Units ES-1 and ES-2 –** The permittee shall maintain records of all emission data and operating parameters necessary to demonstrate compliance with this permit. The content of and format of such records shall be arranged with the Director, Tidewater Regional Office. These records shall include, but are not limited to:

   a. Types, maximum hourly feed rate and amount of disposal of boiler solvent waste solution in Units ES-1 and ES-2, combined, in gallons per year, calculated at the end of each month that cleaning solvent solution has been consumed as the sum of the previous twelve consecutive months;

   b. The amount of water used to dilute the boiler solvent cleaning waste solution, in gallons per year, calculated at the end of each month cleaning solvent solution has been consumed as the sum of the previous twelve consecutive months;

   c. Documentation of solvent concentrations required by Condition A.18 in this section of the permit;

   d. Test results for metals in boiler cleaning solvent solution, and any supplemental calculations, as required in Condition A.20 in this section of the permit;

   e. Opacity monitor strip chart readings, or other continuous readings, recorded during the combined burning of coal and solvent solution, shall be maintained as separate records.

   These records shall be available at the facility for inspection by the DEQ and shall be current for the most recent five (5) years.
   (9 VAC 5-50-50, 9 VAC 5-80-490 F and Conditions 9 and 15 of 01/13/94 NSR permit)

3. **On Site Records on Waste Pond Bottoms Co-firing in Unit ES-2 –** The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with the permit. These records shall include, but are not limited to:

   a. Operation and control device monitoring records for Unit ES-2 and record of coal firing status, when combusting waste pond bottoms;

   b. Waste pond bottoms hourly co-firing rate in Unit ES-2, defined as the ratio of metered tons, expressed on a dry weight basis, and measured co-firing hours, including a record of daily start and stop times; and

c. Operator's log of bottoms transferred daily to the staging bunker (in cubic yards), and tons of annual bottoms transferred, expressed on a dry weight basis, calculated monthly as the sum of each consecutive 12-month period.

These records shall be available at the facility for inspection by the DEQ and shall be current for the most recent five (5) years.
(9 VAC 5-50-50, 9 VAC 5-80-490 and Condition 11 of 08/23/99 NSR permit)

4. **On Site Records for Fluid Heaters ES-4 and ES-5** – The permittee shall maintain records of all emission data and operating parameters necessary to demonstrate compliance with this permit. Records shall include, but are not limited to:

   a. Annual consumption of fuel oil in fluid heaters ES-4 and ES-5, each calculated monthly as the sum of each consecutive 12-month period;

   b. Fuel supplier certifications;

   c. All emission calculations relied on by the permittee to demonstrate compliance with the emission limits set forth in this permit, including DEQ-approved, pollutant-specific emission factors, equations and assumptions used;

   d. Monthly periodic visible emissions observations on heaters ES-4 and ES-5 during months when these units operate; and

   e. Results of Method 9 visible emission evaluations on heaters ES-4 and ES-5, if any, and any corrective action taken.

   These records shall be available at the facility for inspection by DEQ and shall be current for the most recent five (5) years.
   (9 VAC 5-50-50 and 9 VAC 5-80-490)

5. **Compliance Assurance Monitoring (CAM) Recordkeeping -** The permittee shall maintain records of monitoring data, monitor performance data, corrective actions taken, any written quality improvement plan (QIP) required pursuant to §64.8 and any activities undertaken to implement a quality improvement plan (QIP), and other supporting information required to be maintained under this part (such as data used to document the adequacy of monitoring, or records of monitoring maintenance or corrective actions).
   (9 VAC 5-80-490 and 40 CFR 64.9(b))

D. Testing

1. **PM Emissions Testing for Units ES-1, ES-2 and ES-3** – Testing to demonstrate compliance with the permit shall be conducted for PM emissions from Units ES-1, ES-2 and ES-3 within twelve (12) months of the issuance of this permit, and within one year of each 5-year update, or sooner if directed. Stack testing for PM-10 or other air pollutants may be directed, if DEQ determines such testing is required to meet the requirements of Conditions A.11 and A.13 in this section of the permit. Testing of fluid heaters ES-4 and ES-5 is not required unless directed.
   (9 VAC 5-80-490)

2. **PM Emissions Testing for Units ES-1 and ES-2 -** The permittee shall conduct stack testing for PM on Units ES-1 and ES-2. The stack test shall be conducted at least once per every four successive "QA Operating Quarters" (as defined in 40 CFR 72.2) and the results of the testing shall be submitted to the Director, Tidewater Regional Office.
(9 VAC 5-80-490)

3. **Other Testing -** If testing is conducted in addition to the monitoring specified in this permit, the permittee shall use the appropriate method(s) in accordance with procedures approved by the DEQ.
(9 VAC 5-80-490)

E. Reporting

1. The permittee shall furnish written reports to the Director, Tidewater Regional Office of excess emissions from any process monitored by a continuous monitoring system (COMS/CEMS) for Opacity on the Common Stack and on Unit 3 on a semi-annual or quarterly basis, postmarked no later than the 30th day following the end of the calendar half or quarter. These reports shall include, but are not limited to the following information:

   a. The magnitude of excess emissions, any conversion factors used in the calculation of excess emissions, and the date and time of commencement and completion of each period of excess emissions;

   b. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the process, the nature and cause of the malfunction (if known), the corrective action taken or preventative measures adopted;

   c. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments; and

   d. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired or adjusted, such information shall be stated in that report.

   (9 VAC 5-80-490)

2. **Ozone Season NO_x Data –** The permittee shall submit the results, and any supporting data, related to ozone season NO_x measurements or calculations to the Director, Tidewater Regional Office by October 15 of each calendar year.
(9 VAC 5-80-490 and Condition 3 and 4 of 09/03/96 Ozone Season permit)

3. **NSR Permit Invalidation –** The NSR permit dated August 23, 1999, to combust waste pond bottoms in Unit ES-2 shall become invalid, unless an extension is granted by the DEQ, if combustion of waste pond bottoms is discontinued for a period of 18 months or more, or is not completed within a reasonable time, except for a DEQ approved period between phases of combustion.
(9 VAC 5-80-490, 9 VAC 5-80-1210 and Condition 17 of 08/23/99 NSR permit)

4. **Compliance Assurance Monitoring (CAM) Reporting** - The permittee shall submit CAM reports as part of the quarterly or semi-annual excess emission reports required by Condition E.1 of this section to the Director, Tidewater Regional Office. Such reports shall include at a minimum:

   a. Summary information on the number, duration and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective actions taken;

   b. Summary information on the number, duration and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable); and

   c. A description of the actions taken to implement a quality improvement plan (QIP), if required, during the reporting period as specified in Condition B.14 of this section and §64.8. Upon completion of a QIP, the owner or operator shall include in the next summary report documentation that the implementation of the plan has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring.

   (9 VAC 5-80-490 and 40 CFR 64.9(a))

5. **Consent Decree -** The permittee shall submit semi-annual reports required under Appendix B of the Consent Decree (Appendix B of permit), until the expiration of the Decree.
   (9 VAC 5-80-490 and Paragraph 95 and Appendix B of Appendix B)

IV. Process Equipment Requirements – (ES-6a to ES-6d)

A. Limitations

1. **PM and PM10 Emission Control Requirements for Units ES-6a, ES-6b, ES-6c and ES-6d** – Particulate matter (PM and PM10) emissions from coal pile grading and maintenance, and coal crushing and transfer points in the coal handling system, shall be controlled at all times, including periods of startup, shutdown and malfunction, by wet suppression as necessary, and by maintaining and operating the facility, including any air pollution control equipment, in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to monitoring results, opacity observations, review or operating and maintenance procedures and inspection of the source.
(9 VAC 5-40-20 and 9 VAC 5-80-490)

2. **PM and PM_{10} Emission Limit for Coal Pile Grading and Maintenance (Unit ES-6d)** – Total emissions from coal storage pile grading and maintenance, Unit ES-6d, shall not exceed the limit specified below:

   Particulate Matter (PM/PM_{10}) 71.2 lbs/hr

   Compliance shall be determined as stated in Condition A.1 of this section.
(9 VAC 5-40-260 D and 9 VAC 5-80-490)

3. **PM and PM_{10} Emission Limit for Coal Crushing (Unit ES-6b, Drop Point DP-3)** – Emissions from coal crushing, Unit ES-6b, Drop Point DP-3, shall not exceed the limit specified below:

   Particulate Matter (PM/PM_{10}) 71.2 lbs/hr

   Compliance shall be determined as stated in Condition A.1 of this section.
(9 VAC 5-40-260 D and 9 VAC 5-80-490)

4. **Visible Emission Limits for Coal Transfer Points DP-1 to DP-9** – Visible emissions from coal transfer points, DP-1 to DP-9, shall not exceed twenty (20) percent opacity, except during one 6-minute period in any one hour in which visible emissions shall not exceed sixty (60) percent opacity, as determined by the EPA Method 22 (reference 40 CFR 60, Appendix A).
(9 VAC 5-40-80 and 9 VAC 5-80-490)

B. Monitoring and Recordkeeping

1. **Weekly Visual Observations for Coal and Fly Ash Handling Emissions –** The permittee shall observe the coal handling and fly ash handling systems for visible emissions on a weekly basis, weather permitting. If visible emissions are noted, the permittee shall correct the conditions causing the visible emissions as expeditiously as practical. The permittee shall record all instances of visible emissions and the corrective action taken (if any) in a log. The log shall be kept on site and available for inspection by DEQ for the most recent five (5) years.
(9 VAC 5-80-490 E)

2. **On Site Records for Coal and Fly Ash Handling –** The permittee shall maintain records of emissions data and operating parameters as necessary to demonstrate compliance with this permit. These records shall include, but are not limited to:

   a. Annual coal throughput for the facility, calculated monthly as the sum of each consecutive 12-month period;

   b. Use of any other dust suppressant than water, including the type of suppressant employed, the reason for use, and when and where used, as specified in Condition VIII.N of this permit;

   c. Any malfunction of dust control equipment and the corrective actions taken (e.g., malfunction of a baghouse, wheel washer, or water truck, etc.);

   d. Records sufficient to confirm the plant's current hourly coal handling rate and associated emission rate;

   e. Weekly visible emissions observations log of coal and fly ash handling; and

   These records shall be available at the facility for inspection by the DEQ and shall be current for the most recent five (5) years.
   (9 VAC 5-50-50 and 9 VAC 5-80-490)

C. Testing

1. No specific testing requirements are imposed for applicable requirements related to coal crushing and handling. Compliance with each limitation shall be based on compliance with monitoring, recordkeeping and reporting provisions of this section.
(9 VAC 5-80-490)

V. Facility Wide Conditions

A. Limitations

1. **Stratospheric Ozone Regulations –** The permittee shall comply with each applicable provision of 40 CFR 82, Protection of Stratospheric Ozone, Subparts B and F.
(9 VAC 5-80-490; 40 CFR 82, Sections 82.34, 82.36, 82.42, 82.154, 82.156, 82.158, 82.161, 82.162, 82.166; and Appendices to Subpart B)

B. Monitoring and Recordkeeping

1. **Notification for Control Equipment Maintenance** – The permittee shall furnish notification to the Director, Tidewater Regional Office of the intention to shut down or bypass, or both, air pollution control equipment for necessary scheduled maintenance, which results in excess emissions for more than one hour, at least 24 hours prior to the shutdown. The notification shall include, but is not limited to, the following information:

   a. Identification of the air pollution control equipment to be taken out of service, as well as its location, and registration number;

   b. The expected length of time that the air pollution control equipment will be out of service;

   c. The nature and quantity of emissions of air pollutants likely to occur during the shutdown period; and

   d. Measures that will be taken to minimize the length of the shutdown or to negate the effect of the outage.

   (9 VAC 5-20-180 I, 9 VAC 5-80-490 and Condition 14 of 08/23/99 NSR permit)

2. **Maintenance/Operating Procedures** – The permittee shall take the following measures to minimize the duration and frequency of excess emissions associated with all combustion units, and coal and fly ash handling operations, with respect to air pollution control equipment and process equipment which affect such emissions:

   a. Develop a maintenance schedule and maintain records of all scheduled and non-scheduled maintenance;

   b. Maintain an appropriate inventory of spare parts;

   c. Have available written operating procedures for equipment. These procedures shall be based on manufacturers' recommendations, at a minimum; and

   d. Train operators in the proper operations of all such equipment and familiarize the operators with the written operating procedures. The permittee shall maintain records of training provided including the names of trainees, the date of training and the nature of the training.

   Records of maintenance and training shall be maintained at the facility for a period of five (5) years, and shall be available to DEQ personnel upon request.
   (9 VAC 5-80-490, Conditions 14, 19 and 20 of 01/13/94 NSR permit and Condition 19 of 08/23/99 NSR permit)

C. Testing

1. **Test Ports** - The permitted facility shall be constructed so as to allow for emissions testing at any time using appropriate methods. Upon request from the Department, test ports shall be provided at the appropriate locations.
   (9 VAC 5-40-30, 9 VAC 5-80-490 E and F, Condition 13 of 01/113/94 NSR permit and Condition 9 of 08/23/99 NSR permit)

2. **Test Methods** - If testing is conducted in addition to the monitoring specified in this permit, the permittee shall use the appropriate method(s) in accordance with procedures approved by the DEQ.
   (9 VAC 5-80-490)

VI. Insignificant Emission Units

The following emission units at the facility are identified in the application as insignificant emission units under 9 VAC 5-80-720:

Emission Unit No.	Emission Unit Description	Citation	Pollutant(s) Emitted (9 VAC 5-80-720 B)	Rated Capacity (9 VAC 5-80-720 C)
IS-1	No. 2 fuel oil storage tank	9 VAC 5-80-720 B	VOC	15,229 gallons
IS-2	No. 2 fuel oil storage tank	9 VAC 5-80-720 B	VOC	466,379 gallons
IS-3	Kerosene dispensing station and tank	9 VAC 5-80-720 B	VOC	5,000 gallons
IS-4	Turbine lube oil systems	9 VAC 5-80-720 B	VOC	
IS-5	Induced draft fan lube oil system	9 VAC 5-80-720 B	VOC	
IS-6	Forced draft fan lube oil system	9 VAC 5-80-720 B	VOC	
IS-7	Boiler feed pump system	9 VAC 5-80-720 B	VOC	
IS-8	No. 6 fuel oil drain tanks	9 VAC 5-80-720 B	VOC	1,028 gallons & 1,028 gallons
IS-9	Station degreaser systems-SafetyKleen self-contained	9 VAC 5-80-720 B	VOC	
IS-10	No. 6 fuel oil storage tank	9 VAC 5-80-720 B	VOC	11,130,000 gallons
IS-11	No. 6 fuel oil storage tank (Yorktown Refinery)	9 VAC 5-80-720 B	VOC	21,217,216 gallons
IS-12	No. 6 fuel oil storage tank (Yorktown Refinery)	9 VAC 5-80-720 B	VOC	21,180,725 gallons
IS-13	No. 6 fuel oil storage tank (Yorktown Refinery)	9 VAC 5-80-720 B	VOC	21,227,055 gallons
IS-14	No. 6 fuel oil storage tank (Yorktown Refinery)	9 VAC 5-80-720 B	VOC	21,222,541 gallons
IS-15	No. 6 fuel oil storage tank (Yorktown Refinery)	9 VAC 5-80-720 B	VOC	21,224,611 gallons
IS-16	Gasoline dispensing station and tank	9 VAC 5-80-720 B	VOC	5,000 gallons
IS-17	Used oil separator tank	9 VAC 5-80-720 B	VOC	10,362 gallons
IS-18	Fly ash handling & truck loading (controlled by addition of water)	9 VAC 5-80-720 B	PM10	
IS-19	Unit 3 fuel oil additive storage tank	9 VAC 5-80-720 B	VOC	8,813 gallons
IS-20	Hydrogen oil seal tank system	9 VAC 5-80-720 B	VOC	
IS-21	No. 2 fuel oil-fired emergency generator	9 VAC 5-80-720 B	VOC, SO_2, NO_x, PM10, CO	
IS-22	Electro-hydraulic control system	9 VAC 5-80-720 B	VOC	
IS-23	Fire water diesel pump and tank	9 VAC 5-80-720 B	VOC, SO_2, NO_x, PM10, CO	575 gallon tank, 340 Hp engine
IS-24	Coal yard diesel fuel dispensing station and tank	9 VAC 5-80-720 B	VOC	5,000 gallons
IS-25	Warehouse diesel fuel dispensing station and tank	9 VAC 5-80-720 B	VOC	5,000 gallons
IS-26	Emergency diesel generator and fuel tank	9 VAC 5-80-720 B	VOC	584 gallons
IS-27	No. 2/diesel fuel tank for oil heater (Tank 161), constructed 1972	9 VAC 5-80-720 B	VOC	15,571 gallons
IS-28	No. 2/diesel fuel tank for oil heater (Tank 161), constructed 1972	9 VAC 5-80-720 B	VOC	15,571 gallons

IS-29	No. 2/diesel fuel tank for oil heater (Tank 161), constructed 1974	9 VAC 5-80-720 B	VOC	70,438 gallons

These emission units are presumed to be in compliance with all requirements of the federal Clean Air Act as may apply. Based on this presumption, no monitoring, recordkeeping, or reporting shall be required for these emission units in accordance with 9 VAC 5-80-490 C, E and F.

VII. Permit Shield & Inapplicable Requirements

Compliance with the provisions of this permit shall be deemed compliance with all applicable requirements in effect as of the permit issuance date as identified in this permit. This permit shield covers only those applicable requirements covered by terms and conditions in this permit and the following requirements which have been specifically identified as being not applicable to this permitted facility:

Citation	Title of Citation	Description of Applicability
40 CFR Part 60, Subpart Ka	Performance Standards for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced After May 18, 1978 and Prior to July 23, 1984	This requirement does not apply to any of the tanks listed as insignificant. The tanks are either smaller in size than 400,000 gallons or were installed prior to, and not modified after, the applicability date of May 18, 1978.
40 CFR Part 60, Subpart Kb	Performance Standards for VOL Storage Vessels (including petroleum liquid storage vessels) for which Construction, Reconstruction or Modification Commenced after July 23, 1984	This requirement does not apply to any of the Volatile Organic Liquid (VOL) storage tanks listed as insignificant. The tanks are either smaller in size than 20,000 gallons, or were installed prior to, and not modified after, the applicability date of July 23, 1984 (68FR59328, et seq., of 10/15/03)
40 CFR Part 60, Subpart Y (60.250-60.254)	Standards of Performance for New or Modified Coal Preparation Plants	Any coal preparation facility processing more than 200 tons coal per day that constructs or modifies after October 24, 1974. This facility existed before that date, and exceeds the process rate, but has not reported modifications to coal preparation processes.
40 CFR Part 60, Subparts D, Da, Db, Dc (60.40-60.48c)	Boiler NSPS Subparts	All boilers at this facility were constructed prior to, and not modified after, the applicability date for each NSPS.
40 CFR Part 63	All Subparts	No current MACT affected sources at this facility.

Nothing in this permit shield shall alter the provisions of §303 of the federal Clean Air Act, including the authority of the administrator under that section, the liability of the owner for any violation of applicable requirements prior to or at the time of permit issuance, or the ability to obtain information by the administrator pursuant to §114 of the federal Clean Air Act, (ii) the Board pursuant to §10.1-1314 or §10.1-1315 of the Virginia Air Pollution Control Law or (iii) the Department pursuant to §10.1-1307.3 of the Virginia Air Pollution Control Law.

(9 VAC 5-80-500)

VIII. General Conditions

A. Federal Enforceability

All terms and conditions in this permit are enforceable by the administrator and citizens under the federal Clean Air Act, except those that have been designated as only state-enforceable.

(9 VAC 5-80-490 N)

B. Permit Expiration

This permit has a fixed term of five years. The expiration date shall be the date five years from the date of issuance. Unless the owner submits a timely and complete application for renewal to the Department consistent with the requirements of 9 VAC 5-80-430, the right of the facility to operate shall be terminated upon permit expiration.

1. The owner shall submit an application for renewal at least six months but no earlier than eighteen months prior to the date of permit expiration.
2. If an applicant submits a timely and complete application for an initial permit or renewal under this section, the failure of the source to have a permit or the operation of the source without a permit shall not be a violation of Article 3, Part II of 9 VAC 5 Chapter 80, until the Board takes final action on the application under 9 VAC 5-80-510.
3. No source shall operate after the time that it is required to submit a timely and complete application under subsections C and D of 9 VAC 5-80-430 for a renewal permit, except in compliance with a permit issued under Article 3, Part II of 9 VAC 5 Chapter 80.
4. If an applicant submits a timely and complete application under section 9 VAC 5-80-430 for a permit renewal but the Board fails to issue or deny the renewal permit before the end of the term of the previous permit, (i) the previous permit shall not expire until the renewal permit has been issued or denied and (ii) all the terms and conditions of the previous permit, including any permit shield granted pursuant to 9 VAC 5-80-500, shall remain in effect from the date the application is determined to be complete until the renewal permit is issued or denied.
5. The protection under subsections F 1 and F 5 (ii) of section 9 VAC 5-80-430 F shall cease to apply if, subsequent to the completeness determination made pursuant section 9 VAC 5-80-430 D, the applicant fails to submit by the deadline specified in writing by the Board any additional information identified as being needed to process the application.

(9 VAC 5-80-430 B, C, and F, 9 VAC 5-80-490 D and 9 VAC 5-80-530 B)

C. Recordkeeping and Reporting

1. All records of monitoring information maintained to demonstrate compliance with the terms and conditions of this permit shall contain, where applicable, the following:

   a. The date, place as defined in the permit, and time of sampling or measurements;

   b. The date(s) analyses were performed;

   c. The company or entity that performed the analyses;

   d. The analytical techniques or methods used; and

   e. The results of such analyses.

   f. The operating conditions existing at the time of sampling or measurement.

   (9 VAC 5-80-490 F)

2. Records of all monitoring data and support information shall be retained for at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.
   (9 VAC 5-80-490 F)

3. The permittee shall submit the results of monitoring contained in any applicable requirement to DEQ no later than **March 1** and **September 1** of each calendar year. This report must be signed by a responsible official, consistent with 9 VAC 5-80-430 G, and shall include:

   a. The time period included in the report. The time periods to be addressed are January 1 to June 30 and July 1 to December 31.

   b. All deviations from permit requirements. For purpose of this permit, deviations include, but are not limited to:

      (1) Exceedance of emissions limitations or operational restrictions;

      (2) Excursions from control device operating parameter requirements, as documented by continuous emission monitoring, periodic monitoring, or Compliance Assurance Monitoring (CAM) which indicates an exceedance of emission limitations or operational restrictions; or,

      (3) Failure to meet monitoring, recordkeeping, or reporting requirements contained in this permit.

   c. If there were no deviations from permit conditions during the time period, the permittee shall include a statement in the report that “no deviations from permit requirements occurred during this semi-annual reporting period.”

   (9 VAC 5-80-490 F)

D. Annual Compliance Certification

1. Exclusive of any reporting required to assure compliance with the terms and conditions of this permit or as part of a schedule of compliance contained in this permit, the permittee shall submit to EPA and DEQ no later than **March 1** each calendar year a certification of compliance with all terms and conditions of this permit including emission limitation standards or work practices. The compliance certification shall comply with such additional requirements that may be specified pursuant to §114(a)(3) and §504(b) of the federal Clean Air Act. This certification shall be signed by a responsible official, consistent with 9 VAC 5-80-430 G, and shall include:

   a. The time period included in the certification. The time period to be addressed is January 1 to December 31;

   b. The identification of each term or condition of the permit that is the basis of the certification;

   c. The compliance status;

   d. Whether compliance was continuous or intermittent, and if not continuous, documentation of each incident of non-compliance;

   e. Consistent with subsection 9 VAC 5-80-490 E, the method or methods used for determining the compliance status of the source at the time of certification and over the reporting period; and

   f. Such other facts as the permit may require to determine the compliance status of the source.

2. One copy of the annual compliance certification shall be sent to EPA at the following address:

   Clean Air Act Title V Compliance Certification (3AP00)
   U.S. Environmental Protection Agency, Region III
   1650 Arch Street
   Philadelphia, PA 19103-2029

(9 VAC 5-80-490 K.5)

E. Permit Deviation Reporting

1. The permittee shall notify the Director, Tidewater Regional Office within four daytime business hours after discovery of any deviations from permit requirements which may cause excess emissions for more than one hour, including those attributable to upset conditions as may be defined in this permit. In addition, within 14 days of the discovery, the permittee shall provide a written statement explaining the problem, any corrective actions or preventative measures taken, and the estimated duration of the permit deviation. Owners subject to the requirements of 9 VAC 5-40-50 C and 9 VAC 5-50-50 C are not required to provide the written statement prescribed in this paragraph for facilities subject to the monitoring requirements of 9 VAC 5-40-40 and 9 VAC 5-50-40. The occurrence should also be reported in the next semi-annual compliance monitoring report pursuant to General Condition VIII.C.3 of this permit.
   (9 VAC 5-80-490 F.2 and 9 VAC 5-80-250)

F. Failure/Malfunction Reporting

1. In the event that any affected facility or related air pollution control equipment fails or malfunctions in such a manner that may cause excess emissions for more than one hour, the owner shall, as soon as practicable but no later than four daytime business hours after the malfunction is discovered, notify the Director, Tidewater Regional Office by facsimile transmission, telephone or telegraph of such failure or malfunction and shall within 14 days of discovery provide a written statement giving all pertinent facts, including the estimated duration of the breakdown. Owners subject to the requirements of 9 VAC 5-40-50 C and 9 VAC 5-50-50 C are not required to provide the written statement prescribed in this paragraph for facilities subject to the monitoring requirements of 9 VAC 5-40-40 and 9 VAC 5-50-40. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the Director, Tidewater Regional Office.

   a. The emission units that have continuous monitors subject to 9 VAC 5-40-50 C and 9 VAC 5-50-50 C are not subject to the 14 day written notification.

   b. The emission units subject to the reporting and the procedure requirements of 9 VAC 5-40-50 C and the procedures of 9 VAC 5-50-50 C are listed below:

      (1) Unit ES-1

      (2) Unit ES-2

      (3) Unit ES-3

   c. Each owner required to install a continuous monitoring system (CMS) or monitoring device subject to 9 VAC 5-40-41 or 9 VAC 5-50-410 shall submit a written report of excess emissions (as defined in the applicable subpart in 9 VAC 5-50-410) and either a monitoring systems performance report or a summary report form, or both, to the board quarterly. All quarterly reports shall be postmarked by the 30th day following the end of each calendar quarter and shall include the following information:

      (1) The magnitude of excess emissions computed in accordance with 40 CFR 60.13(h) or 9 VAC 5-40-41 B.6, any conversion factors used, and the date and time of commencement and completion of each period of excess emissions;

      (2) Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the source. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted;

      (3) The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments; and

      (4) When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired or adjusted, such information shall be stated in the report.

d. All malfunctions of emission units not subject to 9 VAC 5-40-50 C and 9 VAC 5-50-50 C require written reports within 14 days of the discovery of the malfunction.
(9 VAC 5-20-180 C, 9 VAC 5-40-50, and 9 VAC 5-50-50)

G. Severability

1. The terms of this permit are severable. If any condition, requirement or portion of the permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of the permit.
(9 VAC 5-80-490 G.1)

H. Duty to Comply

1. The permittee shall comply with all terms and conditions of this permit. Any permit noncompliance constitutes a violation of the federal Clean Air Act or the Virginia Air Pollution Control Law or both and is ground for enforcement action; for permit termination, revocation and reissuance, or modification; or, for denial of a permit renewal application.
(9 VAC 5-80-490 G.2)

I. Need to Halt or Reduce Activity not a Defense

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
(9 VAC 5-80-490 G.3)

J. Permit Modification

1. A physical change in, or change in the method of operation of, this stationary source may be subject to permitting under State Regulations 9 VAC 5-80-50, 9 VAC 5-80-1100, 9 VAC 5-80-1605, or 9 VAC 5-80-2000 and may require a permit modification and/or revisions except as may be authorized in any approved alternative operating scenarios.
(9 VAC 5-80-550 and 9 VAC 5-80-660)

K. Property Rights

1. The permit does not convey any property rights of any sort, or any exclusive privilege.
(9 VAC 5-80-490 G.5)

L. Duty to Submit Information

1. The permittee shall furnish to the Board, within a reasonable time, any information that the Board may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Board copies of records required to be kept by the permit and, for information claimed to be confidential, the permittee shall furnish such records to the Board along with a claim of confidentiality.
(9 VAC 5-80-490 G.6)

2. Any document (including reports) required in a permit condition to be submitted to the Board shall contain a certification by a responsible official that meets the requirements of 9 VAC 5-80-430 G. (9 VAC 5-80-490 K.1)

M. Duty to Pay Permit Fees

1. The owner of any source for which a permit under 9 VAC 5-80-360 through 9 VAC 5-80-700 was issued shall pay permit fees consistent with the requirements of 9 VAC 5-80-310 through 9 VAC 5-80-350. The actual emissions covered by the permit program fees for the preceding year shall be calculated by the owner and submitted to the Department by **April 15** of each year. The calculations and final amount of emissions are subject to verification and final determination by the Department. (9 VAC 5-80-490 H and 9 VAC 5-80-340 C)

N. Fugitive Dust Emission Standards

1. During the operation of a stationary source or any other building, structure, facility, or installation, no owner or other person shall cause or permit any materials or property to be handled, transported, stored, used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions may include, but are not limited to, the following:

   a. Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land;

   b. Application of asphalt, water, or suitable chemicals on dirt roads, materials stockpiles, and other surfaces which may create airborne dust; the paving of roadways and the maintaining of them in a clean condition;

   c. Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty material. Adequate containment methods shall be employed during sandblasting or similar operations;

   d. Open equipment for conveying or transporting material likely to create objectionable air pollution when airborne shall be covered or treated in an equally effective manner at all times when in motion; and,

   e. The prompt removal of spilled or tracked dirt or other materials from paved streets and of dried sediments resulting from soil erosion.

   (9 VAC 5-40-490 and 9 VAC 5-50-90)

O. Startup, Shutdown, and Malfunction

1. At all times, including periods of startup, shutdown, and soot blowing, and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.
   (9 VAC 5-50-20 E and 9 VAC 5-40-20 E)

P. Alternative Operating Scenarios

1. Contemporaneously with making a change between reasonably anticipated operating scenarios identified in this permit, the permittee shall record in a log at the permitted facility a record of the scenario under which it is operating. The permit shield described in 9 VAC 5-80-500 shall extend to all terms and conditions under each such operating scenario. The terms and conditions of each such alternative scenario shall meet all applicable requirements including the requirements of 9 VAC 5 Chapter 80, Article 3.
(9 VAC 5-80-490 J)

Q. Inspection and Entry Requirements

1. The permittee shall allow DEQ, upon presentation of credentials and other documents as may be required by law, to perform the following:
   a. Enter upon the premises where the source is located or emissions-related activity is conducted, or where records must be kept under the terms and conditions of the permit.
   b. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of the permit.
   c. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.
   d. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

   (9 VAC 5-80-490 K.2)

R. Reopening For Cause

1. The permit shall be reopened by the Board if additional federal requirements become applicable to a major source with a remaining permit term of three years or more. Such reopening shall be completed no later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to 9 VAC 5-80-430 F.
   a. The permit shall be reopened if the Board or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
   b. The permit shall be reopened if the administrator or the Board determines that the permit must be revised or revoked to assure compliance with the applicable requirements.
   c. The permit shall not be reopened by the Board if additional applicable state requirements become applicable to a major source prior to the expiration date established under 9 VAC 5-80-490 D.

   (9 VAC 5-80-490 L)

S. Permit Availability

1. Within five days after receipt of the issued permit, the permittee shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to DEQ upon request.
(9 VAC 5-80-510 G)

T. Transfer of Permits

1. No person shall transfer a permit from one location to another, unless authorized under 9 VAC 5-80-130, or from one piece of equipment to another.
(9 VAC 5-80-520)
2. In the case of a transfer of ownership of a stationary source, the new owner shall comply with any current permit issued to the previous owner. The new owner shall notify the Board of the change in ownership within 30 days of the transfer and shall comply with the requirements of 9 VAC 5-80-560.
(9 VAC 5-80-520)
3. In the case of a name change of a stationary source, the owner shall comply with any current permit issued under the previous source name. The owner shall notify the Board of the change in source name within 30 days of the name change and shall comply with the requirements of 9 VAC 5-80-560.
(9 VAC 5-80-520)

U. Malfunction as an Affirmative Defense

1. A malfunction constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the requirements of the following paragraph of this condition are met.
   a. The affirmative defense of malfunction shall be demonstrated by the permittee through properly signed, contemporaneous operating logs, or other relevant evidence that show the following:
      (1) A malfunction occurred and the permittee can identify the cause or causes of the malfunction.
      (2) The permitted facility was at the time being properly operated.
      (3) During the period of the malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.
      (4) The permittee notified the Board of the malfunction within two working days following the time when the emission limitations were exceeded due to the malfunction. This notification shall include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notification may be delivered either orally or in writing. The notification may be delivered by electronic mail, facsimile transmission, telephone, or any other method that allows the permittee to comply with the deadline. This notification fulfills the requirements of 9 VAC 5-80-490 F.2.b to report promptly deviations from permit requirements. This notification does not release the permittee from the malfunction reporting requirement under 9 VAC 5-20-180 C.

b. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

c. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

(9 VAC 5-80-650)

V. Permit Revocation or Termination for Cause

1. A permit may be revoked or terminated prior to its expiration date if the owner knowingly makes material misstatements in the permit application or any amendments thereto or if the permittee violates, fails, neglects or refuses to comply with the terms or conditions of the permit, any applicable requirements, or the applicable provisions of 9 VAC 5 Chapter 80 Article 3. The Board may suspend, under such conditions and for such period of time as the Board may prescribe any permit for any grounds for revocation or termination or for any other violations of these regulations.
(9 VAC 5-80-550 C and 9 VAC 5-80-660)

W. Duty to Supplement or Correct Application

1. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrections. An applicant shall also provide additional information as necessary to address any requirements that become applicable to the source after the date a complete application was filed but prior to release of a draft permit.
(9 VAC 5-80-430 E)

X. Stratospheric Ozone Protection

1. If the permittee handles or emits one or more Class I or II substances subject to a standard promulgated under or established by Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, the permittee shall comply with all applicable sections of 40 CFR Part 82, Subparts A to F.
(40 CFR Part 82, Subparts A-F)

Y. Asbestos Requirements

1. The permittee shall comply with the requirements of National Emissions Standards for Hazardous Air Pollutants (40 CFR 61) Subpart M, National Emission Standards for Asbestos as it applies to the following: Standards for Demolition and Renovation (40 CFR 61.145), Standards for Insulating Materials (40 CFR 61.148), and Standards for Waste Disposal (40 CFR 61.150).
(9 VAC 5-60-70 and 9 VAC 5-80-490 A.1)

Z. Accidental Release Prevention

1. If the permittee has more, or will have more than a threshold quantity of a regulated substance in a process, as determined by 40 CFR 68.115, the permittee shall comply with the requirements of 40 CFR Part 68.
(40 CFR Part 68)

AA. Changes to Permits for Emissions Trading

1. No permit revision shall be required under any federally approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in this permit.
   (9 VAC 5-80-490 I)

BB. Emissions Trading

1. Where the trading of emissions increases and decreases within the permitted facility is to occur within the context of this permit and to the extent that the regulations provide for trading such increases and decreases without a case-by-case approval of each emissions trade:
   a. All terms and conditions required under 9 VAC 5-80-490, except subsection N, shall be included to determine compliance;
   b. The permit shield described in 9 VAC 5-80-500 shall extend to all terms and conditions that allow such increases and decreases in emissions.
   c. The owner shall meet all applicable requirements including the requirements of 9 VAC 5-80-360 through 9 VAC 5-80-700.

   (9 VAC 5-80-490 I)

IX. Title IV (Phase II Acid Rain) Permit Allowances and Requirements

A. Statutory and Regulatory Authorities

1. In accordance with the Air Pollution Control Law of Virginia §10.1–1308 and §10.1-1322, the Environmental Protection Agency (EPA) Final Full Approval of the Operating Permits Program (Titles IV and V) published in the Federal Register December 4, 2001, Volume 66, Number 233, Rules and Regulations, Pages 62961-62967 and effective November 30, 2001, and Title 40, the Code of Federal Regulations §§72.1 through 76.16, the Commonwealth of Virginia Department of Environmental Quality issues this permit pursuant to 9 VAC 5 Chapter 80, Article 3 of the Virginia Regulations for the Control and Abatement of Air Pollution (Federal Operating Permit Article 3). (9 VAC 5-80-490 B.2)

B. SO_2 Allowance Allocations and NO_x Requirements for Affected Units

		2008	2009	2010	2011	2012
Unit 1	SO_2 allowances, under Table 2, 40 CFR Part 73 (tons)	4670	4670	4679	4679	4679
	NO_x limit	Pursuant to 40 CFR Part 76, the Commonwealth of Virginia Department of Environmental Quality approves a standard NOx compliance plan for Unit 1, effective for calendar year 2008 thought 2012. Under the NOx compliance plan, this unit's annual average NOx emission rate for each year, determined in accordance with 40 CFR Part 75, shall not exceed the applicable emission limitation under 40 CFR 76.7(a)(1), of 0.40 lb/mmBtu of heat input for tangentially fired boilers. If the permittee submits an averaging plan in accordance with 40 CFR Part 76 (76.11(b)(1)) and the DEQ approves the plan, then the permittee shall not exceed the annual average NOx emission rate specified in the averaging plan for those units specified in the averaging plan. The limitation listed in 40 CFR 76.6 or 76.7. If a plan is approved and then later rescinded by the DEQ, then the unit's annual average NOx emission rate for each year, determined in accordance with 40 CFR Part 75, shall not exceed the applicable emission limitation under 40 CFR 76.7(a)(1), of 0.40 lb/mmBtu of heat input for tangentially fired boilers. In addition to the described compliance plan, this unit shall comply with all other applicable requirements of 40 CFR Part 76, including the duty to reapply for a NOx compliance plan and requirements covering excess emissions.				

		2008	2009	2010	2011	2012
Unit 2	SO_2 allowances, under Table 2, 40 CFR Part 73 (tons)	4673	4673	4503	4503	4503
	NO_x limit	Pursuant to 40 CFR Part 76, the Commonwealth of Virginia Department of Environmental Quality approves a standard NOx compliance plan for Unit 2, effective for calendar year 2008 thought 2012. Under the NOx compliance plan, this unit's annual average NOx emission rate for each year, determined in accordance with 40 CFR Part 75, shall not exceed the applicable emission limitation under 40 CFR 76.7(a)(1), of 0.40 lb/mmBtu of heat input for tangentially fired boilers. If the permittee submits an averaging plan in accordance with 40 CFR Part 76 (76.11(b)(1)) and the DEQ approves the plan, then the permittee shall not exceed the annual average NOx emission rate specified in the averaging plan for those units specified in the averaging plan. The limitation listed in 40 CFR 76.6 or 76.7. If a plan is approved and then later rescinded by the DEQ, then the unit's annual average NOx emission rate for each year, determined in accordance with 40 CFR Part 75, shall not exceed the applicable emission limitation under 40 CFR 76.7(a)(1), of 0.40 lb/mmBtu of heat input for tangentially fired boilers. In addition to the described compliance plan, this unit shall comply with all other applicable requirements of 40 CFR Part 76, including the duty to reapply for a NOx compliance plan and requirements covering excess emissions.				

		2008	2009	2010	2011	2012
Unit 3	SO_2 allowances, under Table 2, 40 CFR Part 73 (tons)	6303	6303	6316	6316	6316

(9 VAC 5-80-490 A.4)

C. Additional Requirements, Notes, Comments and Justifications

1. **Additional Requirements** – Virginia Electric and Power Company shall submit a complete permit application that includes all of the information required under 40 CFR §§72.21 and 72.31 including a complete NO_x compliance plan in accordance with 40 CFR §76.9(c), at least 6 months, but no earlier than 18 months, prior to the date of expiration of the existing Phase II Acid Rain permit. EPA forms shall be used.
   (9 VAC 5-80-430 C.5)

2. **Notes** – SO_2 allowances may be acquired from other sources in addition to those allocated by U.S. EPA. No revision to this permit is necessary in order for the owners and operators of this unit to hold additional allowances recorded in accordance with 40 CFR Part 73. The owners and operators of this unit remain obligated to hold sufficient allowances to account for SO_2 emissions from this unit in accordance with 40 CFR 72.9(c)(1).
   (9 VAC 5-80-420 C.1 and H.1 and 9 VAC 5-80-490 O)

3. **Justifications** – Unit 3 is a natural gas/oil- fired unit and is not subject to the NO_x limitations under 40 CFR Part 76.
   (9 VAC 5-80-420 D)

X. NO_x Budget Trading Program Requirements

A. NO_x Budget Permit General Conditions

1. A review of the air emission units included in this permit approval has determined that the equipment listed in the following table meets the definition of a NO_x Budget Unit and falls subject to the NO_x Budget emission limitations under 9 VAC 5-140-40 or for opt-in sources 9 VAC 5-140-800. As required by 9 VAC 5-140-200 A, each NO_x Budget source is required to have a federally enforceable permit. This section of the document represents the NO_x Budget permit.
   (9 VAC 5-140-40)

2. The NO_x Budget permit will be administrated by the VADEQ under the authority of 9 VAC 5-80-360 et seq., and 9 VAC 5-140-10 et seq.
   (9 VAC 5-140-200 A)

3. The following air emission units have been determined to meet the applicability requirements as provided in 9 VAC 5-140-40 A.1 and A.2. Units that do not meet this definition, are not defined as 25-Ton Exemption Units and are not permanently shutdown can be included in the NO_x Budget Trading program as "opt-in" air emission sources.

Table X – 1 Facility NO_x Budget Units				
Facility Unit ID	**Unit NATS Code**	**Unit Name and description**	**Maximum Heat Capacity (MMBtu/hr)**	**Maximum Generation Capacity (megawatts)**
ES-1	03809-001	Combustion Engineering tangential-fired boiler	1697	170
ES-2	03809-002	Combustion Engineering tangential-fired boiler	1745	170
ES-3	03809-003	Combustion Engineering tangential-fired boiler	8061	850

(9 VAC 5-140-40 A)

B. Standard Requirements

1. Continuous Monitoring requirements.

   a. The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x Budget source and each NO_x Budget unit at the source shall comply with the monitoring requirements of 9 VAC 5-140-700 et seq.

   b. The emissions measurements recorded and reported in accordance with 9 VAC 5-140-700 et seq. (subparts H of 40 CFR 75 and 40 CFR 97) shall be used to determine compliance by the unit with the NO_x Budget emissions limitation under Conditions 2.a through 2.h of this section. The following approved methods will be used to calculate NO_x Control Period and Annual emission rates:

Table X-2 **NO_x Mass Emission Rate Monitoring** **Units ES-1, ES-2 and ES-3**	
Item Monitored	**Monitoring Methods** **(40 CFR 75)**
Heat input (HI), (Formulas F15 and F21A)	Calculated
NO_x emissions rate and NO_x mass emission rate (Formula F-6 and Formula F-24)	CO_2 and NO_x Continuous Emissions Monitoring Systems (CEMS) with DAHS**; NO_x mass emission rates are calculated using heat input rates
Carbon-based F-factor (FC) (Formula F-8)	Calculated
SO_2 mass emission rate (Formula F-1)	SO_2 CEMS and DAHS
CO2 mass emission rate (Formula F-11)	CO2 CEMS and DAHS
Net Stack Flow (FLOW)	Differential pressure (DP) sampling method: average of two DP sampling points, and DAHS
Opacity -Stack 0 for Units ES-1 and ES-2 -Stack 3 for Unit ES-3	Continuous Opacity Monitoring Systems (COMS)

** Data Acquisition and Handling System
(9 VAC 5-140-60 B.1 and 9 VAC 5-140-60 B.2)

2. Nitrogen oxides requirements.

   a. The owners and operators of each NO_x Budget source and each NO_x Budget unit at the source shall hold NO_x allowances available for compliance deductions under 9 VAC 5-140-540 A, B, E, or F, as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the control period from the unit, as determined in accordance with Article 8 (9 VAC 5-140-700 et seq.), plus any amount necessary to account for actual utilization under 9 VAC 5-140-420 E for the control period or to account for excess emissions for a prior control period under 9 VAC 5-140-540 D or to account for withdrawal from the NO_x Budget Trading Program, or a change in regulatory status, of a NO_x Budget opt-in unit under 9 VAC 5-140-860 or 9 VAC 5-140-870.
   (9 VAC 5-140-60 C.1)

   b. Each ton of nitrogen oxides emitted in excess of the NO_x Budget emissions limitation shall constitute a separate violation of the Clean Air Act, and applicable Virginia Air Pollution Control law.
   (9 VAC 5-140-60 C.2)

   c. A NO_x Budget unit shall be subject to the requirements under 9 VAC 5-140-60 C.1 starting on the later of May 31, 2004 or the date on which the unit commences operation if the date falls within the Control Period.
   (9 VAC 5-140-60 C.3)

d. NO_x allowances shall be held in, deducted from, or transferred among NO_x Allowance Tracking System accounts in accordance with 9 VAC 5-140-400 et seq., 9 VAC 5-140-500 et seq., 9 VAC 5-140-600 et seq., and 9 VAC 5-140-800 et seq..
(9 VAC 5-140-60 C.4)

e. A NO_x allowance shall not be deducted in order to comply with the requirements under 9 VAC 5-140-60 C.1 for a control period in a year prior to the year for which the NO_x allowance was allocated.
(9 VAC 5-140-60 C.5)

f. A NO_x allowance allocated by the permitting authority or the administrator under the NO_x Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO_X Budget Trading Program. No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit, or an exemption under 9 VAC 5-140-50 and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit such authorization.
(9 VAC 5-140-60 C.6)

g. A NO_x allowance allocated by the permitting authority or the administrator under the NO_x Budget Trading Program does not constitute a property right.
(9 VAC 5-140-60 C.7)

h. Upon recordation by the administrator under 9 VAC 5-140-500 et seq., 9 VAC 5-140-600 et seq., or 9 VAC 5-140-800 et seq., every allocation, transfer, or deduction of a NO_x allowance to or from a NO_x Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO_x Budget permit of the NO_x Budget unit by operation of law without any further review.
(9 VAC 5-140-60 C.8)

3. Excess emissions requirements.

a. The owners and operators of a NO_x Budget unit that has excess emissions in any control period shall:

(1) Surrender the NO_x allowances required for deduction under 9 VAC 5-140-540 D 1; and

(2) Pay any fine, penalty, or assessment or comply with any other remedy imposed under 9 VAC 5-140-540 D 3.

(9 VAC 5-140-60 D)

C. Recordkeeping and Reporting Requirements.

The following requirements concerning recordkeeping and reporting shall apply:

1. Unless otherwise provided, the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source shall have accessible each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the permitting authority or the administrator.
(9 VAC 5-140-60 E.1)

a. The account certificate of representation for the NO_x authorized account representative and each NO_x Budget unit for the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with 9 VAC 5-140-130; provided that the certificate and documents shall be accessible beyond such five-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.
(9 VAC 5-140-60 E.1)

b. All emissions monitoring information, in accordance with 9 VAC 5-140-700 et seq. of this part; provided that to the extent that 9 VAC 5-140-700 et seq. provides for a three-year period for recordkeeping, the three-year period shall apply.
(9 VAC 5-140-60 E.1)

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x Budget Trading Program.
(9 VAC 5-140-60 E.1)

d. Copies of all documents used to complete a NO_x Budget permit application and any other submission under the NO_x Budget Trading Program or to demonstrate compliance with the requirements of the NO_x Budget Trading Program.
(9 VAC 5-140-60 E.1)

2. The NO_x authorized account representative of a NO_x Budget source and each NO_x Budget unit at the source shall submit the reports and compliance certifications required under the NO_x Budget Trading Program, including those under 9 VAC 5-140-300 et seq., 9 VAC 5-140-700 et seq., or 9 VAC 5-140-800 et seq.
(9 VAC 5-140-60 E.2)

D. Emission Testing

1. The permitted facility shall be constructed so as to allow for emissions testing at any time using appropriate methods. Upon request from the Department, test ports will be provided at the appropriate locations.
(9 VAC 5-50-30 and 9 VAC 5-140-710)

2. If testing is conducted in addition to the monitoring specified in this permit, the permittee shall use test methods approved by DEQ.
(9 VAC 5-140-700 to 710)

E. Liability

1. Any person who knowingly violates any requirement or prohibition of the NO_x Budget Trading Program, a NO_x Budget permit, or an exemption under 9 VAC 5-140-50 shall be subject to enforcement pursuant to applicable State or Federal law.
(9 VAC 5-140-60 F.1)

2. Any person who knowingly makes a false material statement in any record, submission, or report under the NO_x Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.
(9 VAC 5-140-60 F.2)

3. No permit revision shall excuse any violation of the requirements of the NO_x Budget Trading Program that occurs prior to the date that the revision takes effect.
(9 VAC 5-140-60 F.3)

4. Each NO_x Budget source and each NO_x Budget unit shall meet the requirements of the NO_x Budget Trading Program.
(9 VAC 5-140-60 F.4)

5. Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget source or the NO_x authorized account representative of a NO_x Budget source shall also apply to the owners and operators of such source and of the NO_x Budget units at the source.
(9 VAC 5-140-60 F.5)

6. Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget unit or the NO_x authorized account representative of a NO_x budget unit shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under Article 8 (9 VAC 5-140-700 et seq.), the owners and operators and the NO_x authorized account representative of one NO_x Budget unit shall not be liable for any violation by any other NO_x Budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.
(9 VAC 5-140-60 F.6)

F. Effect on Other Authorities

1. No provision of the NO_x Budget Trading Program, a NO_x Budget permit application, a NO_x Budget permit, or an exemption under 9 VAC 5-140-50 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x Budget source or NO_x Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.
(9 VAC 5-140-60 G)

XI. Clean Air Interstate Rule (CAIR) Permit

1. The permittee shall comply with all applicable CAIR requirements (9 VAC 5-140-1010 *et seq.*, 9 VAC 5-140-2010 *et seq*., 9 VAC 5-140-3010 *et seq*., and 40 CFR Part 96) by the compliance date in the respective Part of 9 VAC 5 Chapter 140, as contained in the CAIR Permit. The CAIR Permit is Attachment A to this document and expires upon expiration of this Title V Permit.
(9 VAC 5-80-490, 40 CFR Part 96 and 9 VAC 5 Chapter 140)

XII. State-Only Enforceable Requirements

The following terms and conditions are not required under the federal Clean Air Act or under any of its applicable federal requirements, and are not subject to the requirements of 9 VAC 5-80-290 concerning review of proposed permits by EPA and draft permits by affected states.

1. Odor (9 VAC 5 Chapter 40, Article 2)

2. State toxics rule (9 VAC 5 Chapter 60)

(9 VAC 5-80-490 N and 9 VAC 5-80-700)

Appendix A
CAIR Application

CAIR Permit Application
(for sources covered under a CAIR SIP)

For more information, refer to 40 CFR 96.121, 96.122, 96.221, 96.222, 96.321, and 96.322

This submission is: ☒ **New** **Revised**

STEP 1
Identify the source by plant name, State, and ORIS or facility code

Plant Name **Dominion – Yorktown Power Station** State **VA** ORIS/Facility Code **3809**

STEP 2
Enter the unit ID# for each CAIR unit and indicate to which CAIR programs each unit is subject (by placing an "X" in the column)

Unit ID#	NO_X Annual	SO_2	NO_X Ozone Season
1	X	X	X
2	X	X	X
3	X	X	X

STEP 3
Read the standard requirements and the certification, enter the name of the CAIR designated representative, and sign and date

Standard Requirements

(a) Permit Requirements.

(1) The CAIR designated representative of each CAIR NO_X source, CAIR SO_2 source, and CAIR NO_X Ozone Season source (as applicable) required to have a title V operating permit and each CAIR NO_X unit, CAIR SO_2 unit, and CAIR NO_X Ozone Season unit (as applicable) required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under §96.122, §96.222, and §96.322 (as applicable) in accordance with the deadlines specified in §96.121, §96.221, and §96.321 (as applicable); and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO_X source, CAIR SO_2 source, and CAIR NO_X Ozone Season source (as applicable) required to have a title V operating permit and each CAIR NO_X unit, CAIR SO_2 unit, and CAIR NO_X Ozone Season unit (as applicable) required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CC, CCC, and CCCC (as applicable) of 40 CFR part 96 for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart II, III, and IIII (as applicable) of 40 CFR part 96, the owners and operators of a CAIR NO_X source, CAIR SO_2 source, and CAIR NO_X Ozone Season source (as applicable) that is not otherwise required to have a title V operating permit and each CAIR NO_X unit, CAIR SO_2 unit, and CAIR NO_X Ozone Season unit (as applicable) that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CC, CCC, and CCCC (as applicable) of 40 CFR part 96 for such CAIR NO_X source, CAIR SO_2 source, and CAIR NO_X Ozone Season source (as applicable) and such CAIR NO_X unit, CAIR SO_2 unit, and CAIR NO_X Ozone Season unit (as applicable).

Plant Name (from Step 1) **Dominion – Yorktown Power Station**

STEP 3, continued

(b) Monitoring, reporting, and recordkeeping requirements.

(1) The owners and operators, and the CAIR designated representative, of each CAIR NO_X source, CAIR SO_2 source, and CAIR NO_X Ozone Season source (as applicable) and each CAIR NO_X unit, CAIR SO_2 unit, and CAIR NO_X Ozone Season unit (as applicable) at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subparts HH, HHH, and HHHH (as applicable) of 40 CFR part 96.

(2) The emissions measurements recorded and reported in accordance with subparts HH, HHH, and HHHH (as applicable) of 40 CFR part 96 shall be used to determine compliance by each CAIR NO_X source, CAIR SO_2 source, and CAIR NO_X Ozone Season source (as applicable) with the CAIR NO_X emissions limitation, CAIR SO_2 emissions limitation, and CAIR NO_X Ozone Season emissions limitation (as applicable) under paragraph (c) of §96.106, §96.206, and §96.306 (as applicable).

(c) Nitrogen oxides emissions requirements.

(1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_X source and each CAIR NO_X unit at the source shall hold, in the source's compliance account, CAIR NO_X allowances available for compliance deductions for the control period under §96.154(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_X units at the source, as determined in accordance with subpart HH of 40 CFR part 96.

(2) A CAIR NO_X unit shall be subject to the requirements under paragraph (c)(1) of §96.106 for the control period starting on the later of January 1, 2009 or the deadline for meeting the unit's monitor certification requirements under §96.170(b)(1), (2), or (5) and for each control period thereafter.

(3) A CAIR NO_X allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of §96.106, for a control period in a calendar year before the year for which the CAIR NO_X allowance was allocated.

(4) CAIR NO_X allowances shall be held in, deducted from, or transferred into or among CAIR NO_X Allowance Tracking System accounts in accordance with subparts FF, GG, and II of 40 CFR part 96.

(5) A CAIR NO_X allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_X Annual Trading Program. No provision of the CAIR NO_X Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under §96.105 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) A CAIR NO_X allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart EE, FF, GG, or II of 40 CFR part 96, every allocation, transfer, or deduction of a CAIR NO_X allowance to or from a CAIR NO_X source's compliance account is incorporated automatically in any CAIR permit of the source that includes the CAIR NO_X unit.

Sulfur dioxide emission requirements.

(1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall hold, in the source's compliance account, a tonnage equivalent of CAIR SO_2 allowances available for compliance deductions for the control period under §96.254(a) and (b) not less than the tons of total sulfur dioxide emissions for the control period from all CAIR SO_2 units at the source, as determined in accordance with subpart HHH of 40 CFR part 96.

(2) A CAIR SO_2 unit shall be subject to the requirements under paragraph (c)(1) of §96.206 for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under §96.270(b)(1), (2), or (5) and for each control period thereafter.

(3) A CAIR SO_2 allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of §96.206, for a control period in a calendar year before the year for which the CAIR SO_2 allowance was allocated.

(4) CAIR SO_2 allowances shall be held in, deducted from, or transferred into or among CAIR SO_2 Allowance Tracking System accounts in accordance with subparts FFF, GGG, and III of 40 CFR part 96.

(5) A CAIR SO_2 allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO_2 Trading Program. No provision of the CAIR SO_2 Trading Program, the CAIR permit application, the CAIR permit, or an exemption under §96.205 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) A CAIR SO_2 allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FFF, GGG, or III of 40 CFR part 96, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from a CAIR SO_2 source's compliance account is incorporated automatically in any CAIR permit of the source that includes the CAIR SO_2 unit.

Nitrogen oxides ozone season emissions requirements.

(1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO_X Ozone Season allowances available for compliance deductions for the control period under §96.354(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_X Ozone Season units at the source, as determined in accordance with subpart HHHH of 40 CFR part 96.

(2) A CAIR NO_X Ozone Season unit shall be subject to the requirements under paragraph (c)(1) of §96.306 for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under §96.370(b)(1), (2), (3) or (7) and for each control period thereafter.

(3) A CAIR NO_X Ozone Season allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of §96.306, for a control period in a calendar year before the year for which the CAIR NO_X Ozone Season allowance was allocated.

(4) CAIR NO_X Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO_X Ozone Season Allowance Tracking System accounts in accordance with subparts FFFF, GGGG, and IIII of 40 CFR part 96.

(5) A CAIR NO_X allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_X Ozone Season Trading Program. No provision of the CAIR NO_X Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under §96.305 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) A CAIR NO_X allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart EEEE, FFFF, GGGG, or IIII of 40 CFR part 96, every allocation, transfer, or deduction of a CAIR NO_X Ozone Season allowance to or from a CAIR NO_X Ozone Season source's compliance account is incorporated automatically in any CAIR permit of the source.

Plant Name (from Step 1) **Dominion – Yorktown Power Station**

STEP 3, continued

(d) Excess emissions requirements.
If a CAIR NO_X source emits nitrogen oxides during any control period in excess of the CAIR NO_X emissions limitation, then:
(1) The owners and operators of the source and each CAIR NO_X unit at the source shall surrender the CAIR NO_X allowances required for deduction under §96.154(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and
(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

If a CAIR SO_2 source emits sulfur dioxide during any control period in excess of the CAIR SO_2 emissions limitation, then:
(1) The owners and operators of the source and each CAIR SO_2 unit at the source shall surrender the CAIR SO_2 allowances required for deduction under §96.254(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and
(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

If a CAIR NO_X Ozone Season source emits nitrogen oxides during any control period in excess of the CAIR NO_X Ozone Season emissions limitation, then:
(1) The owners and operators of the source and each CAIR NO_X Ozone Season unit at the source shall surrender the CAIR NO_X Ozone Season allowances required for deduction under §96.354(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and
(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(e) Recordkeeping and Reporting Requirements.
(1) Unless otherwise provided, the owners and operators of the CAIR NO_X source, CAIR SO_2 source, and CAIR NO_X Ozone Season source (as applicable) and each CAIR NO_X unit, CAIR SO_2 unit, and CAIR NO_X Ozone Season unit (as applicable) at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.
(i) The certificate of representation under §96.113, §96.213, and §96.313 (as applicable) for the CAIR designated representative for the source and each CAIR NO_X unit, CAIR SO_2 unit, and CAIR NO_X Ozone Season unit (as applicable) at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under §96.113, §96.213, and §96.313 (as applicable) changing the CAIR designated representative.
(ii) All emissions monitoring information, in accordance with subparts HH, HHH, and HHHH (as applicable) of 40 CFR part 96, provided that to the extent that subparts HH, HHH, and HHHH (as applicable) of 40 CFR part 96 provides for a 3-year period for recordkeeping, the 3-year period shall apply.
(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, and CAIR NO_X Ozone Season Trading Program (as applicable).
(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, and CAIR NO_X Ozone Season Trading Program (as applicable) or to demonstrate compliance with the requirements of the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, and CAIR NO_X Ozone Season Trading Program (as applicable).
(2) The CAIR designated representative of a CAIR NO_X source, CAIR SO_2 source, and CAIR NO_X Ozone Season source (as applicable) and each CAIR NO_X unit, CAIR SO_2 unit, and CAIR NO_X Ozone Season unit (as applicable) at the source shall submit the reports required under the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, and CAIR NO_X Ozone Season Trading Program (as applicable) including those under subparts HH, HHH, and HHHH (as applicable) of 40 CFR part 96.

(f) Liability.
(1) Each CAIR NO_X source, CAIR SO_2 source, and CAIR NO_X Ozone Season source (as applicable) and each NO_X unit, CAIR SO_2 unit, and CAIR NO_X Ozone Season unit (as applicable) shall meet the requirements of the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, and CAIR NO_X Ozone Season Trading Program (as applicable).
(2) Any provision of the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, and CAIR NO_X Ozone Season Trading Program (as applicable) that applies to a CAIR NO_X source, CAIR SO_2 source, and CAIR NO_X Ozone Season source (as applicable) or the CAIR designated representative of a CAIR NO_X source, CAIR SO_2 source, and CAIR NO_X Ozone Season source (as applicable) shall also apply to the owners and operators of such source and of the CAIR NO_X units, CAIR SO_2 units, and CAIR NO_X Ozone Season units (as applicable) at the source.
(3) Any provision of the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, and CAIR NO_X Ozone Season Trading Program (as applicable) that applies to a CAIR NO_X unit, CAIR SO_2 unit, and CAIR NO_X Ozone Season unit (as applicable) or the CAIR designated representative of a CAIR NO_X unit, CAIR SO_2 unit, and CAIR NO_X Ozone Season unit (as applicable) shall also apply to the owners and operators of such unit.

Plant Name (from Step 1) **Dominion – Yorktown Power Station**

STEP 3, continued

(g) Effect on Other Authorities.
No provision of the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, and CAIR NO_X Ozone Season Trading Program (as applicable), a CAIR permit application, a CAIR permit, or an exemption under § 96.105, §96.205, and §96.305 (as applicable) shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_X source, CAIR SO_2 source, and CAIR NO_X Ozone Season source (as applicable) or CAIR NO_X unit, CAIR SO_2 unit, and CAIR NO_X Ozone Season unit (as applicable) from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

Certification

I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.

Name J. David Rives	
Signature J. David Rives	Date 06-21-07

Appendix B
EPA Consent Decree

Docket as of October 10, 2003 7:05 pm Web PACER (v2.4)

U.S. District Court

Eastern District of Virginia (Alexandria)

CIVIL DOCKET FOR CASE #: 03-CV-517

United States, et al v. Virginia Electric

Filed: 04/21/03
Assigned to: Judge Leonie M. Brinkema
Demand: $0,000
Nature of Suit: 893
Lead Docket: None
Jurisdiction: US Plaintiff
Dkt# in other court: None
Cause: 42:7604 Clear Air Act (Emission Standards)

UNITED STATES OF AMERICA plaintiff	Richard W. Sponseller [COR LD NTC] United States Attorney's Offic 2100 Jamieson Ave Alexandria, VA 22314 (703)299-3700
STATE OF NEW JERSEY intervenor-plaintiff	Bruce B. McHale [COR LD NTC] Office of the Attorney General of NY Assitant Attorney General 120 Broadway 24th Floor New York, NY 10271 (212) 416-6363
STATE OF CONNECTI intervenor-plaintiff	Bruce B. McHale (See above) [COR LD NTC]
STATE OF WEST VIRGINIA intervenor-plaintiff	Carl Josephson [COR LD NTC] Office o A torney G n l Virginia 900 E. Main St. Richmond, VA 23219 (804) 786-2452

v.

VIRGINIA ELECTRIC AND POWER COMPANY □ defendant	Earle Duncan Getchell, Jr. [COR LD NTC] McGuireWoods LLP 1 James Ctr 901 E Cary St Richmond, VA 23219-4030 (804) 775-1000

COMMONWEALTH OF VIRGINIA movant	Roger L. Chaffe [COR LD NTC] Office of Attorney General of Virginia 900 E. Main St Richmond, VA 23219 (804) 786-6957
STATE OF WEST VIRGINIA movant [term 10/03/03]	Carl Josephson [term 10/03/03] [COR LD NTC] Office of Attorney General of Virginia 900 E. Main St. Richmond, VA 23219 (804) 786-2452
==========	
STATE OF NEW JERSEY movant [term 10/03/03]	Bruce B. McHale [term 10/03/03] [COR LD NTC] Office of the Attorney General of NY Assitant Attorney General 120 Broadway 24th Floor New York, NY 10271 (212) 416-6363
STATE OF CONNECTICUT movant [term 10/03/03]	Bruce B. McHale [term 10/03/03] (See above) [COR LD NTC]
□	

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
4/21/03	1	COMPLAINT (kcha) [Entry date 04/24/03]
4/21/03	2	NOTICE by United States of Lodging of Proposed Consent Decree (kcha) [Entry date 04/24/03]
4/22/03	3	MOTION by Commonwealth of VA for Leave to Intervene and Complaint in Intervention (kcha) [Entry date 04/24/03]
4/22/03	4	MOTION by State of West VA for Leave to Intervene and Complaint in Intervention (kcha) [Entry date 04/24/03]
4/25/03	5	ORDER, for Roland Theodore Huson, III to appear pro hac vice Filing Fee Paid $ 25.00 Receipt # 100163166 (signed by Judge Leonie M. Brinkema) Copies Mailed: yes [EOD Date: 4/29/03] (lkin) [Entry date 04/29/03]
7/22/03	6	ORDER, that this case hereby is consolidated with the case United States of America v. Electric and Power Company, CA-03-517-A (see order for details) (signed by Judge Leonie M. Brinkema) Copies Mailed: Yes [EOD Date: 7/23/03] (kjon) [Entry date 07/23/03]
7/22/03	--	Consolidated Lead Case (consolidated with CA-03-603-A) (kjon) [Entry date 07/23/03]
8/27/03	7	ORDER, rescheduling pretrial conference from 8/27/03 to 9/17/03 at 10:10 a.m. (signed by Magistrate Judge Barry R. Poretz) Copies Mailed: yes [EOD Date: 8/28/03] (mcke) [Entry date 08/28/03]
8/27/03	--	Deadline updated; set Initial Pretrial Conference for 10:10 9/17/03 (per order of Mag. Judge Poretz that was filed in CA-03-603-A, with a copy in this case) (mcke) [Entry date 08/28/03]
9/16/03	8	ORDER, that the initial pretrial originally set for 9/17/03 at 10:00 am is reset Initial Pretrial Conference for 10:00 10/29/03 (signed by Magistrate Judge Thomas R. Jones Jr.) Copies Mailed: yes [EOD Date: 9/16/03] (mcke)
9/22/03	9	MOTION to Intervene by State of New Jersey, State of Connecticut (kjon) [Entry date 09/29/03]
9/22/03	10	MEMORANDUM OF LAW by State of New Jersey, State of Connecticut in support of [9-1] motion to Intervene (LARGE PLEADING) (kjon) [Entry date 09/29/03]
9/22/03	11	NOTICE of Hearing: Motion Hearing Deadline set for 10:00 10/3/03 for [9-1] motion to Intervene by State of New Jersey, State of Connecticut (kjon) [Entry date 09/29/03]
9/22/03	12	NOTICE of Attorney Appearance for State of New Jersey, State of Connecticut by Bruce B. McHale (kjon) [Entry date 09/29/03]

9/22/03	13	Joint Stipulation filed by United States, State of New Jersey, State of Connecticut, Virginia Electric (kjon) [Entry date 09/29/03]
9/30/03	14	ORDER, for John R. Renella to appear pro hac vice Filing Fee Paid $ 50.00 Receipt # 100 166649 (signed by Judge Leonie M. Brinkema) Copies Mailed: Yes [EOD Date: 9/30/03] (kjon)
9/30/03	15	ORDER, for Carmel Alicia Motherway to appear pro hac vice Filing Fee Paid $ 50.00 Receipt # 100 166649 (signed by Judge Leonie M. Brinkema) Copies Mailed: Yes [EOD Date: 9/30/03] (kjon)
9/30/03	16	MOTION by United States to enter the consent decree as the order of this court (kjon)
9/30/03	17	MEMORANDUM by United States in support of [16-1] motion by United States to enter the consent decree as the order of this court (LARGE PLEADING) (kjon)
9/30/03	18	Declaration of Thomas A. Mariani, Jr. re: [16-1] motion by United States to enter the consent decree as the order of this court (kjon)
10/2/03	--	Per LMB chambers motions set for 10/03/03 are on papers (stas)
10/3/03	19	ORDER GRANTING [9-1] motion to Intervene as Pltfs' by State of New Jersey, State of Connecticut; GRANTING [4-1] motion by State of West VA for Leave to Intervene as Pltf; GRANTING [16-1] motion United States to enter the consent decree as the order of this court; The Clerk is directed to enter the consent decree as the judgment of the Court pursuant to FRCP 58 (see Order for details) (signed by Judge Leonie M. Brinkema) Copies Mailed: yes [EOD Date: 10/7/03] (pmil) [Entry date 10/07/03]
10/3/03	20	JUDGMENT/CONSENT DECREE for United States as a civil penalty in the amount of $5.3 million and against Virginia Electric to be paid within 30 calendar days of the entry of this Consent Decree; the Civil Penalty shall be paid by Electronic Funds Transfer ("EFT") to the U.S. Dept. of Justice, in accordance w/current EFT procedures, referencing the USAO File No. 2003V00487 and DOJ CA No. 90-5-2-1-07122 and the civil action case name and case number of this action. The costs of EFT shall be VEPCO's responsibiliy. Payment shall be made in accordance w/instructions provided by the Financial Litigation Unit of the U.S. Attorney's Office for the EDVA. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. VEPCO shall provide notice of payment, referencing the USAO File Number, DOJ Case Number 90-5-2-1-07122, and the civil action case name and number, to the Dept. of Justice and to EPA, as provided in Section XXIX, Paragraph 187 ("Notice"). Failure to timely pay the civil penalty shall subject VEPCO 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 VEPCO liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the U.S. in securing payment; Entered pursuant to FRCP 58 (see Judgment/Consent Decree for details) (signed by Judge Leonie M. Brinkema) Copies Mailed: yes (LARGE PLEADING) [EOD DATE: 10/10/03] (pmil) [Entry date 10/10/03]

10/3/03 -- Case closed (pmil) [Entry date 10/10/03]

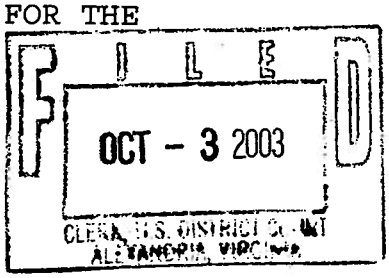
10/3/03 -- ALL PLEADINGS ACCOUNTED FOR AND IN ORDER (pmil) [Entry date 10/10/03]

Case Flags:
CLOSED
LEAD

END OF DOCKET: 1:03cv517

PACER Service Center			
Transaction Receipt			
10/19/2003 19:14:30			
PACER Login:	us3079	Client Code:	
Description:	docket report	Search Criteria:	1:03cv00517
Billable Pages:	5	Cost:	0.35

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



UNITED STATES OF AMERICA, STATE OF NEW YORK, STATE OF CONNECTICUT, COMMONWEALTH OF VIRGINIA, STATE OF WEST VIRGINIA	)	
Plaintiffs,	)	Civil Action No. 03-517-A and Civil Action No. 03-603-A
v.	)	
	)	CONSOLIDATED
VIRGINIA ELECTRIC AND POWER COMPANY,	)	
Defendant.	)	

ORDER

Before the Court is the Motion of the United States to Enter the Consent Decree As the Order of This Court. Also before the Court are motions of the State of New Jersey, State of Connecticut, and State of West Virginia to intervene as additional plaintiffs. The motions to intervene are unopposed and will be granted.

The United States and the several states, along with Defendant Virginia Electric and Power Company ("VEPCO"), have submitted a consent decree to resolve all claims brought by plaintiffs against defendants under the Clean Air Act. The parties represent that this consent decree is a well-considered agreement to reduce the emissions of pollutants from Defendant's coal-fired, electric generating units located in Virginia and

West Virginia. The parties have submitted a memorandum outlining the background of the litigation, the claims alleged against VEPCO, and the key terms of the decree.

The United States filed Notice of Lodging of Proposed Consent Decree on April 21, 2003, and invited comment by publishing notice in the Federal Register on June 19, 2003. At the completion of the comment period, the only comments received were from the Attorney General of the Commonwealth of Massachusetts. Those comments did not urge the Court to reject the decree, and the Commonwealth of Massachusetts has not sought to intervene in this civil action. In their memorandum asking the Court to enter the proposed consent decree, the parties have presented and sufficiently responded to the objections of the Commonwealth of Massachusetts.

The Court has thoroughly reviewed the information presented by the parties, and is persuaded that the proposed consent decree is fair, adequate, and reasonable, and not illegal, the product of collusion, or against public policy. Therefore, the Court finds that the proposed consent decree is in the public interest, and will enter it as the judgment of this Court. Accordingly, it is hereby

ORDERED that the motions of the states of New Jersey, Connecticut, and West Virginia to intervene as plaintiffs be and are GRANTED, and it is further

ORDERED that the Motion of the United States to Enter the Consent Decree as the Order of This Court be and is GRANTED.

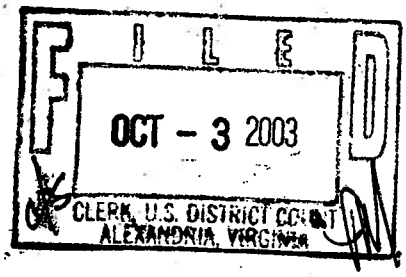
The Clerk is directed to enter the consent decree as the judgment of the Court pursuant to Fed. R. Civ. P. 58 and forward copies of this Order to counsel of record.

Entered this 3rd day of October, 2003.

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA



UNITED STATES OF AMERICA, STATE OF NEW YORK, STATE OF NEW JERSEY, STATE OF CONNECTICUT, COMMONWEALTH OF VIRGINIA STATE OF WEST VIRGINIA Plaintiffs, v. VIRGINIA ELECTRIC AND POWER COMPANY, Defendant.	CIVIL ACTION NO. 03-517A CONSOLIDATED W/ 03-603-A

CONSENT DECREE

WHEREAS Plaintiff, the United States of America ("the United States"), on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint alleging that Defendant, Virginia Electric and Power Company ("VEPCO"), commenced construction of major modifications of major emitting facilities in violation of the Prevention of Significant Deterioration ("PSD") requirements at Part C of the Clean Air Act ("Act"), 42 U.S.C. §§ 7470-7492;

WHEREAS on April 24, 2000, EPA issued a Notice of Violation ("NOV") to VEPCO with respect to certain alleged violations of PSD;

WHEREAS Plaintiff, the State of New York, filed a complaint against VEPCO on July

20

20, 2000, alleging violations of the Act at VEPCO's Mount Storm Power Station located in northeastern West Virginia;

WHEREAS Plaintiff, the State of Connecticut, has issued VEPCO a notice of intent to sue, alleging violations of the Act and also has filed a complaint alleging violations of the Act at certain VEPCO electric generating units;

WHEREAS Plaintiff, the State of New Jersey, has issued to VEPCO a notice of intent to sue, alleging violations of the Act and also filed a complaint alleging violations of the Act at certain VEPCO electric generating units;

WHEREAS Plaintiff the Commonwealth of Virginia is filing a Motion for Leave to Intervene and Complaint in Intervention alleging that VEPCO may have violated Virginia's air pollution regulations found at 9 VAC 50-80-1700, *et seq.*, "Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas," at one or more of its coal-fired generating units located in Virginia and that such violations may recur or other similar violations may occur in the future;;

WHEREAS the Parties consent to intervention by the Commonwealth of Virginia;

WHEREAS Plaintiff the Commonwealth of Virginia has a significant interest in this litigation by reason of its aforesaid Complaint as well as by reason of: (1) the fact that a significant portion of the relief provided by this Decree will involve facilities located within Virginia and regulated by the Commonwealth and no other State, and (2) the fact that such relief will directly impact the issuance to the affected facilities of permits under the Commonwealth's program approved pursuant to Title V of the Clean Air Act;

WHEREAS, Section 10.1-1186.4 of the Code of Virginia specifically authorizes the Attorney General of Virginia to seek to intervene in pending federal enforcement actions such as this one brought by the United States through the Environmental Protection Agency.

WHEREAS Plaintiff the State of West Virginia is filing a Motion for Leave to Intervene and Complaint in Intervention alleging that VEPCO may have violated West Virginia's air pollution regulations found at 45CAR14, "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration," at one or more of its coal-fired generating units located in West Virginia and that such violations may recur or other similar violations may occur in the future;

WHEREAS the Parties consent to intervention by the State of West Virginia;

WHEREAS Plaintiff the State of West Virginia has a significant interest in this litigation by reason of its aforesaid Complaint as well as by reason of: (1) the fact that a significant portion of the relief provided by this Decree will involve facilities located within West Virginia and regulated by the State of West Virginia and no other State, and (2) the fact that such relief will directly impact the issuance to the affected facilities of permits under the West Virginia program approved pursuant to Title V of the Clean Air Act;

WHEREAS, Section 22-1-6 (d)(3) of the West Virginia Code specifically authorizes the Secretary of the West Virginia Department of Environmental Protection to enforce the statutes or rules which the Department is charged with enforcing.

WHEREAS VEPCO, a large electric utility, responded in a constructive way to Plaintiffs' notices of intent to sue and the NOV and expended significant time and effort to develop and agree to the terms of settlement embodied in this Decree;

WHEREAS VEPCO asserts that installation and operation of the pollution controls required by this Decree will result in emission reductions beyond current regulatory requirements;

WHEREAS the steam electric generating units at VEPCO's Mount Storm Power Station qualified for alternative emission limitations under 40 CFR Section 76.10 because VEPCO demonstrated under the applicable standard that they were not capable of meeting the emissions limitations otherwise applicable under the Clean Air Act's Acid Rain Nitrogen Oxides Emission Reduction Program;

WHEREAS Plaintiffs and VEPCO disagree fundamentally over the nature and scope of modifications that may be made to steam electric generating units without implicating the New Source Review requirements (including PSD) under the Act and its regulations;

WHEREAS nothing in this Decree resolves or is intended to resolve those disagreements;

WHEREAS VEPCO has advised the United States and the Plaintiff States that VEPCO has entered into this Consent Decree in reliance on the expectation that EPA will continue to enforce the modification provisions of the Act's New Source Review program in substantially the same manner as set forth in the complaints filed herein;

WHEREAS VEPCO has been advised that the United States retains all of its discretion concerning whether and how to enforce the Clean Air Act against any person, nothing in this Consent Decree is intended to predict or impose enforcement activities on EPA or the United States, and that the obligations of VEPCO under this Consent Decree are not conditional on subsequent enforcement activities of the Federal government;

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

WHEREAS VEPCO has not answered any of the Complaints in light of the settlement memorialized in this Decree;

WHEREAS VEPCO has denied and continues to deny the violations alleged in the NOV and the Complaints; maintains that it has been and remains in compliance with the Act and is not liable for civil penalties or injunctive relief; and states that it is agreeing to the obligations imposed by this Decree solely to avoid the costs and uncertainties of litigation and to improve the environment;

WHEREAS VEPCO intends to comply with any applicable Federal or State Implementation Plans that result from the NO_x SIP Call (63 Fed. Reg. 57356 (1998)) separate and apart from the obligations imposed by this Decree, and such Federal or State Implementation Plans that may ultimately result from the NO_x SIP Call are not intended to be enforceable under this Decree, and instead are enforceable in accordance with their own terms and the laws pertaining to them;

WHEREAS the Plaintiffs and VEPCO agree that settlement of these actions is fair, reasonable, and in the best interest of the Parties and the public, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

WHEREAS the Plaintiffs and VEPCO have consented to entry of this Decree without the trial or other litigation of any allegation in the complaints;

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

the violations alleged in the Complaints or NOV, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. Solely for purposes of entry and enforcement of this Decree, the parties agree that this Court has jurisdiction over the subject matter herein and over the Parties consenting hereto pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367 and pursuant to Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477, and also pursuant to 42 U.S.C. §7604(a). Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c). VEPCO consents 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 any party other than the Plaintiffs and VEPCO. VEPCO consents to entry of this Decree without further notice.

II. APPLICABILITY

2. Scope. The provisions of this Consent Decree shall apply to and be binding upon – consistent with Section XXVIII ("Sale or Transfers of Ownership Interests") – the Plaintiffs and VEPCO, including VEPCO's officers, employees, and agents solely in their capacities as such. Unless otherwise specified, each requirement on VEPCO under this Consent Decree shall become effective thirty days after entry of this Decree.

3. Notice to those Performing Decree-Mandated Work. VEPCO shall provide a copy of this

Decree to all vendors, suppliers, consultants, or contractors performing any of the work described in Sections IV through IX. Notwithstanding any retention of contractors, subcontractors or agents to perform any work required under this Consent Decree, VEPCO shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree, VEPCO shall not assert as a defense the failure of its employees, servants, agents, or contractors to take actions necessary to comply with this Decree, unless VEPCO establishes that such failure is delayed or excused under Section XXVI ("Force Majeure").

III. DEFINITIONS

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

5. "30-Day Rolling Average Emission Rate" for a Unit means and is calculated by (A) summing the total pounds of the pollutant in question emitted from the Unit during an Operating Day and the previous twenty-nine (29) Operating Days; (B) summing the total heat input to the Unit in mmBTU during the Operating Day and during the previous twenty-nine (29) Operating Days; and (C) dividing the total number of pounds of pollutants emitted during the thirty (30) Operating Days by the total heat input during the thirty (30) Operating Days, and converting the resulting value to lbs/mmBTU. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Operating Day. In calculating all 30-Day Rolling Average Emission

Rates VEPCO :

A. shall include all emissions and BTUs commencing from the time the Unit is synchronized with a utility electric distribution system through the time that the Unit ceases to combust fossil fuel and the fire is out in the boiler, except as provided by Subparagraph B, C, or D;

B. shall use the methodologies and procedures set forth in 40 C.F.R. Part 75;

C. may exclude emissions of NOx and BTUs occurring during the fifth and subsequent Cold Start Up Period(s) that occur in any 30-Day period if inclusion of such emissions would result in a violation of any applicable 30-Day Rolling Average Emissions Rate, and if VEPCO has installed, operated and maintained the SCR in question in accordance with manufacturers' specifications and good engineering practices. A "Cold Start Up Period" occurs whenever there has been no fire in the boiler of a Unit (no combustion of any fossil fuel) for a period of six hours or more. The emissions to be excluded during the fifth and subsequent Cold Start Up Period(s) shall be the less of (1) those NOx emissions emitted during the eight hour period commencing when the Unit is synchronized with a utility electric distribution system and concluding eight hours later or (2) those emitted prior to the time that the flue gas has achieved the SCR operational temperature as specified by the catalyst manufacturer; and

D. may exclude NOx emissions and BTUs occurring during any period of malfunction (as defined at 40 C.F.R. 60.2) of the SCR.

6. "30-Day Rolling Average Removal Efficiency" means the percent reduction in the SO_2 Emissions Rate achieved by a Unit's FGD over a 30 Operating Day period, as further described by the terms of this Decree.

7. "Air Quality Control Region" means a geographic area designated under Section 107(c)

of the Act, 42 U.S.C. § 7407(c).

8. "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.

9. "Capital Expenditures" means all capital expenditures, as defined by Generally Accepted Accounting Principles (GAAP), as VEPCO applied GAAP to its Boiler Island expenditures for the calendar years 1995-2000. Excluded from "Capital Expenditure" is the cost of installing or upgrading pollution control devices and the cost of altering or replacing any portion of the Boiler Island if such alteration or replacement is required in accordance with good engineering practices to accomplish the installation or upgrading of a pollution control device to meet the requirements of this Decree.

10. "CEMS" or "Continuous Emission Monitoring System," for obligations involving NO_x and SO_2 under this Decree, shall mean "CEMS" as defined in 40 C.F.R. Section 72.2 and installed and maintained as required by 40 C.F.R. Part 75.

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

12. "Completed," when used in connection with Sections XI through XVII (Resolution of Certain Civil Claims) and with respect to a change or modification, means the time when the Unit subject to the change or modification has been returned to service and is capable of generating electricity.

13. "Connecticut" means the State of Connecticut.

14. "Consent Decree" or "Decree" means this Consent Decree and its Appendices A through C, which are incorporated by reference (Appendix A -- "Coal-Fired Steam-Electric Generating Units Constituting the VEPCO System"; Appendix B -- "Consent Decree Reporting Form"; and Appendix C -- "Mitigation Projects that Shall be Completed Under this VEPCO Consent Decree").

15. "Defendant" means Virginia Electric and Power Company or VEPCO.

16. "Emission Rate" means the number of pounds of pollutant emitted per million BTU of heat input ("lb/mmBTU"), measured as required by this Consent Decree.

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

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

19. "FGD" means a pollution control device that employs flue gas desulfurization technology to remove SO_2 from flue gas.

20. "Improved Unit" means, in the case of NOx, a VEPCO System Unit scheduled under this Decree to be equipped with SCR and, in the case of SO2, means a VEPCO System Unit scheduled under this Decree to be equipped with an FGD, or Possum Point Units 3 and 4 because of their conversion to natural gas, as listed in Appendix A of this Decree and any amendment thereto. A Unit may be an Improved Unit for one pollutant without being an Improved Unit for the other.

21. "KW" means a kilowatt, which is one thousand Watts or one thousandth of a megawatt (MW).

22. "lb/mmBTU" means the number of pounds of pollutant emitted per million British Thermal Units of heat input.

23. "MW" means megawatt or one million Watts.

24. "National Ambient Air Quality Standards" means national air quality standards promulgated pursuant to Section 109 of the Act, 42 U.S.C. § 7409.

25. "New York" means the State of New York.

26. "New Jersey" means the State of New Jersey.

27. "NOV" means the Notice of Violation issued by EPA to VEPCO, dated April 24, 2000.

28. "NO_x" means oxides of nitrogen, as further described by the terms of this Decree.

29. "NSR" means New Source Review and refers generally to the Prevention of Significant Deterioration and Non-Attainment provisions of Parts C and D of Subchapter I of the Act.

30. "Operating Day" for a coal-fired Unit means any calendar day on which such a Unit burns fossil fuel.

31. "Other Unit" means any Unit of the VEPCO System that is not an Improved Unit for the pollutant in question. A Unit may be an Improved Unit for NOx and an Other Unit for SO2 and vice versa.

32. "Ozone Season" means the five-month period from May 1 through September 30 of any year after 2004. For the year 2004, "Ozone Season" means the period from May 31, 2004, through September 30, 2004.

33. "Paragraph" means a provision of this Decree preceded by an Arabic number.

34. "Parties" means VEPCO, the United States, Virginia, West Virginia, New York, New Jersey, and Connecticut.

35. "Plaintiffs" means the United States, New York, New Jersey, Connecticut, Virginia, and West Virginia.

36. "PM" means total particulate matter as further described by the terms of this Decree.

37. "PM CEM" or "PM Continuous Emission Monitor" means equipment that samples, analyses, measures, and provides PM emissions data -- by readings taken at frequent intervals -- and makes an electronic or paper record of the PM emissions measured.

38. "Pollution Control Upgrade Analysis" means the technical study, analysis, review, and selection of control technology recommendations (including an emission rate or removal efficiency) performed in connection with an application for a federal PSD permit, taking into account the characteristics of the existing facility. Except as otherwise provided in this Consent Decree, such study, analysis, review, and selection of recommendations shall be carried out in accordance with applicable federal and state regulations and guidance describing the process and analysis for determining Best Available Control Technology (BACT), as that term is defined in 40 C.F.R. §52.21(b)(12), including, without limitation, the December 1, 1987 EPA Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, regarding Improving New Source Review (NSR) Implementation. Nothing in this Decree shall be construed either to: (A) alter the force and effect of statements known as or characterized as "guidance" or (B) permit the process or result of a "Pollution Control Upgrade Analysis" to be considered BACT for any purpose under the Act.

39. "ppm" means parts per million by dry volume, corrected to 15 percent O_2.

40. "Project Dollars" means VEPCO's properly documented internal and external costs incurred in carrying out the dollar-limited projects identified in Section XXI ("Mitigation

Projects") and Appendix C, as determined in accordance with Generally Accepted Accounting Principles (GAAP) (subject to review by the Plaintiffs), and provided that such costs comply with the Project Dollars and other requirements for such expenditures and payments set forth in Section XXI ("Mitigation Projects") and Appendix C.

41. "PSD" means Prevention of Significant Deterioration, as that term is understood under Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470 - 7492 and 40 C.F.R. Part 52.

42. "PSD Increment" means the maximum allowable increase in a pollutant's concentration over the baseline concentration within the meaning of Section 163 of the Act, 42 U.S.C. § 7473 and 40 C.F.R. § 51.166(c).

43. "SCR" means a pollution control device that employs selective catalytic reduction to remove NO_x from flue gas.

44. "Seasonal System-Wide Emission Rate" for a pollutant means the total pounds of the pollutant emitted by the VEPCO System during the period from May 1 through September 30 of each calendar year, divided by the total heat input (in mmBTU) to the VEPCO System during the period from May 1 through September 30 of the same calendar year. VEPCO shall calculate the Seasonal System-Wide Emission Rates from hourly CEMS data collected and analyzed in compliance with the 40 C.F.R. Part 75.

45. "Section" means paragraphs of this Decree collected under a capitalized heading that is preceded by a Roman Numeral.

46. "SO_2" means sulfur dioxide, as described further by the terms of this Decree.

47. "SO_2 Allowance" means the same as the definition of "allowance" found at 42 U.S.C. Section 7651a(3): "an authorization, allocated to an affected unit, by the Administrator [of EPA]

under [Subchapter IV of the Act] to emit, during or after a specified calendar year, one ton of sulfur dioxide."

48. "Subparagraph" means any subdivision of a Paragraph identified by any number or letter.

49. "System-Wide Annual Emission Rate" for a pollutant shall mean the total pounds of the pollutant emitted by the VEPCO System during a calendar year, divided by the total heat input (in mmBTU) to the VEPCO System during the same calendar year. VEPCO shall calculate and analyze the System-Wide Annual Emission Rates from hourly CEM data collected in compliance with 40 C.F.R. Part 75.

50. "Title V Permit" means each permit required under Subchapter V of the Clean Air Act, 42 U.S.C. § 7661, et seq., for each electric generating plant that includes one or more Units that are part of the VEPCO System.

51. "VEPCO System" means all the Units listed here and described further in Appendix A: Bremo Power Station Units 3 and 4 (in Fluvanna County, Virginia); Chesapeake Energy Center Units 1, 2, 3, and 4 (near Chesapeake, Virginia); Chesterfield Power Station Units 3, 4, 5, and 6 (in Chesterfield County, Virginia); Clover Power Station Units 1 and 2 (in Halifax County, Virginia); Mount Storm Power Station Units 1, 2, and 3 (in northeastern West Virginia); North Branch Power Station Units 1A and 1B (in northeastern West Virginia); Possum Point Power Station Units 3 and 4 (in Northern Virginia, about twenty-five miles south of Washington, D.C.); and Yorktown Power Station Units 1 and 2 (in Yorktown, Virginia).

52. "Virginia" means the Commonwealth of Virginia.

53. "Watt" means a unit of power equal to one joule per second.

54. "West Virginia" means the State of West Virginia.

55. "Unit" means a generator, the steam turbine that drives the generator, the boiler that produces the steam for the steam turbine, the equipment necessary to operate the generator, turbine and boiler, and all ancillary equipment, including pollution control equipment or systems necessary for the production of electricity.

IV. NO_x EMISSION REDUCTIONS AND CONTROLS

56. Unit-Specific SCR Installations and Performance Requirements. VEPCO shall install an SCR on each Unit listed below, no later than the date specified below and, commencing on that date and continuing thereafter, operate each SCR to meet a 30-Day Rolling Average Emission Rate for NO_x of 0.100 lb/mmBTU for each listed Unit, except that VEPCO shall meet a 30-Day Rolling Average Emissions Rate of 0.110 lb/mmBTU for Mount Storm Units 1, 2 and 3:

Units on Which VEPCO Shall Install an SCR	Latest Date by which VEPCO Must: (A) Complete Installation of Fully Operational SCR, and (B) Start Operation that Meets 30-Day Rolling Average NO_x Emission Rate
Mount Storm Unit 1	January 1, 2008
Mount Storm Unit 2	January 1, 2008
Mount Storm Unit 3	January 1, 2008
Chesterfield Unit 4	January 1, 2013
Chesterfield Unit 5	January 1, 2012
Chesterfield Unit 6	January 1, 2011
Chesapeake Energy Center Unit 3	January 1, 2013
Chesapeake Energy Center Unit 4	January 1, 2013

57. VEPCO also shall use best efforts to operate each SCR required under this Decree whenever VEPCO operates the Unit served by the SCR, in accordance with manufacturers' specifications, good engineering practices, and VEPCO's operational and maintenance needs.

58. Year-Round Operation of SCRs. Beginning on January 1, 2008, and continuing thereafter, in accordance with the SCR installation schedule provided for in Paragraph 56 (Unit specific SCR Installation and Performance Requirements), every VEPCO System Unit served by an SCR required pursuant to Paragraph 56 shall operate year-round and achieve and maintain a NO_x 30-Day Rolling Average Emission Rate of no more than 0.100 lb/mmBTU, except that

Mount Storm Units 1, 2 and 3 shall achieve a NOx 30-Day Rolling Average Emission Rate of no more than 0.110 lb/mmBTU.

59. VEPCO System: Interim Control of NO_x Emissions: 2004 through 2007. Commencing in 2004 and ending on December 31, 2007, VEPCO shall control NO_x emissions under the provisions of either Subparagraph (A) or (B) of this Paragraph. VEPCO may elect to comply with either Subparagraph in any calendar year and may change its election from year to year. VEPCO shall notify the Parties in writing on or before January 1 of each calendar year of whether it elects to comply with Subparagraph (A) or Subparagraph (B) for that year. If VEPCO fails to provide such notice by January 1 of any year, the last elected option for the prior calendar year shall be deemed to apply, and, if none, Subparagraph (B) shall be deemed to apply for such year. The requirements of this Paragraph shall terminate on December 31, 2007:

(A) During the following three time periods, VEPCO shall control emissions of NO_x by operating SCRs on VEPCO System Units of at least the mega-wattage capacities specified and shall achieve a 30-Day Rolling Average Emission Rate for NOx of no greater than 0.100 lb/mmBTU at each such Unit, except that Mount Storm Units 1, 2 and 3 shall achieve a NOx 30-Day Rolling Average Emission Rate of no more than 0.110 lb/mmBTU, as follows:

(i) May 31, 2004, through April 30, 2005: Operate SCR on combined capacity of at least 375 MW on any combination of VEPCO System Units, but at least one Unit so controlled shall be at the Chesterfield Station.

(ii) May 1, 2005, through April 30, 2006: Operate SCR on combined capacity of at least 875 MW on any combination of VEPCO System Units, but at

least one-half of the 875 MW so controlled shall be from a Unit or Units at the Chesterfield and/or Mt. Storm Stations.

(iii) May 1, 2006, through December 31, 2007: Operate SCR on combined capacity of at least 1,450 MW on any combination of VEPCO System Units, but at least one-half of the 1,450 MW so controlled shall be from a Unit or Units at the Chesterfield and/or Mt. Storm Stations; or

(B) During the Ozone Seasons of the years 2004 through 2007, actual NO_x emissions from the VEPCO System shall not exceed a Seasonal System Wide Emission Rate greater than 0.150 lb/mmBTU. VEPCO's compliance with this limit shall be achieved, in part, by operating an SCR at the Mt. Storm and Chesterfield Stations.

60. VEPCO System NO_x Limits 2003 and thereafter: Declining, System-Wide Tonnage Caps. Actual, total emissions of NO_x from the VEPCO System in each calendar year, beginning in 2003 and continuing thereafter, shall not exceed the number of tons specified below:

Calendar Year	Total Permissible NO_x Emissions (in Tons) from VEPCO System
2003	104,000
2004	95,000
2005	90,000
2006	83,000
2007	81,000
2008	63,000
2009	63,000
2010	63,000
2011	54,000
2012	50,000
2013 and each year thereafter	30,250

61. VEPCO System-Wide, Annual Average NO_x Emission Rate. Commencing January 1, 2013, and continuing thereafter, actual NO_x emissions from the VEPCO System shall not exceed a System-Wide Annual Average Emission Rate of 0.150 lb/mmBTU.

62. NOx Measurement and Calculation Procedures and Methods. In determining emission rates for NO_x, VEPCO shall use those applicable monitoring or reference methods specified in 40 C.F.R. Part 75.

63. Evaluation of NOx Emission Limitations Based Upon Performance Testing. At any time after September 30, 2004, VEPCO may submit to the Plaintiffs a proposed revision to the applicable 30-Day Rolling Average Emissions Rate for NOx on any VEPCO System Unit

equipped with SCR and subject to a 30-Day Rolling Average Emission Rate. To make a successful petition, VEPCO must demonstrate that it cannot consistently achieve the Decree-mandated NOx emissions rate for the Unit in question, considering all relevant information, including but not limited to the past performance of the SCR, reasonable measures to achieve the designed level of performance of the SCR in question, the performance of other NOx controls installed at the unit, and the operational history of the Unit. VEPCO shall include in such proposal an alternative 30-Day Rolling Average Emissions Rate. VEPCO also shall retain a qualified contractor to assist in the performance and completion of the petition for an alternate 30-Day Rolling Average Emissions Rate for NOx. VEPCO shall deliver with each submission all pertinent documents and data that support or were considered in preparing such submission. If the Plaintiffs disapprove the revised emission rate, such disagreement is subject to Section XXVII ("Dispute Resolution"). VEPCO shall make any submission for any Unit under this Paragraph no later than fifteen months after the compliance date specified for that unit in Paragraph 56 ("Unit-Specific SCR Installations and Performance Requirements").

V. SO_2 EMISSION REDUCTIONS AND CONTROLS

64. Installation and Construction of, and Improvements to, plus Removal Efficiencies Required on, FGDs Serving: Clover Units 1 and 2, Mount Storm Units 1, 2, and 3, and Chesterfield Units 5 and 6. VEPCO shall construct or improve -- as applicable -- FGDs for each Unit listed below, to meet or exceed the Removal Efficiencies for SO_2 specified below, in accordance with the schedules set out below. VEPCO shall operate each FGD so that each Unit shall continuously meet or exceed the SO_2 removal efficiency specified for it, as a 30-Day

Rolling Average Removal Efficiency, during the time periods described (Phases I and II):

Plant Name and Unit Number	**Duration of Phase I Removal Efficiency Requirement**	**Phase I Minimum 30-Day Rolling Average Removal Efficiency (%)**	**Duration of Phase II Removal Efficiency Requirement**	**Phase II Minimum 30-Day Rolling Average Removal Efficiency (%)**
Clover Unit 1	Meet 30-Day Rolling Average by 09/01/ 2003 and thereafter	95.0	Same as Phase I	Same as Phase I
Clover Unit 2	Meet 30-Day Rolling Average by 09/01/ 2003 and thereafter	95.0	Same as Phase I	Same as Phase I
Mt. Storm Unit 1	Meet 30-Day Rolling Average by 09/01/ 2003 and through 12/31/04	93.0	Jan. 1, 2005, and thereafter	95.0
Mt. Storm Unit 2	Meet 30-Day Rolling Average by 09/01/ 2003 and through 12/31/04	93.0	Jan. 1, 2005, and thereafter	95.0
Mt. Storm Unit 3	Meet 30-Day Rolling Average by 09/01/ 2003 and through 12/31/04	93.0	Jan. 1, 2005, and thereafter	95.0

Chesterfield Unit 5	Oct. 12, 2012, and thereafter	95.0	Same as Phase I	Same a Phase I
Chesterfield Unit 6	Jan. 1, 2010, and thereafter	95.0	Same as Phase I	Same as Phase I

65. Chesterfield FGD Construction. This Decree does not require VEPCO to begin: (A) physical construction on or begin significant equipment procurement for the FGD for Chesterfield Unit 6 prior to July 1, 2008, or (B) physical construction on or significant equipment procurement for the FGD for Chesterfield Unit 5 before January 1, 2010.

66. Option of Compliance with an Emission Rate after an FGD Demonstrates SO_2 30-Day Rolling Average Removal Efficiency of at least 95.0%. Once a Unit (and its FGD) listed in Paragraph 64 demonstrates at least 95 percent removal efficiency for SO_2 for at least 180 consecutive days of operation without FGD bypass as specified in Paragraph 67 (omitting days on which the Unit did not combust fossil fuel) on a 30-Day Rolling Average basis, then VEPCO -- at its option and with written, prior notice to the Plaintiffs -- shall meet the following emission rate for SO_2 rather than the 30-Day Rolling Average Removal Efficiency specified in Paragraph 64:

Plant and Unit Eligible to Make 180-Day Demonstration	**Maximum SO_2 30-Day Rolling Average Emission Rate VEPCO shall meet in Lieu of 95.0%, 30-Day Rolling Average Removal Efficiency**
Clover Unit 1	**0.130**
Clover Unit 2	**0.130**
Chesterfield Unit 5	**0.130**
Chesterfield Unit 6	**0.130**

Mount Storm Unit 1	**0.150**
Mount Storm Unit 2	**0.150**
Mount Storm Unit 3	**0.150**

67. Interim Mitigation of Mount Storm SO_2 Emissions While FGDs are Improved. Notwithstanding the requirement to meet a specific percent removal or emission rate at Mount Storm Units 1, 2, or 3, in limited circumstances, VEPCO may operate such Units without meeting required Removal Efficiencies or Emission Rates in the case of FGD scrubber outages or downtime of the FGD scrubber serving each such Unit, if such operation complies with the following requirements. For this Paragraph, FGD outage or downtime "day" shall consist of a 24-hour block period commencing in the hour the FGD ceases to operate, and continuing in successive 24-hour periods until the hour the FGD is placed back into operation. Any period of less than 24 hours of FGD downtime shall count as a full "day". For the FGD serving Unit 3, because it has two separately operating absorber vessels, outage or downtime may be measured in "1/2 day" (12-hour) increments – one for each absorber – but otherwise on the same basis as a "day" is counted for outage or downtime on the FGDs serving Units 1 and 2.

(A) In any calendar year from 2003 through 2004 for Mount Storm Unit 3, and in any calendar year from 2003 through 2004 for Mount Storm Units 1 and 2, VEPCO may operate Mount Storm Units 1, 2, or 3 in the case of outage or downtime of the FGD serving such Unit, if all of the following conditions are satisfied:

(i) VEPCO does not operate Mount Storm Units 1, 2, or 3 during FGD outages or downtime on more than thirty (30) "days", or any part thereof, in any calendar year; in the case of Mount Storm Unit 3, operation during an outage or

downtime in either of the two FGD absorber vessels serving the Unit shall count as operation during a "1/2" day of FGD outage or downtime;

(ii) All other available VEPCO System Units on-line at the Mount Storm Station and Clover Power Station are dispatched ahead of the Mount Storm Unit experiencing the FGD outage or downtime;

(iii) For each of the first twenty (20) "days" in a calendar year, or part thereof, that a Unit operates under this Paragraph VEPCO surrenders to EPA (using the procedure Section VI, Paragraph 72) one SO_2 Allowance, in addition to any surrender or possession of allowances required under Title IV or under any other provision of this Consent Decree, for each ton of SO_2 actually emitted in excess of the SO_2 emissions that would have occurred if coal containing 1.90 lb/mmBTU sulfur had been burned; and

(iv) For each "day", or part thereof, that a Unit operates under this Paragraph beyond twenty (20) "days" in a calendar year, VEPCO shall surrender to EPA (using the procedure in Section VI, Paragraph 72) one SO_2 Allowance, in addition to any surrender or possession of allowances required under Title IV or under any other provision of this Consent Decree, for each ton of SO_2 actually emitted in excess of SO_2 emissions that would have occurred if coal containing 1.70 lb/mmBTU sulfur had been burned.

(B) <u>In any calendar year from 2005 through 2007</u>, VEPCO may operate Mount Storm Units 1, 2, or 3 in the case of FGD outage or downtime, if all of the following conditions are satisfied:

(i) VEPCO does not operate Mount Storm Units 1 or 2 during FGD outages or downtime on more than thirty (30) "days", or any part thereof, in any calendar year; and in the case of Mount Storm Unit 3, operation during an outage or downtime in either one of the two FGD absorber vessels serving the Unit shall count as operation during "1/2" day of FGD outage or downtime;

(ii) All other available VEPCO System Units on-line at the Mount Storm Station and Clover Power Station are dispatched ahead of the Mount Storm Unit experiencing the FGD outage or downtime;

(iii) For each of the first ten (10) "days", or part thereof, in a calendar year that a Unit operates under this Paragraph VEPCO surrenders to EPA (using the procedure in Section VI, Paragraph 72) one SO_2 Allowance, in addition to any surrender or possession of allowances required under Title IV or under any other provision of this Consent Decree, for each ton of SO_2 actually emitted in excess of the SO_2 emissions that would have occurred if coal containing 1.90 lb/mmBTU sulfur had been burned;

(iv) For each day that a Unit operates under this Paragraph from the eleventh through the twentieth "days", or part thereof, in a calendar year, VEPCO shall surrender to EPA (using the procedure in Section VI, Paragraph 72) one SO_2 Allowance, in addition to any surrender or possession of allowances required under Title IV or under any other provision of this Consent Decree, for each of the tons of SO_2 actually emitted that equal the mass emissions difference between actual emissions and those that would have occurred if coal containing 1.70

lb/mmBTU sulfur had been used.; and

(v) For each day that a Unit operates under this Paragraph beyond twenty (20) "days", or part thereof, in a calendar year, VEPCO shall surrender to EPA (using the procedure Section VI, Paragraph 72) one SO_2 Allowance, in addition to any surrender or possession of allowances required under Title IV or under any other provision of this Consent Decree, for each ton of SO_2 actually emitted in excess of SO_2 emissions that would have occurred if coal containing 1.50 lb/mmBTU sulfur had been burned;

(C) In any calendar year from 2008 through 2012, VEPCO may operate Mount Storm Units 1, 2, or 3 in the case of FGD outages or downtime, if all of the following conditions are satisfied:

(i) VEPCO does not operate Mount Storm Units 1, 2, or 3 during FGD outages or downtime on more than ten (10) "days", or part thereof, in any calendar year; in the case of Mount Storm Unit 3, operation during an outage or downtime in either of the two FGD absorber vessels serving the Unit shall count as "1/2" day of operation during an FGD outage or downtime;

(ii) All other available VEPCO System Units on-line at the Mount Storm Station and Clover Station are dispatched ahead of the Mount Storm Unit experiencing the FGD outage or downtime; and

(iii) VEPCO surrenders to EPA (using the procedure of Section VI, Paragraph 72) one SO_2 Allowance, in addition to any surrender or possession of allowances required under Title IV or under any other provision of this Consent Decree, for

each ton of SO_2 actually emitted in excess of SO_2 emissions that would have occurred if coal with 1.50 lb/mmBTU sulfur had been burned.

68. Calculating 30-Day Rolling Average Removal Efficiency of a VEPCO System FGD. The SO_2 30-Day Rolling Average Removal Efficiency for a VEPCO System FGD shall be obtained and calculated using SO_2 CEMS data in compliance with 40 CFR Part 75 (from both the inlet and outlet of the control device) by subtracting the outlet 30-Day Rolling Average Emission Rate from the inlet 30-Day Rolling Average Emission Rate on each day the boiler operates, dividing that difference by the inlet 30-Day Rolling Average Emission Rate, and then multiplying by 100. A new 30-Day Rolling Average Removal Efficiency shall be calculated for each new Operating Day. In the case of FGDs serving Chesterfield Units 5 and 6 or Mount Storm Units 1, 2, or 3, if any flue gas emissions containing SO_2 did not pass through the inlet of the Unit's scrubber on a day when the Unit operated, VEPCO must account for, report on, and include any such emissions in calculating the FGD Removal Efficiency for that day and for every 30-Day Rolling Average of which that day is a part.

69. Commencing within 30 days after lodging of this Decree, VEPCO shall use best efforts to operate each such FGD at all times the Unit the FGD serves is in operation, provided that such FGD system can be operated consistent with manufacturers' specifications, good engineering practices and VEPCO's operational and maintenance needs. In calculating a 30-Day Rolling Average Removal Efficiency or a 30-Day Rolling Average Emission Rate for a Mount Storm Unit, VEPCO need not include SO_2 emitted by Unit while its FGD is shut down in compliance with Paragraph 67 ("Interim Mitigation of Mount Storm SO_2 Emissions While FGDs are Improved").

70. SO_2 Measurement Methods. VEPCO shall conduct all emissions monitoring for SO_2 in compliance with 40 C.F.R. Part 75.

VI. ANNUAL SURRENDER OF SO_2 ALLOWANCES

71. Annual Surrender. On or before March 31 of every year beginning in 2013 and continuing thereafter, VEPCO shall surrender 45,000 SO_2 Allowances. In each year, this surrender of SO_2 Allowances may be made either directly to EPA or by first transferring the SO_2 Allowances to another person in the manner provided for by this Decree.

72. Surrender Directly to EPA. If VEPCO elects to make an annual surrender directly to EPA, VEPCO shall, on or before March 31, 2013, and on or before March 31 of each year thereafter, submit SO_2 Allowance transfer request forms to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of 45,000 SO_2 Allowances held or controlled by VEPCO to the EPA Enforcement Surrender Account or to any other EPA Account to which the EPA may direct. As part of submitting these transfer requests, VEPCO shall irrevocably authorize the transfer of these Allowances and VEPCO shall also identify – by name of account and any applicable serial or other identification numbers or plant names – the source and location of the Allowances being surrendered, as well as any information required by the transfer request form.

73. Alternate Method of Surrender. If VEPCO elects to make an annual surrender of SO_2 Allowances to a person other than EPA, VEPCO shall include a description of such transfer in the next report submitted to Plaintiffs pursuant to Section XIX ("Periodic Reporting") of this Consent Decree. Such report shall: (A) provide the identity of the third-party recipient(s) of the

SO_2 Allowances and a listing of the serial numbers of the transferred allowances; (B) include a certificate in compliance with Section XIX from the third-party recipient(s) stating that it (they) will not sell, trade, or otherwise exchange any of the allowances and will not use any of the allowances to meet any obligation imposed by any environmental law. No later than the next periodic report due 12 months after the first report of the transfer, VEPCO shall include in the Section XIX reports to Plaintiffs a statement that the third-party recipient(s) permanently surrendered the allowances to EPA within one year after VEPCO transferred the allowances to the third-party recipient(s). VEPCO shall not have finally complied with the allowance surrender requirements of this Paragraph until all third-party recipient(s) shall have actually surrendered the transferred allowances to EPA.

74. Changes to Decree-Mandated SO_2 Allowance Surrenders Beginning in 2013, and every year thereafter:

(A) If changes in Title IV of the Act or it implementing regulations decrease the number of SO_2 Allowances that are allocated to the VEPCO System Units for the year 2013 or any year thereafter, or if other applicable law either: (A) awards fewer than 127,363 SO_2 Allowances to the VEPCO System or (B) directs non-reusable surrender of SO_2 Allowances by VEPCO, then the number of SO_2 Allowances that VEPCO must surrender in such a year under this Section shall decrease by the same amount;

(B) If changes to Title IV of the Act or its implementing regulations result in (i) a reduction of SO_2 Allowances to the VEPCO System and (ii) any amount of SO_2 Allowances being auctioned-off, and the national SO_2 Allowance pool reflects a nationwide reduction in SO_2 Allowances of less than 35.6% from the 2010 national pool,

then the number of SO_2 Allowances that VEPCO must surrender in such year under this Section of this Decree shall decrease as follows:

45,000 – (127,363 x the percent reduction of the National pool)

Thus, if the national pool of SO_2 Allowances is reduced by greater than 35.6% from the 2010 national pool of SO_2 allowances, then VEPCO is not required to surrender any SO_2 Allowances under this Decree. But in no event shall VEPCO keep in excess of 82,363 SO_2 Allowances allocated in any year after 2012 to the VEPCO System.

(C) If changes to Title IV of the Act or its implementing regulations result in an increase of SO_2 Allowances to VEPCO, then VEPCO's annual obligation to surrender such Allowances under this Decree shall increase by the amount of such increase.

75. Use of SO_2 Allowances Related to VEPCO System Units Scheduled for FGDs under the Decree. For all SO_2 Allowances allocated to Mount Storm Unit 1 on or after January 1, 2003, Mount Storm Unit 2 on or after January 1, 2003, Chesterfield Unit 5 on or after October 1, 2012, and Chesterfield Unit 6 on or after January 1, 2010, VEPCO may use such SO_2 Allowances only to (A) meet the SO_2 Allowance surrender requirements established for the VEPCO System under this Decree; (B) meet the limits imposed on VEPCO under Title IV of the Act; or (C) meet any federal or state future emission reduction programs that use or rely on Title IV SO_2 Allowances for compliance, in whole or in part. However, if VEPCO operates a FGD serving Mount Storm Unit 1, Mount Storm Unit 2, Chesterfield Unit 5, or Chesterfield Unit 6 either: (A) earlier than required by a provision of this Decree or (B) at a 30-Day Rolling Average Removal Efficiency greater than, or a 30-Day Rolling Average Emissions Rate less than that required by this Decree, then VEPCO may use for any lawful purpose SO_2 Allowances equal to the number of tons of

SO_2 that VEPCO removed from the emission of those Units in excess of the SO_2 tonnage reductions required by this Decree, so long as VEPCO timely reports such use under Section XIX.

76. Other Limits on Use of SO_2 Allowances. VEPCO may not use the same SO_2 Allowance more than once. VEPCO may not use the SO_2 Allowances surrendered under this Section for any other purpose, including, but not limited to, any sale or trade of such Allowances for use by any person other than VEPCO or by any Unit not part of the VEPCO System, except as provided by Paragraph 73 ("Alternate Method of Surrender"). Other than the limits stated in this Decree on use of SO_2 Allowances or limits imposed by law, this Decree imposes no other limits on how VEPCO may use SO_2 Allowances.

77. No Entitlement Created. This Consent Decree does not entitle VEPCO to any allocation of SO_2 Allowances under the Act.

VII. PM EMISSION REDUCTIONS AND CONTROLS

78. Use of Existing PM Pollution Control Equipment. Commencing within 30 days after lodging of this Decree, VEPCO shall operate each ESP and baghouse within the VEPCO System to maximize PM emission reductions through the procedures established in this Paragraph. VEPCO shall (A) commence operation no later than two hours after commencement of combustion of any amount of coal in the controlled System Unit, except that this requirement shall apply to Bremo Power Station Units 3 and 4 commencing two hours after cessation of oil injection to the boiler, and provided that, for all ESP-equipped Units, "combustion of any amount of coal" shall not include combustion of coal that is the result of clearing out a Unit's coal mills as the Unit is returned to service; (B) fully energize each available portion of each

ESP, except those ESP fields that have been out of service since at least January 1, 2000, consistent with manufacturers' specifications, the operational design of the Unit, and good engineering practices, and repair such fields that go out of service consistent with the requirements of this Paragraph; (C) maintain power levels delivered to the ESPs, consistent with manufacturers' specifications, the operational design of the Unit, and good engineering practices; and (D) continuously operate each ESP and baghouse in compliance with manufacturers' specifications, the operational design of the Unit, and good engineering practices. Whenever any element of any ESP that has been in service at any time since January 1, 2000 fails, does not perform in accordance with manufacturers' specifications and good engineering practices, or does not operate in accordance with the standards set forth in this Paragraph, VEPCO shall use best efforts to repair the element no later than the next available Unit outage appropriate to the repair task. The requirements of this Paragraph do not apply to Possum Point Units 3 and 4 until January 1, 2004, and do not apply at all when those Units burn natural gas.

79. ESP and Baghouse Optimization Studies and Recommendations. VEPCO shall complete an optimization study, in accordance with the schedule below, for each VEPCO System Unit served by an ESP or baghouse (except Possum Point Units 3 and 4, in light of their conversion to natural gas), which shall recommend: the best available maintenance, repair, and operating practices that will optimize ESP or baghouse availability and performance in accordance with manufacturers' specifications, the operational design of the Unit, and good engineering practices. These studies shall consider any ESP elements not in service prior to January 1, 2000, to the extent changes to such elements may be required to meet a PM Emission Rate of 0.030 lb/mmBTU. Any operating practices or procedures developed and approved under this

Paragraph shall become a part of the standard specified in (D) of Paragraph 78 ("Use of Existing PM Pollution Control Equipment"), above, and shall be implemented in compliance with that Paragraph. VEPCO shall retain a qualified contractor to assist in the performance and completion of each study. VEPCO shall submit each completed study to the United States for review and approval. (The United States will consult with the other Plaintiffs before completing such review). VEPCO shall implement the study's recommendations within 90 days (or any longer time period approved by the United States) after receipt of approval by the United States. If VEPCO seeks more than 90 days to implement the recommendations contained in the study, then VEPCO shall include, as part of the study, the reasons why more than 90 days are necessary to implement the recommendations, e.g., the need to order or install parts or equipment, retain specialized expertise, or carry out training exercises. VEPCO shall maintain each ESP and baghouse as required by the study's recommendations and shall supplement the ESP operational standard in (D) of Paragraph 78 to include any operational elements of the study and its recommendations. The schedule for completion and submission to the United States of the optimization studies shall be as follows:

10/3/07

Number and Choice of VEPCO System Units on Which VEPCO Shall Complete and Submit Optimization Studies	**Number of Months After Lodging of the Decree that VEPCO Shall Submit Optimizations Studies to the U.S.**
Four Units (including at least one Unit at Mount Storm or Chesterfield)	12 Months 10/3/04
Three More Units (including at least two at any one or more of the following VEPCO stations – Mount Storm, Chesterfield, and Bremo, if not already done)	24 Months 10/3/05

Two More Units (including at least two located at any one or more of the following VEPCO stations – Mount Storm, Chesterfield, and Bremo, if not already done)	36 Months
Two More Units	48 Months
Two More Units	60 Months
All Other Units	72 Months 10/3/09

80. Alternative to Pollution Control Upgrade Analysis. Within 270 days after VEPCO receives the United States' approval of the ESP optimization study for a VEPCO System Unit, VEPCO may elect to achieve for any Unit the objectives of, and thereby avoid, the Pollution Control Upgrade Analysis otherwise required by this Section by certifying to the United States, in writing, that: (A) the ESP shall continue to be operated and maintained in compliance with the approved optimization plan, pursuant to Paragraphs 78 and 79 of this Section, respectively, and (B) that the enforceable PM emission limit for this Unit shall be 0.030 lb/mmBTU, either commencing immediately or on and after the date required by this Decree for completion of FGD installations or improvements at that Unit (or after installation of any other FGD system VEPCO chooses to install at a Unit prior to 2013). Otherwise, VEPCO shall comply with Paragraph 82 (Pollution Control Upgrade Analysis, Construction of PM Controls, Compliance with New Emission Rate"), below.

81. PM Emission Rate Determination. The methods specified in this Paragraph shall be the reference methods for determining PM Emission Rates along with any other method approved by EPA under its authority to establish or approve such methods. The PM Emission Rates established under Paragraph 80 of this Section shall not apply during periods of "startup" and "shutdown" or during periods of control equipment or Unit malfunction, if the malfunction meets

the requirements of the Force Majeure Section of this Consent Decree. Periods of "startup" shall not exceed two hours after any amount of coal is combusted (except that for Bremo Power Station Units 3 and 4, this two-hour period begins upon cessation of injection of oil into the boiler). Periods of "shutdown" shall only commence when the Unit ceases burning any amount of coal (or in the case of Bremo Power Station Units 3 and 4, when any oil is introduced into the boiler). Coal shall not be deemed to be combusted if it is burned as a result of clearing out a Unit's coal mills as the Unit is returned to service. The reference methods for determining PM Emission Rates shall be those specified in 40 C.F.R. Part 60, Appendix A, Method 5 or Method 17, using annual stack tests. VEPCO shall calculate PM Emission rates from the annual stack tests in accordance with 40 C.F.R. 60.8(f) and 40 C.F.R. 60.48a(b). The annual stack-testing requirement of this Paragraph shall be conducted as described in Paragraph 95 and may be satisfied by: (A) any annual stack tests VEPCO may conduct pursuant to its permits or applicable regulations from the States of Virginia and West Virginia if such tests employ reference test methods allowed under this Decree, or (B) installation and operation of PM CEMs required under this Decree.

82. Pollution Control Upgrade Analysis of PM, Construction of PM Controls, Compliance with New Emission Rate. For each VEPCO System Unit served by an ESP -- other than Possum Point Units 3 and 4 and those Units that meet the requirements of Paragraph 80 ("Alternative to Pollution Control Upgrade Analysis") -- VEPCO shall complete a Pollution Control Upgrade Analysis and shall deliver the Analysis and supporting documentation to the United States for review and approval (after consultation with the other Plaintiffs). Notwithstanding the definition of Pollution Control Upgrade Analysis (Paragraph 38), VEPCO shall not be required to consider

in this Analysis: (A) the replacement of any existing ESP with a new ESP, scrubber, or baghouse, or (B) the installation of any supplemental pollution control device similar in cost to a replacement ESP, scrubber, or baghouse (on a total dollar-per-ton-of-pollution-removed basis).

83. VEPCO shall retain a qualified contractor to assist in the performance and completion of each Pollution Control Upgrade Analysis. Within one year of the United States' approval of the work and recommendation(s) made in the Analysis (or within a longer period of time properly sought by VEPCO and approved by the United States), VEPCO shall complete all recommendation(s). If VEPCO seeks more than one year from the date of the United States' approval of the Analysis to complete the work and recommendations called for by the Analysis, VEPCO must state the amount of additional time required and the reasons why additional time is necessary. Thereafter, VEPCO shall operate each ESP in compliance with the work and recommendation(s), including compliance with the specified Emission Rate. The schedule for completion and submission to the United States of the Pollution Control Upgrade Analyses for each Unit subject to this Paragraph shall be 12 months after the United States approves the ESP optimization study for each Unit pursuant to Paragraph 79 (unless VEPCO has elected to use the alternative to the Pollution Control Upgrade Analysis under Paragraph 80 for the Unit).

84. Performance Testing of Equipment Required by Pollution Control Upgrade Analysis. Between 6 and 12 months after VEPCO completes installation of the equipment called for by each approved Pollution Control Upgrade Analysis, VEPCO shall conduct a performance test demonstration to ensure that the approved PM emission limitation set forth in the Analysis can be consistently achieved in practice, including all requirements pertaining to proper operation and maintenance of control equipment. If the performance demonstration shows that the

approved control equipment cannot consistently meet the required PM emission limitation, VEPCO shall revise the Pollution Control Upgrade Analysis and resubmit it to the United States for review and approval of an alternative emissions limitation.

85. Installation and Operation of PM CEMs. VEPCO shall install, calibrate, operate, and maintain PM CEMs, as specified below. Each PM CEM shall be comprised of a continuous particle mass monitor measuring particulate matter concentration, directly or indirectly, on an hourly average basis and a diluent monitor used to convert results to units of lb/mmBTU. VEPCO may select any type of PM CEMS that meets the requirements of this Consent Decree. VEPCO shall maintain, in an electronic database, the hourly average emission values of all PM CEMS in lb/mmBTU. During Unit startups, VEPCO shall begin operating the PM CEMs in accordance with the standards set out in Paragraph 78(A) ("Use of Existing PM Pollution Control Equipment"), and VEPCO shall thereafter use reasonable efforts to keep each PM CEM running and producing data whenever any Unit served by the PM CEM is operating. VEPCO shall submit to EPA for review and approval a plan to install, calibrate and operate each PM CEM. VEPCO shall thereafter operate each PM CEM in accordance with the approved plan.

86. Installation of PM CEMs – First Round (Three Units). On or before December 1, 2003, VEPCO shall designate which three VEPCO System Units will have PM CEMs installed, in accordance with this Paragraph. No later than 12 months after entry of this Decree (or a longer time period approved by the United States, not to exceed 18 months after entry of this Decree) VEPCO shall install, calibrate, and commence operation of the following:

(A) PM CEMs in the stacks that service at least two of the following VEPCO System Units: Mount Storm Units 1, 2, and 3, and Clover Units 1 and 2; and

(B) at least one additional PM CEM at any other ESP-equipped Unit in the VEPCO System, as selected by VEPCO.

If VEPCO seeks more than 12 months after entry of the Decree to complete installation and calibration of the PM CEMs, then VEPCO shall include a full explanation of the reasons why it requires more than 12 months after entry of the Decree to complete installation and calibration.

87. Consultation Before the First Round of PM CEMs. Prior to installing any PM CEMs, VEPCO and the United States shall meet, consult, and agree to adequate mechanisms for treating potential emission limitation exceedances that may occur during installation and calibration periods of the PM CEMs that may exceed applicable PM emission limitations. VEPCO and the United States shall invite the States of Virginia and West Virginia to participate in these discussions.

88. Option for Consultation Both Before and After Installation of the First or Second Round of PM CEMs. Either before the first or second round of PM CEMs installations, or after such PM CEMs are installed and producing data, or both, the United States and VEPCO shall meet, upon the request of either, to examine further the data that may or may not be generated by the PM CEMs. This issue should be addressed in light of the regulatory or permit-based mass emission limit set for the Unit before it was equipped with a PM CEM or any PM emission limitation established or to be established under this Section of the Decree, and the parties should take appropriate and acceptable actions to address any issues concerning periodic short term Unit process and control device upsets and/or averaging periods. In the event VEPCO or the United States call for such a meeting, the United States and VEPCO shall invite the States of Virginia and West Virginia to participate.

89. Demonstration that PM CEMs Are Infeasible. No earlier than 2 years after VEPCO has installed the first round of PM CEMs, VEPCO may attempt to demonstrate that it is infeasible to continue operating PM CEMs. As part of such demonstration, VEPCO shall submit an alternative PM monitoring plan for review and approval by the United States. The plan shall explain the basis for stopping operation of the PM CEMs and propose an alternative-monitoring plan. If the United States disapproves the alternative PM monitoring plan, or if the United States rejects VEPCO's claim that it is infeasible to continue operating PM CEMs, such disagreement is subject to Section XXVII ("Dispute Resolution").

90. "Infeasible to Continue Operating PM CEMs" – Standard. Operation of a PM CEM shall be considered "infeasible" if, by way of example, the PM CEMS: (A) cannot be kept in proper condition for sufficient periods of time to produce reliable, adequate, or useful data; or (B) VEPCO demonstrates that recurring, chronic, or unusual equipment adjustment or servicing needs in relation to other types of continuous emission monitors cannot be resolved through reasonable expenditures of resources; or (C) chronic and difficult Unit operation issues cannot be resolved through reasonable expenditure of resources; or (D) the data produced by the CEM cannot be used to assess PM emissions from the Unit or performance of the Unit's control devices. If the United States determines that VEPCO has demonstrated infeasibility pursuant to this Paragraph, VEPCO shall be entitled to discontinue operation of and remove the PM CEMs.

91. PM CEM Operations Will Continue During Dispute Resolution or Proposals for Alternative Monitoring. Until the United States approves an alternative monitoring plan or until the conclusion of any proceeding under Section XXVII ("Dispute Resolution"), VEPCO shall continue operating the PM CEMs. If EPA has not issued a decision regarding an alternative

monitoring plan within 90 days VEPCO may initiate action under the Dispute Resolution provisions (Section XXVII) under this Consent Decree.

92. Installation and Operation of PM CEMs – Second Round (6 Units). Unless VEPCO has been allowed to cease operation of the PM CEMs under Paragraph 89 ("Demonstration that PM CEMs Are Infeasible"), then VEPCO shall install, calibrate, and commence operation of PM CEMs that serve at least 6 more Units. In selecting the VEPCO System Units to receive PM CEMs under this second round, VEPCO must assure that Mount Storm Units 1, 2, and 3 and Clover Units 1 and 2 all receive PM CEMs if they have not already received PM CEMs under the first round. VEPCO may select the other VEPCO System Units to receive the required PM CEMs. The options for consultation regarding first round PM CEMs under Paragraphs 87 and 88 shall also be available for second round PM CEMs. VEPCO shall install PM CEMs that serve two VEPCO System Units in each of the years 2007, 2008, and 2009 under this second round of PM CEMs.

93. Common Stacks. Installation of a PM CEM on Mount Storm Units 1 and 2 or on Yorktown Units 1 and 2 shall count as installation of PM CEMs on 2 units in recognition of the common stack that serves these Units. VEPCO and the United States shall agree in writing on the method for apportioning emissions to the Units served by common stacks.

94. Data Use. Data from PM CEMs shall be used by VEPCO, at minimum, to monitor progress in reducing PM emissions. Nothing in this Consent Decree is intended to or shall alter or waive any applicable law (including, but not limited to, any defense, entitlements, challenges, or clarifications related to the Credible Evidence Rule (62 Fed. Reg. 8314 (Feb. 27, 1997))) concerning the use of data for any purpose under the Act, generated either by the reference

methods specified herein or otherwise.

95. Other Testing and Reporting Requirements. Commencing in 2004, VEPCO shall conduct a stack test for PM on each stack servicing each Unit in the VEPCO System (excluding Possum Point Units 3 and 4 in 2004, and in any subsequent year in which such Units have not burned coal). Such PM stack testing shall be conducted at least once per every four successive "QA Operating Quarters" (as defined in 40 C.F.R. § 72.2) and the results of such testing shall be submitted to the Plaintiffs as part of the periodic reporting under Section XIX ("Periodic Reporting") and Appendix B. Following installation of each PM CEM, VEPCO shall include all data recorded by PM CEMs, including submission in electronic format, if available, in the reports required by Section XIX.

VIII. POSSUM POINT UNITS 3 & 4: FUEL CONVERSION, INSTALLATION OF CONTROLS

96. Fuel Conversion. VEPCO shall cease all combustion of coal at Possum Point Units 3 and 4 prior to May 1, 2003, in preparation for the conversion of Possum Point Units 3 and 4 to operate on natural gas, and shall not operate these Units again until that fuel conversion is complete and the Units are firing natural gas. VEPCO shall continuously operate such equipment to control NOx emissions in compliance with State permitting requirements. VEPCO also shall limit the combined emissions from Possum Point Units 3 and 4 to 219 tons of NOx in any 365 days, rolled daily, and determined as follows: Add the total NOX emissions from Possum Point Units 3 and 4 on any given day, occurring after entry of this Decree, to the total NOX emissions from those two Units for the preceding 364 consecutive days occurring after

entry of the Decree; the sum of those emissions may never exceed 219 tons. If VEPCO exceeds this 219-ton limit, VEPCO shall install and operate SCR at BACT levels within 3 years of the exceedance at either Yorktown Unit 1 (173 MW), or Yorktown Unit 2 (183 MW), or Bremo Unit 4 (170 MW). VEPCO may select which of these Units receives the SCR so long as the following are true for the Unit:

(A) An SCR is not required under regulatory requirements for the Unit;

(B) VEPCO had not planned to install an SCR on such Unit to help comply with any requirement as of the day of exceedance at Possum Point; and

(C) The Unit is not required to meet an emission rate that would call for installation of SCR.

If these conditions are not met for any of the three listed Units, then VEPCO shall install the required SCR at the next largest Unit (in MW) within the VEPCO System that meets the conditions of subparagraphs (A) through (C).

97. Return to Combustion of Coal After Gas Conversion. If VEPCO uses coal rather than natural gas to operate Possum Point Units 3 or 4 on or after May 1, 2003, VEPCO shall install controls on such Unit(s) and meet the following requirements for NO_x, SO_2, and PM emissions, on or after May 1, 2003:

(A) For NO_x, the more stringent of: (i) a 30-Day Rolling Average Emission Rate of 0.100 lb/mmBTU or (ii) the NO_x emission rate that would be LAER at the time that VEPCO returns to firing Possum Point Units 3 or 4 with coal;

(B) For SO_2, a 30-Day Rolling Average Removal Efficiency of at least 95.0%; and

(C) For PM, an Emission Rate of no more than 0.030 lb/mmBTU.

98. Measurements At Possum Point. The applicable methods and rules specified in other portions of this Decree for measuring emission rates and removal efficiencies for NO_x, SO_2, and PM also apply to the emission standards, as applicable, established under Paragraph 96 and 97 ("Fuel Conversion" and "Return to Combustion of Coal After Gas Conversion") for Possum Point Units 3 and 4.

IX. INSTALLING ADDITIONAL CONTROLS ON VEPCO SYSTEM UNITS

99. If, prior to November 1, 2004, this Consent Decree is modified to require that VEPCO:

(A) Install additional NO_x or SO_2 pollution control devices on a VEPCO System Unit not scheduled for installation of such control device as part the original Decree;

(B) Commence full-time (year-round) operation of such control device no later than January 1, 2008; and

(C) Operate the control device and the Unit it serves in compliance with a performance standard of 0.100 lb/mmBTU 30-Day Rolling Average Emission Rate for NO_x or a 95.0% 30-Day Rolling Average Removal Efficiency for SO_2;

then the modification of the Consent Decree shall also provide that such Unit be treated as an Improved Unit as to the pollutant that has been controlled in compliance with this Section.

100. Reference Methods. The reference and monitoring methods specified in other portions of this Decree for measuring all emission rates and removal efficiencies for NO_x, SO_2, and PM also apply to the emission standards established under this Section.

X. PERMITS

101. Timely Application for Permits. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree require VEPCO to secure a permit to authorize constructing or operating any device under this Consent Decree, VEPCO shall make such application in a timely manner. Such applications shall be completed and submitted to the appropriate authorities to allow sufficient time for all legally required processing and review of the permit request. Failure to comply with this provision shall allow Plaintiffs to bar any use by VEPCO of Section XXVI ("Force Majeure") where a Force Majeure claim is based upon permitting delays.

102. New Source Review Permits. This Consent Decree shall not be construed to require VEPCO to apply for or obtain a permit pursuant to the New Source Review requirements of Parts C and D of Title I of the Act for any work performed by VEPCO within the scope of the resolution of claims provisions of Sections XI through XVII (Resolution of Certain Civil Claims).103. Title V Permits . Whenever VEPCO applies for a Title V permit or a revision to such a permit, VEPCO shall send, at the same time, a copy of such application to each Plaintiff. Also, upon receiving a copy of any permit proposed for public comment as a result of such application, VEPCO shall promptly send a copy of such proposal to each Plaintiff, thereby allowing for timely participation in any public comment opportunity.

104. Title V Permits Enforceable on Their Own Terms. Notwithstanding the reference to Title V permits in this Decree, the enforcement of such permits shall be in accordance with their own terms and the Act. The Title V permits shall not be directly enforceable under this Decree, though any term or limit established by or under this Decree shall be enforceable under this

Decree regardless of whether such term has or will become part of a Title V Permit, subject to the limits of Section XXX ("Conditional Termination of Enforcement, Continuation of Terms, and First Resort to Title V Permit").

105. Consent Decree Requirements To Be Proposed for Inclusion in Title V Permits. Whenever VEPCO applies for Title V Permit(s), or for amendment(s) to existing Title V Permit(s), for the purpose of including the requirements of this Decree in such permits, VEPCO shall include in such application all performance, operational, maintenance, and control technology requirements specified by or created under this Consent Decree, not only for particular Units in the VEPCO System but also for the VEPCO System itself – including, but not limited to, emission rates, removal efficiencies, allowance surrenders, limits on use of emission credits, and operation, maintenance and optimization requirements, unless otherwise limited by Sections XI through XVII. VEPCO shall notify all Plaintiffs of any applicable requirement within its Title V permit application that may be more stringent than the requirements of this Consent Decree.

106. Methods to be Used in Applying for Title V Permit Provisions Applicable to the VEPCO System. VEPCO shall include provisions in any Title V permit application(s) submitted in accordance with Paragraph 105 ("Consent Decree Requirements To Be Proposed for Inclusion in Title V Permits") that comply with this Consent Decree's NO_x VEPCO System Declining Tonnage Cap (Section IV, Paragraph 60), the VEPCO System-Wide Annual Average Emission Rate for NO_x (Section IV, Paragraph 61), and the Annual Surrender of SO_2 Allowances from the

VEPCO System (Section VI, Paragraphs 71). In making such application, VEPCO shall use either the provisions listed below or any other method agreed to in advance by written stipulation of all the Parties and filed with this Court:

(A) For the VEPCO System declining NO_x cap in Section IV, Paragraph 61 ("VEPCO System NO_x Limits 2002 and thereafter: Declining, System-Wide Tonnage Caps"), each Unit in the VEPCO System shall be limited in perpetuity to a specified portion of the NO_x annual emissions cap that ultimately descends to 30,250 tons, provided the total of the VEPCO System declining tonnage caps for NO_x submitted for inclusion in the Title V permits shall be no greater for any year than the tonnage specified for each calendar year for the VEPCO System). The NO_x emission tons shall be allocated to each Unit within the VEPCO System. No Unit shall exceed its allocation except that VEPCO can trade NOx emissions tons between Units within the VEPCO System in order to comply with any given Unit-specific allocation. Compliance with the NO_x Annual System-Wide Annual Average Emissions cap shall be determined each year by whether each Unit holds a sufficient number of NO_x emission tons allocated to it in the Title V permit, or acquired by it through trades with other Units in the VEPCO System, to cover the Unit's actual, annual NO_x emissions; and

(B) For the System-Wide, Annual Average NO_x Emissions Rate specified in Section IV, Paragraph 61, ("VEPCO System-Wide, Annual Average NO_x Emission Rate") VEPCO shall prepare a VEPCO System-Wide NO_x emissions BTU-weighted averaging plan for all the Units in the VEPCO System, and in doing so, shall use all the appropriate methods and procedures specified at 40 C.F.R. § 76.11 in preparing such a plan. As part

of that plan, VEPCO shall prepare an "alternative contemporaneous allowable annual emissions limitation" (in lb/mmBTU) for each Unit in the VEPCO System, as described by 40 C.F.R. § 76.11. After this allocation and establishment of an "alternative contemporaneous allowable annual emissions limitation," VEPCO's compliance with Paragraph 61 ("VEPCO System-Wide, Annual Average NO_x Emission Rate") shall be determined in the manner described by 40 C.F.R. § 76.11, as applicable, and shall be based on whether each Unit meets the applicable "alternative contemporaneous allowable annual emissions limitation" for the NO_x emissions BTU weighted averaging plan; provided, however, that if any Unit(s) does not meet such emissions limitation, such Unit(s) shall still be in compliance if VEPCO shows that all the Units in the emissions averaging plan, in aggregate, do not exceed the BTU-weighted NO_x System-Wide Emissions Rate; and

(C) For the Annual Surrender of SO_2 Allowances required by Section VI, the annual SO_2 Allowance surrender requirement of 45,000 SO_2 Allowances shall either be divided up and allocated to specific Units of the VEPCO System or assigned to a single VEPCO System Unit – as VEPCO elects.

XI. RESOLUTION OF CERTAIN CIVIL CLAIMS OF THE UNITED STATES.

107. Claims Based on Modifications Occurring Before the Lodging of Decree. Entry of this Decree shall resolve all civil claims of the United States under either: (i) Parts C or D of Subchapter I of the Clean Air Act or (ii) 40 C.F.R. Section 60.14, that arose from any

modification commenced at any VEPCO System Unit prior to the date of lodging of this Decree, including but not limited to, those modifications alleged in the U.S. Complaint in this civil action or in the EPA NOV issued to VEPCO on April 24, 2000.

108. Claims Based on Modifications after the Lodging of Decree. Entry of this Decree also shall resolve all civil claims of the United States for pollutants regulated under Parts C or D of Subchapter I of the Clean Air Act and regulations promulgated as of the date of the lodging of this Decree, where such claims are based on a modification completed before December 31, 2015 and:

A) commenced at any VEPCO System Unit after lodging of this Decree or

B) that this Consent Decree expressly directs VEPCO to undertake.

The term "modification" as used in this Paragraph shall have the meaning that term is given under the Clean Air Act statute as it existed on the date of lodging of this Decree.

109. Reopener. The resolution of the civil claims of the United States provided by this Section is subject to the provisions of Section XII.

XII. REOPENING OF U.S. CIVIL CLAIMS RESOLVED BY SECTION XI

110. Bases for Pursuing Resolved Claims Across VEPCO System. If VEPCO:

(A) Violates Paragraph 59(A) or (B) (VEPCO System-Wide, Interim Control of NOX Emissions, 2004 through 2007); or

(B) Violates Paragraph 60 (VEPCO System-Wide NOX Tonnage Limits 2003 and thereafter: Declining, System-Wide Tonnage Caps); or

(C) Violates Paragraph 61 (VEPCO System-Wide Average NOX Emission Rate) in any calendar year (or ozone season, as applicable); or

(D) Fails by more than ninety days to complete installation of and commence timely year-round operation of any SCR or FGD required by Paragraphs 56 or 64 or Sections VIII or IX; or

(E) Fails to limit VEPCO System SO2 emissions to 203,693 tons or less in each calendar year starting with 2005 and thereafter;

then the United States may pursue any claims at any VEPCO System Unit otherwise resolved under Section XI, where the modification(s) on which such claim is based was commenced, under way, or completed within five years preceding the violation or failure specified in items (A) through (E) above, unless such modification was undertaken at an Improved Unit and commenced prior to the date of lodging of this Consent Decree.

111. Other Units. The resolution of claims of United States in Section XI shall not apply to claims arising from modifications at Other Units commenced less than five years prior to the occurrence of one or more of the following:

(A) a modification or (collection of modifications) commenced after lodging of this Decree at such Other Unit, individually (or collectively) increase the maximum hourly emission rate for such Unit for the relevant pollutant (NOx or SO2) as measured by 40 C.F.R. § 60.14(b) and (h); or

(B) the aggregate of all Capital Expenditures made at such Other Unit exceed $125/KW on the Unit's Boiler Island (based on the Maximum Dependable Capacity numbers in the North American Electric Reliability Council's Generating Availability

Database for the year 2002) during any of the following five-year periods: January 1, 2001, through December 31, 2005; January 1, 2006, through December 31, 2010; January 1, 2011, through December 31, 2015. (Capital Expenditures shall be measured in calendar year 2000 constant dollars, as adjusted by the McGraw-Hill Engineering News-Record Construction Cost Index); or

(C) modification(s) commenced after lodging of this Decree resulting in emissions increase(s) of the relevant pollutant that actually occurred from any such Other Unit, where such increase(s):

(1) present by themselves 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; or

(2) cause or contribute to violation of a National Ambient Air Quality Standard in any Air Quality Control Area that is in attainment with that NAAQS; or

(3) cause or contribute to violation of a PSD increment; or

(4) cause or contribute to any adverse impact on any formally recognized air quality and related values in any Class I area.

112. Solely for purposes of Subparagraph 111(C), above: (i) the determination of whether emissions increase(s) of the relevant pollutant actually occurred at the Unit must take into account any emissions changes relevant to the modeling domain that have occurred or will occur under this Decree at other VEPCO System Units; and (ii) an emissions increase shall not be deemed to have actually occurred unless annual emissions of the relevant pollutant from all

VEPCO System Units at the plant at which such Unit is located (and treating Mount Storm and North Branch as a single plant for this purpose) have exceeded such plant's emissions of that pollutant after the lodging of this Consent Decree, as specified below:

Plant	SO2 Annual Emissions (tons)	NOX Annual Emissions (tons)
Bremo	13,463	4,755
Chesapeake	35,923	10,657
Chesterfield	75,330	15,858
Clover	Improved	10,076
Mt. Storm / North Branch	19,992	40,188
Yorktown	26,755	5,066

113. Introduction of any new or changed National Ambient Air Quality Standard shall not, standing alone, provide the showing needed under Subparagraph 111(C) (1)-(4) to pursue any claim resolved under Section XI.

114. Fuel Limit. The resolution of claims provided by Section XI shall not apply to any modification commenced on a Unit within five years prior to the date on which VEPCO:

(A) fires such Unit with any fuel or fuel mix that is either prohibited by applicable state law or that is not otherwise authorized by the relevant state; or

(B) increases the current (as of February 1, 2003) coal contracting bid specification or contract specifications that limit fuel sulfur content in securing coal for a Unit, as summarized in Appendix A. This Paragraph does not apply to VEPCO's use of: (i) a fuel or fuel mix specifically called for by this Decree, if any, or (ii) any coal in any coal-fired Unit regardless of the fuel's sulfur content, so long as such use occurs after the Unit is being served by an FGD or other control equipment that can maintain 95.0% Removal Efficiency for SO2, on a 30-day, rolling average basis.

115. Improved Units. The resolution of claims provided by Section XI shall not apply to a modification (or collection of modifications), if commenced after the lodging of this Decree at an Improved Unit, that individually (or collectively) increase the maximum hourly emission rate of that Unit for NO_x or SO_2 (as measured by 40 C.F.R. § 60.14 (b) and (h)) by more than ten percent (10%) of the maximum hourly emission rate for that Unit.

XIII. RESOLUTION OF PAST CLAIMS OF NEW YORK, NEW JERSEY, AND CONNECTICUT

116. The States of New York, New Jersey, and Connecticut agree that this Decree resolves all of the following civil claims that have been or could have been brought against VEPCO for violations at Units at Mount Storm, Chesterfield or Possum Point prior to the lodging of this Decree:

(A) The Prevention of Significant Deterioration or Non- Attainment provisions of Parts C and D of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* and related state provisions; and(B) 40 C.F.R. § 60.1.

XIV. RESOLUTION OF CIVIL CLAIMS OF THE COMMONWEALTH OF VIRGINIA.

117. Claims Based on Modifications Occurring Before the Lodging of Decree. Subject to the specific limitations in this Section, entry of this Decree shall resolve all civil and administrative claims of the Commonwealth of Virginia that arose from any modification (physical change or change in the method of operation, including construction of any air pollution control project at any VEPCO System Unit) under applicable federal statutes (Section 7410 (a)(2)(C), Part C or D of Subchapter I of the Clean Air Act or 40 CFR Section 60.14) or applicable state regulations (Article 6 (9 VAC 5-80-1100 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of Part II of 9 VAC 5 Chapter 80, and provisions of 9 VAC 5, Chapter 50, that are equivalent to 40 C.F.R. § 60.14(a)), and, as to the state regulations, all applicable predecessor regulations. This Paragraph shall apply to any modification commenced at any VEPCO System Unit located in the Commonwealth prior to the date of lodging of this Decree.

118. Claims Based on Modifications after the Lodging of Decree. Subject to the specific limitations in this Section, entry of this Decree shall also resolve all civil and administrative claims of the Commonwealth of Virginia arising from any modification (physical change or change in the method of operation, including construction of any air pollution control project at any VEPCO system Unit) under applicable federal statutes (Section 7410 (a)(2)(C), Part C or D of Subchapter I of the Clean Air Act) or applicable state regulations (Article 6 (9 VAC 5-80-

1100 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of Part II of 9 VAC 5 Chapter 80 and any successor regulations). This Paragraph shall apply to any modification at any VEPCO System Unit located in the Commonwealth commenced on or after lodging of this Decree that is completed before December 31, 2015, or are those that this Consent Decree expressly directs VEPCO to undertake.

119. Reopener. The resolution of the civil claims of the Commonwealth of Virginia provided by this Section is subject to the provisions of Section XV.

120. General. Each term used in Paragraph 118 that is also a term used under the Clean Air Act shall mean what such term means under the Act as it existed on the date of lodging of this Decree.

121. Commonwealth's Authority Regarding NAAQS Exceedances. Nothing in this Section shall be construed to affect the Commonwealth's authority under applicable federal statutes and applicable state regulations to impose appropriate requirements or sanctions on any VEPCO System Unit when emissions from the plant at which such unit is located result in violation of, or interfere with the attainment and maintenance of, any ambient air quality standard, or the plant fails to operate in conformance with any applicable control strategy, including any emissions standards or emissions limitations.

122. Nothing in this Section shall prevent the Commonwealth from issuing to any VEPCO System Unit a permit under either Article 5 (9 VAC 5-80-800 et seq.) or Article 6 (9 VAC 5-80-1100 et seq.) for the purpose of preserving the terms and conditions of this Decree as applicable federal requirements upon the expiration of the Decree.

XV. REOPENING OF VIRGINIAS' CLAIMS RESOLVED BY SECTION XIV

123. Bases for Pursuing Resolved Claims Across VEPCO System. If VEPCO:

(A) Violates Paragraph 59(A) or (B) (VEPCO System-Wide, Interim Control of NOx Emissions, 2004 through 2007); or

(B) Violates Paragraph 60 (VEPCO System-Wide NOx Tonnage Limits 2003 and thereafter: Declining, System-Wide Tonnage Caps); or

(C) Violates Paragraph 61 (VEPCO System-Wide Average NOx Emission Rate) in any calendar year (or ozone season, as applicable); or

(D) Fails by more than ninety days to complete installation of and commence timely year-round operation of any SCR or FGD required by Paragraphs 56 or 64 or Sections VIII or IX; or

(E) Fails to limit VEPCO System SO2 emissions to 203,693 tons or less in each calendar year starting with 2005 and thereafter;

then the Commonwealth of Virginia may pursue any claims at any VEPCO System Unit located in the Commonwealth otherwise resolved under Section XIV, where the modification(s) on which such claim is based was commenced, under way, or completed within five years preceding the violation or failure specified above, unless such modification was undertaken at an Improved Unit and commenced prior to the date of lodging of this Consent Decree.

124. Other Units. The resolution of claims of the Commonwealth of Virginia in Section XIV shall not apply to claims arising from modifications at Other Units located in the Commonwealth commenced less than five years prior to the occurrence of one or more of the following:

(A) One or more modifications at such Other Unit commenced after lodging of this Decree, individually or collectively, increase the maximum hourly emission rate for such Unit for the relevant pollutant (NOx or SO2) as measured by 40 C.F.R. § 60.14(b) and (h); or

(B) The aggregate of all Capital Expenditures made at such Other Unit is in excess of $125/KW on the Unit's Boiler Island (based on the Maximum Dependable Capacity numbers in the North American Electric Reliability Council's Generating Availability Database for the year 2002) during any of the following five-year periods: January 1, 2001, through December 31, 2005; January 1, 2006, through December 31, 2010; January 1, 2011, through December 31, 2015. (Capital Expenditures shall be measured in calendar year 2000 constant dollars, as adjusted by the McGraw-Hill Engineering News-Record Construction Cost Index); or

(C) Modification(s) commenced after lodging of this Decree resulting in emissions increase(s) of the relevant pollutant that actually occurred from any such Other Unit, where such increase(s):

(1) present by themselves or in combination with other sources "an imminent and substantial endangerment" within the meaning of Section 303 of the Act, 42 U.S.C. § 7603; or

(2) cause or contribute to violation of a National Ambient Air Quality Standard in any Air Quality Control Area that is in attainment with that NAAQS; or

(3) cause or contribute to violation of a PSD increment; or

(4) cause or contribute to any adverse impact on any formally recognized air quality and related values in any Class I area.

Solely for purposes of this Subparagraph (C), (1) determination of whether there is an emissions increase that actually occurred resulting from modification(s) at the Unit must take into account any emissions changes relevant to the modeling domain that have occurred or will occur under this Decree at other VEPCO System Units; and (2) no such increase from a Unit will be deemed to have occurred if annual emissions of the relevant pollutant from all VEPCO System Units at the plant at which such Unit is located (and treating Mount Storm and North Branch as a single plant for this purpose) do not exceed such plant's emissions of that pollutant after lodging of this Consent Decree, as specified in Paragraph 112. Also, introduction of any new or changed National Ambient Air Quality Standard shall not, standing alone, provide the showing needed under this Subparagraph (C) (1)-(4) to pursue any claim resolved under Section XIV.

125. Improved Units. The resolution of claims provided by Section XIV shall not apply to a modification (or collection of modifications), if commenced after lodging of this Decree, at an Improved Unit located in the Commonwealth that individually (or collectively) increase the maximum hourly emission rate of that Unit for NO_x or SO_2 (as measured by 40 C.F.R. § 60.14 (b) and (h)) by more than ten percent (10%) of the maximum hourly emission rate for that Unit.

XVI. RESOLUTION OF CIVIL CLAIMS OF THE STATE OF WEST VIRGINIA

126. Claims Based on Modifications Occurring Before the Lodging of Decree. Subject to the specific limitations in this Section, entry of this Decree shall resolve all civil claims of the State of West Virginia that arose under applicable federal statutes and regulations (Section 7410 (a)(2)(C), Parts C or D of Subchapter I of the Clean Air Act or 40 CFR Section 60.14) or applicable state regulations (45CSR13, 45CSR14 and 45CSR19, as well as the provisions of 45CSR16 that are equivalent to 40 CFR Section 60.14(a)) and, as to the state regulations, all applicable predecessor regulations, from any modification (physical change or change in the method of operation, including but not limited to construction of any air pollution control project at any VEPCO System Unit). This Paragraph shall apply to any modification at any VEPCO System Unit located in West Virginia commenced prior to the date of lodging of this Decree.

127. Claims Based on Modifications after the Lodging of Decree. Subject to the specific limitations in this Section, entry of this Decree shall also resolve all civil claims of the State of West Virginia arising under applicable federal statutes (Section 7410 (a)(2)(C) and Parts C or D of Subchapter I of the Clean Air Act) or applicable state regulations (45CSR13, 45CSR14 and 45CSR19 and any successor regulations from any modification (physical change or change in the method of operation, including but not limited to construction of any air pollution control project at any VEPCO system Unit. This Paragraph shall apply to any modification at any VEPCO System Unit located in West Virginia commenced on or after the date of lodging of this Decree that is completed before December 31, 2015, or is among those that this Consent Decree expressly directs VEPCO to undertake.

128. Reopener. The resolution of the civil claims of the State of West Virginia provided by this Section is subject to the provisions of Section XVII.

129. General. Each term used in Paragraph 127 that is also a term used under the Clean Air Act shall mean what such term means under the Act as it existed on the date of lodging of this Decree.

130. West Virginia's Authority Regarding NAAQS Exceedances. Nothing in this Decree shall be construed to affect West Virginia's authority under applicable federal statutes and applicable state statutes or regulations to impose appropriate requirements or sanctions on any VEPCO System Unit when emissions from the plant at which such unit is located result in violation of, or interfere with the attainment and maintenance of, any ambient air quality standard, or the plant fails to operate in conformance with any applicable control strategy, including any emissions standards or emissions limitations.

131. Nothing in this Section shall prevent West Virginia from issuing to any VEPCO System Unit a permit under either 45CSR13 or 45CSR14) for the purpose of preserving the terms and conditions of this Decree as applicable federal requirements upon the expiration of the Decree.

XVII. REOPENING OF WEST VIRGINIA'S CLAIMS RESOLVED BY SECTION XVI.

132. Bases for Pursuing Resolved Claims Across VEPCO System. If VEPCO:

(A) Violates Paragraph 59(A) or (B) (VEPCO System-Wide, Interim Control of NOx Emissions, 2004 through 2007); or

(B) Violates Paragraph 60 (VEPCO System-Wide NOx Tonnage Limits 2003 and thereafter: Declining, System-Wide Tonnage Caps); or

(C) Violates Paragraph 61 (VEPCO System-Wide Average NOx Emission Rate) in any calendar year (or ozone season, as applicable); or

(D) Fails by more than ninety days to complete installation of and commence timely year-round operation of any SCR or FGD required by Paragraphs 56 or 64 or Sections VIII or IX; or

(E) Fails to limit VEPCO System SO2 emissions to 203,693 tons or less in each calendar year starting with 2005 and thereafter;

then the State of West Virginia may pursue any claims at any VEPCO System Unit located in the state otherwise resolved under Section AA, where the modification(s) on which such claim is based was commenced, under way, or completed within five years preceding the violation or failure specified above, unless such modification was undertaken at an Improved Unit and completed prior to the date of lodging of this Consent Decree.

133. Other Units. The resolution of claims of the State of West Virginia in Section AA shall not apply to claims arising from modifications at Other Units located in West Virginia commenced less than five years prior to the occurrence of one or more of the following:

(A) One or more modifications at such Other Unit, individually or collectively, increase the maximum hourly emission rate for such Unit for the relevant pollutant (NOx or SO2) as measured by 40 C.F.R. § 60.14(b) and (h); or

(B) The aggregate of all Capital Expenditures made at such Other Unit is in excess of $125/KW on the Unit's Boiler Island (based on the Maximum Dependable Capacity numbers in the North American Electric Reliability Council's Generating Availability Database for the year 2002) during any of the following five-year periods: January 1,

2001, through December 31, 2005; January 1, 2006, through December 31, 2010; January 1, 2011, through December 31, 2015. (Capital Expenditures shall be measured in calendar year 2000 constant dollars, as adjusted by the McGraw-Hill Engineering News-Record Construction Cost Index); or

(C) Modification(s) resulting in emissions increase(s) of the relevant pollutant that actually occurred from any such Other Unit, where such increase(s):

(1) present by themselves or in combination with other sources "an imminent and substantial endangerment" within the meaning of Section 303 of the Act, 42 U.S.C. § 7603; or

(2) cause or contribute to violation of a National Ambient Air Quality Standard in any Air Quality Control Area that is in attainment with that NAAQS; or

(3) cause or contribute to violation of a PSD increment; or

(4) cause or contribute to any adverse impact on any formally recognized air quality and related values in any Class I area.

Solely for purposes of this Subparagraph (C), (i) determination of whether there is an emissions increase that actually occurred resulting from modification(s) at the Unit must take into account any emissions changes relevant to the modeling domain that have occurred or will occur under this Decree at other VEPCO System Units; and (ii) no such increase from a Unit will be deemed to have occurred if annual emissions of the relevant pollutant from all VEPCO System Units at the plant at which such Unit is located (and treating Mount Storm and North Branch as a single

plant for this purpose) do not exceed such plant's emissions of that pollutant, as specified in Paragraph 112. Also, introduction of any new or changed National Ambient Air Quality Standard shall not, standing alone, provide the showing needed under this Subparagraph (C) (1)-(4) to pursue any claim resolved under Section XVI.

134. Improved Units. The resolution of claims provided by Section XVI shall not apply to a modification (or collection of modifications), if commenced after lodging of this Decree, at an Improved Unit located in West Virginia that individually (or collectively) increase the maximum hourly emission rate of that Unit for NO_x or SO_2 (as measured by 40 C.F.R. § 60.14 (b) and (h)) by more than ten percent (10%) of the maximum hourly emission rate for that Unit.

XVIII. OTHER PROVISIONS ON ALLOWANCES AND CREDITS

135. NO_x Credits. For any and all actions taken by VEPCO to conform to the requirements of this Decree, VEPCO shall not use or sell any resulting NO_x emission allowances or credits in any emission trading or marketing program of any kind; provided, however that:

(A) NO_x emission allowances or credits allocated to the VEPCO System by the Administrator of EPA under the Act, or by any State under its SIP in response to the EPA NO_x SIP Call, or the EPA Section 126 Rulemaking, or any other similar emissions trading or marketing program of any kind, may be used by VEPCO and its parent company (Dominion Resources) or its subsidiaries or affiliates to meet their own federal and/or state Clean Air Act regulatory requirements for any air emissions source owned or operated, in whole or in part, by VEPCO or Dominion Resources, Inc. or its subsidiaries or affiliates and;

(B) VEPCO may trade in any federal or state program any NO_x emissions allowances which are generated from VEPCO's operating its SCRs, or equivalent control technology, at Chesterfield Units 4, 5, and 6; or Chesapeake Units 3 and 4; or any VEPCO System Unit on which SCR is installed under Section IX (Installing Additional Units on VEPCO System Units), either:

(1) Earlier than required by this Decree or other applicable law; or

(2) At time periods of the year not required by this Consent Decree or by applicable law; or

(3)At a 30-Day Rolling Average Emission Rate that is more stringent than required by this Decree.

(C) VEPCO may trade in any federal or state program NO_x emissions allowances which are generated from VEPCO's operating its SCRs, or equivalent control technology, at Mt. Storm Units 1, 2, and 3 as follows:

(1) 100% of NOx allowances generated earlier than required by this Decree or other applicable law; or

(2) 100% of NOx allowances generated at time periods of the year not required by this Consent Decree or by applicable law; or (3) 50% of NOx allowances generated by achieving a 30-Day Rolling Average Emission Rate more stringent than required by this Consent Decree. The remaining 50% of the NOx allowances generated may be used in accordance with Subparagraph A or be retired.

136. Netting Limits. Nothing in this Decree shall prevent VEPCO from claiming creditable contemporaneous emissions decreases from emission reductions effected by VEPCO prior to the June 30, 2001. For emission control actions taken by VEPCO to conform with the terms of this Consent Decree, including, but not limited to, improvements to ESPs and FGDs, installation of FGDs, installation of SCRs, and the fuel conversion of Possum Point Units 3 and 4, any emission reductions generated up to the level necessary to comply with the provisions of this Decree (and excluding simple control equipment operating requirements) shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a netting credit under the Act's New Source Review program; provided, however, that nothing in this Decree shall be construed to prohibit VEPCO's seeking such treatment for decreases in emissions resulting from VEPCO's ceasing combustion of coal at Possum Point Unit 3 or Possum Point Unit 4, if:

(A) Such decreases are used in VEPCO's demonstrating whether the conversion of Possum Point Units 3 and 4 (plus the installation of up to two new units 540 MW (nominal) each, combined cycle electric generating units at Possum Point) would result in a net significant emissions increase; and

(B) VEPCO either (i) installs and continuously operates LAER on Possum Point Units 3 or 4 or (ii) demonstrates that the use of natural gas will result in a net emissions decrease; and

(C) VEPCO also complies with the NOx emissions cap and other requirements in Paragraph 96 for Possum Point Units 3 and 4 under this Decree and also installs SCR controls for NO_x on the new combined cycle unit(s).

XIX. PERIODIC REPORTING

137. Compliance Report. After entry of this Decree, VEPCO shall submit to Plaintiffs a periodic report, in compliance with Appendix B, within sixty (60) days after the end of each half of the calendar year (January through June and July through December).

138. Deviations Report. In addition to the reports required by the previous paragraph, if VEPCO violates or deviates from any provision of this Consent Decree, VEPCO shall submit to Plaintiffs a report on the violation or deviation within ten (10) business days after VEPCO knew or should have known of the event. In the report, VEPCO shall explain the cause or causes of the violation or deviation and any measures taken or to be taken by VEPCO to cure the reported violation or deviation or to prevent such violation or deviations in the future. If at any time, the provisions of the Decree are included in Title V Permits, consistent with the requirements for such inclusion in the Decree, then the deviation reports required under applicable Title V regulations shall be deemed to satisfy all the requirements of this Paragraph.

139. VEPCO's reports (Periodic and Deviations) shall be signed by VEPCO's Vice President of Fossil and Hydro, or, in his or her absence, VEPCO's Vice President of Technical Services, or higher ranking official, and shall contain the following certification:

> I certify under penalty of law that this information was prepared 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 directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I understand that there are significant penalties for making misrepresentations to or misleading the United States.

140. If any allowances are surrendered to any third party pursuant to Section VI the third

party's certification shall be signed by a managing officer of the third party's and shall contain the following language:

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

XX. CIVIL PENALTY

141. Within thirty (30) calendar days of entry of this Consent Decree, VEPCO shall pay to the United States a civil penalty of $5.3 million. The civil penalty shall be paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing the USAO File Number 2003V00487 and DOJ Case Number 90-5-2-1-07122 and the civil action case name and case number of this action. The costs of EFT shall be VEPCO's responsibility. Payment shall be made in accordance with instructions provided by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Virginia. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. VEPCO shall provide notice of payment, referencing the USAO File Number, DOJ Case Number 90-5-2-1-07122, and the civil action case name and case number, to the Department of Justice and to EPA, as provided in Section XXIX, Paragraph 187 ("Notice"). Failure to timely pay the civil penalty shall subject VEPCO 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 VEPCO 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.

XXI. MITIGATION PROJECTS

142. General. VEPCO shall submit for review and approval plans for the completion of the Mitigation Projects described in this Section, complying with the schedules and other terms of this Consent Decree and plans for such Projects approved under this Decree. In performing these Projects, VEPCO shall spend no less than $13.9 million Project Dollars. VEPCO shall make available the full amount of the Project Dollars required by this Paragraph within one year of entry of this Decree. VEPCO shall maintain for review by the Plaintiffs, upon request, all documents identifying Project Dollars spent by VEPCO. All plans and reports prepared by VEPCO or by other persons pursuant to the requirements of this Section of the Consent Decree shall be publicly available from VEPCO, without charge. No Project Dollars may be made available or expended to undertake an obligation already required by law.

143. Good Faith. VEPCO shall use good faith efforts to secure as much benefit as possible for the Project Dollars expended, consistent with the applicable requirements and limits of this Decree.

144. Other Project Requirements. In addition to the requirements imposed for each Project specified in this Decree, including Appendix C and the approved plans, the following requirements shall apply. If VEPCO elects (where such election is allowed) to undertake a Project by contributing funds to another person or instrumentality to carry out the Project, that person or instrumentality must, in writing: (A) identify its legal authority for accepting such funding, and (B) identify its legal authority to conduct the Project for which VEPCO contributes the funds. Regardless of whether VEPCO elects (where such election is allowed) to undertake

the Project itself or to do so by contributing funds to another person or instrumentality that will carry out the Project, VEPCO acknowledges that it shall receive credit for expenditure of such funds as Project Dollars only in accordance with the approved plans. Provided however, that when VEPCO elects to undertake a Project by providing funds to a State or any instrumentality thereof, VEPCO shall receive credit for any timely expenditure of funds upon transfer of such funds to such State or instrumentality thereof, as long as the VEPCO provides payment in accordance with Appendix C and the approved plan. VEPCO shall certify, as part of the proposed plan submitted to the Plaintiffs for any contemplated Project, that no person is required by any law, other than this Consent Decree, to perform the Project described in the proposed plan. Within sixty (60) days following the completion of each approved Project, VEPCO shall submit to the Plaintiffs a report that documents the date that all aspects of the project were implemented, VEPCO's results in completing the project, including the emission reductions or other environmental or health benefits achieved, and the Project Dollars expended by VEPCO in implementing the Project. Based on consideration of these reports and the approved plans, and any other available, relevant information, the United States (after consultation with the other Plaintiffs) will advise VEPCO whether the Project has met the requirements of the Decree. VEPCO shall submit the required plans for, and complete, each Project, as approved by the United States, and by any other Plaintiff within whose territory a Project would be implemented, all as specified further in Appendix C to this Decree.

XXII. STIPULATED PENALTIES & ALLOWANCE OR CREDIT SURRENDERS

145. Within thirty (30) days after written demand from the United States, and subject to the provisions of Sections XXVI ("Force Majeure") and XXVII ("Dispute Resolution"), VEPCO shall pay the following stipulated penalties to the United States (and surrender the specified number of emission allowances or credits) for each failure by VEPCO to comply with the terms of this Consent Decree, as follows.

146. For each violation of each limit, rate or removal efficiency that is measured on a 30-day Rolling Average or shorter averaging period imposed on NO_x, SO_2, and PM under Sections IV, V, VII, VIII ("Possum Point"), and IX ("Installing Additional Controls on VEPCO System Units"):

(A) less than 5% in excess of the limit: $2,500 per day per violation;

(B) equal to or greater than 5% in excess of the limit: $5,000 per day per violation;

(C) equal to or greater than 10% in excess of the limit: $10,000 per day per violation.

(D) For failure to meet any VEPCO System-Wide emissions requirement (Paragraph 59(A) and (B) "VEPCO System: Interim Control of NOX Emissions: 2004 through 2007; Paragraph 60"VEPCO System NOX Limits 2003 and thereafter: Declining , System-Wide Tonnage Caps; and Paragraph 61 VEPCO System –Wide, Annual Average NOX Emission Rate): $5,000 per ton for the first 100 tons resulting from the violation, and $10,000 per ton for each additional ton resulting from the violation.

147. Other Specific Failures. For failure to:

(A) install timely and commence operation timely of SCR on each Unit (each SCR installation) specified in Section IV, Paragraph 56 ("Unit-Specific SCR Installations and Annual Performance Requirements"): (i) $10,000 per day, per violation, for the first 30 days; and (ii) $27,500 per day, per violation, thereafter.

(B) complete any FGD improvements or installation needed to meet emission limits imposed under Section V, Paragraph 64 ("Construction, Upgrading, and Removal Efficiencies Required or on FGDs Serving Clover Units 1 and 2, Mount Storm Unites 1, 2, and 3, and Chesterfield Units 5 and 6"): (i) $ 10,000 per day, per violation, for the first 30 days; and (ii) $20,000 per day, per violation,. thereafter.

(C) surrender timely the annually-required 45,000 SO_2 Allowances surrender under Section VI: $27,500 per day, per violation plus the surrender 100 additional SO_2 Allowances per day per violation.

(D) timely transfer the annually-required surrender of 45,000 SO_2 Allowances by VEPCO to any third party under Section VI: $27,500 per day, per violation plus the surrender 100 additional SO_2 Allowances per day per violation.

(E) comply with any requirement in this Consent Decree regarding the use of any SO_2 or NO_x allowances or credits: surrender three times the allowances or credits handled in violation of the requirement.

(F) complete timely the proper installation of all equipment called for under Section VII (PM Emission Reductions and Controls) or under any plan or

submission approved by EPA under Section VII: (i) $ 10,000 per day, per violation, for the first 30 days; and (ii) $20,000 per day, per violation, thereafter.

(G) conduct a required stack test of PM emissions on each VEPCO System Unit where such test is required under Section VII: $1,000 per day, per violation.

(H) Submit timely and complete reports called for under Section XIX ("Periodic Reporting"): $1,000 per day, per violation.

(I) Complete any funding for any of the Projects described in Section XXI (Mitigation Projects): $1,000 per day, per violation for the first 30 days; and $5,000 per day, per violation thereafter.

148. Violations of any limit based on a 30-Day Rolling Average constitutes thirty (30) days of violation but where such a violation (for the same pollutant and from the same Unit or source) recurs within periods less than thirty (30) days, VEPCO 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.

XXIV. ACCESS, AND INFORMATION COLLECTION AND RETENTION

149. Access, Inspection, Investigation. Any authorized representative of EPA, including independent contractors, upon presentation of credentials, shall have a right of entry upon the premises of any facility in the VEPCO System at any reasonable time and for any reasonable purpose regarding monitoring compliance with the provisions of this Consent Decree, including inspecting plant equipment and inspecting and copying all records maintained by VEPCO required by this Consent Decree. VEPCO shall retain such records for a period of fifteen (15)

years from the date of entry of this Consent Decree. Nothing in this Consent Decree shall limit any information-gathering or inspection authority of EPA under the Act, including but not limited to Section 114 of the Act, 42 U.S.C. Section 7414.

XXV. COORDINATION OF ENFORCEMENT & DISPUTE RESOLUTION

150. United States - Enforcement and Dispute Resolution. The United States may enforce any and all requirements of this Decree and may invoke dispute resolution provisions of this Decree as to any requirement of this Decree to which dispute resolution applies and also may participate in adjudication of any claim of Force Majeure made by VEPCO or any other Party.

151. VEPCO - Dispute Resolution. VEPCO may invoke the dispute resolution provisions of this Decree over any requirement of this Decree to which dispute resolution applies.

152. States - Enforcement. Consistent with Section XXV, The State of New York, New Jersey, or Connecticut, or any combination of them, may enforce only the following requirements of this Decree:

(A) those requirements imposed directly on a Unit at Mount Storm, Chesterfield, and Possum Point;

(B) any or all of the following VEPCO System-Wide requirements: Section IV Paragraph 59 ("Interim NO_x Emissions for VEPCO System"), Paragraph 60 ("VEPCO System NO_x Declining Tonnage Caps") and Paragraph 61 ("NO_x System-Wide Average Emission Rate"] and Section VI, Paragraph 71 (Annual Surrender of SO_2 Allowances); and

(C) those requirements involving timely and proper performance of Decree-mandated mitigation projects (Section XXI and Appendix C).

153. The Commonwealth of Virginia and the State of West Virginia may enforce all of the requirements of this Decree applicable to VEPCO units within their respective jurisdictions, including the system-wide cap.

154. States - Dispute Resolution. The States of New York, New Jersey, Connecticut, Virginia, or West Virginia, or any combination of them, may invoke dispute resolution only over those Decree requirements that such State could enforce under this Decree and may participate as a plaintiff in any matter in which VEPCO asserts Force Majeure under this Decree only if the matter concerns a requirement which such State could have enforced under the terms of this Decree. Notwithstanding the preceding sentence, the States of New York, New Jersey, Connecticut, Virginia, or West Virginia, or any combination of them, may participate as a plaintiff in any matter in which VEPCO asserts force majeure under this Decree, to the extent that resolution of the legal issue(s) at stake in that matter would affect the ability of New York, New Jersey, Connecticut, Virginia, or West Virginia to enforce any of the requirements specified in Paragraphs 152 and 153_of this Section.

155. Consultation Among Plaintiffs. Absent exigent circumstances, the United States, New York, New Jersey, Connecticut shall consult prior to enforcing a requirement under this Decree or prior to invoking Dispute Resolution (Section) for any issue, which the given State could enforce under this Decree. Absent exigent circumstances, the United States, Virginia, and West Virginia shall consult prior to enforcing a requirement under this Decree or prior to invoking Dispute Resolution (Section XXVII) for any issue which the given State could enforce under this Decree. If such consultation reveals that, for any reason, the United States does not intend to

participate, in the first instance, in either the Decree enforcement or invocation of Dispute Resolution contemplated by New York, New Jersey, or Connecticut, Virginia, or West Virginia then the consultation required by this Section is not satisfied until after "Senior Management Level Officials" of United States consult with the "Senior Management Level Officials" of each Plaintiff intending to enforce a requirement under the Decree or to invoke dispute resolution under it. The United States shall undertake such consultation and shall complete it within twenty-eight (28) days after the consultation with the States and the United States demonstrates that the United States does not intend to participate in the activity contemplated by one or more of the States. Only for purposes of the consultation requirement of this Section, "Senior Management Level Official" means:

(A) For the United States: Director of the Office of Regulatory Enforcement, U.S. EPA Office of Enforcement and Compliance Assurance, and Chief of the Environmental Enforcement Section, U.S. DOJ Environment & Natural Resources Division;

(B) For New York: Chief of the Environmental Protection Bureau, Office of the Attorney General of the State of New York;

(C) For New Jersey: Assistant Attorney General in Charge of Environmental Protection, Office of the Attorney General of the State of New Jersey;

(D) For Connecticut: Director of the Environmental Department, Office of the Attorney General for the State of Connecticut;

(E) For Virginia: Director of the Environmental Unit, Special Prosecutions Section, Public Safety and Law Enforcement Division, Office of the Attorney General of the Commonwealth of Virginia; and

(F) For West Virginia: Director of the Division of Air Quality, West Virginia Department of Environmental Protection

156. Confirmation of Consultation. Contemporaneous with any filing to enforce the Decree or to invoke Dispute Resolution (Section XXVII), the moving Plaintiff shall serve on VEPCO a written statement noting that the consultation required by this Section has been completed, unless Plaintiff is relying on the "exigent circumstances" exception of this Section. If a Plaintiff invokes the "exigent circumstances" exception in lieu of completing this consultation process, that Plaintiff must then serve on VEPCO an explanation of the need for acting in advance of completing such consultation. "Exigent" is intended to have its normal meaning when used in this Section of the Decree, and reliance by a Plaintiff on this exception is subject to review by the Court.

XXVI. FORCE MAJEURE

157. General. If any event occurs which causes or may cause a delay in complying with any provision of this Consent Decree or causes VEPCO to be in violation of any provision of this Decree, VEPCO shall notify the Plaintiffs in writing as soon as practicable, but in no event later than ten (10) business days following the date VEPCO first knew, or within ten (10) business days following the date VEPCO should have known by the exercise of due diligence, that the event caused or may cause such delay or violation, whichever is earlier. In this notice, VEPCO shall reference this Paragraph of this Consent Decree and describe the anticipated length of time the delay or violation may persist, the cause or causes of the delay or violation, the measures taken or to be taken by VEPCO to prevent or minimize the delay or violation, and the schedule by which those measures will be implemented. VEPCO shall

adopt all reasonable measures to avoid or minimize such delays and prevent such violations.

158. Failure of Notice. Failure by VEPCO to comply with the notice requirements of this Section shall render this Section voidable by the Plaintiffs authorized under Sections XXV (Coordination of Enforcement and Dispute Resolution) to enforce a Consent Decree requirement against which VEPCO could interpose the force majeure assertion in question. If voided, the provisions of this Section shall have no effect as to the particular event involved.

159. Plaintiffs' Response. The Plaintiffs authorized under Sections XXV (Coordination of Enforcement and Dispute Resolution) to enforce a Consent Decree requirement against which VEPCO could interpose the force majeure assertion in question shall notify VEPCO, in writing, regarding VEPCO's claim of a delay in performance or violation within fifteen (15) business days after completion of procedures specified in Section XXV ("Enforcement Coordination"). If the Plaintiffs agree that the delay in performance or the violation has been or will be caused by circumstances beyond the control of VEPCO, including any entity controlled by VEPCO, and that VEPCO could not have prevented the delay through the exercise of due diligence, the parties shall stipulate to such relief as appropriate, which shall usually be an extension of the required deadline(s) for every requirement affected by the delay for a period equivalent to the delay actually caused by such circumstances. Such stipulation shall be filed as a modification to this Consent Decree in order to be effective. VEPCO shall not be liable for stipulated penalties for the period of any such delay.

160. Disagreement. If the Plaintiffs authorized under Sections XXV (Coordination of Enforcement and Dispute Resolution) to enforce a Consent Decree requirement against which VEPCO could interpose the force majeure assertion in question, do not accept VEPCO's claim

that a delay or violation has been or will be caused by a Force Majeure event, or do not accept VEPCO's proposed remedy, to avoid the imposition of stipulated penalties VEPCO must submit the matter to this Court for resolution by filing a petition for determination. Once VEPCO has submitted the matter, the United States, and other Plaintiffs as provided in Paragraph 159, shall have fifteen (15) business days to file a response(s). If VEPCO submits the matter to this Court for resolution, and the Court determines that the delay in performance or violation has been or will be caused by circumstances beyond the control of VEPCO, including any entity controlled by VEPCO, and that VEPCO could not have prevented the delay or violation by the exercise of due diligence, VEPCO shall be excused as to that event(s) and delay (including stipulated penalties otherwise applicable), but only for the period of time equivalent to the delay caused by such circumstances.

161. Burden of Proof. VEPCO shall bear the burden of proving that any delay in performance or violation of any requirement of this Consent Decree was caused by or will be caused by circumstances beyond its control, including any entity controlled by it, and that VEPCO could not have prevented the delay by the exercise of due diligence. VEPCO shall also bear the burden of proving the duration and extent of any delay(s) or violation(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.

162. Events Excluded. Unanticipated or increased costs or expenses associated with the performance of VEPCO's obligations under this Consent Decree shall not constitute circumstances beyond the control of VEPCO or serve as a basis for an extension of time under this Section. However, failure of a permitting authority to issue a necessary permit in a timely

fashion may constitute a Force Majeure event where the failure of the permitting authority to act is beyond the control of VEPCO, and VEPCO has taken all steps available to it to obtain the necessary permit, including, but not limited to, submitting a complete permit application, responding to requests for additional information by the permitting authority in a timely fashion, accepting lawful permit terms and conditions, and prosecuting appeals of any allegedly unlawful terms and conditions imposed by the permitting authority in an expeditious fashion.

163. Potential Force Majeure Events. The parties agree that, depending upon the circumstances related to an event and VEPCO's response to such circumstances, the kinds of events listed below could qualify as Force Majeure events: construction, labor, or equipment delays; acts of God; Malfunction for PM as malfunction is defined in 40 C.F.R. 60.2; and orders by governmental officials, acting under and authorized by applicable law, that direct VEPCO to supply electricity in response to a legally declared, system-wide (or state-wide) emergency.

164. Prohibited Inferences. Notwithstanding any other provision of this Consent Decree, this Court shall not draw any inferences nor establish any presumptions adverse to any party as a result of VEPCO delivering a notice pursuant to this Section or the parties' inability to reach agreement on a dispute under this Part.

165. Extended Schedule. As part of the resolution of any matter submitted to this Court under this Section, the Parties by agreement with approval from this Court, or this Court by order, may, as allowed by law, extend the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay or violation. VEPCO shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended schedule.

XXVII. DISPUTE RESOLUTION

167. Scope of Disputes Covered and Eligibility of Parties to Participate. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, except as provided in Section XXVI ("Force Majeure") or in this Section, provided that the Party making such application has made a good faith attempt to resolve the matter with the other Parties. Invocation and participation of this Section also shall be done in compliance with Section XXV ("Coordination of Enforcement and Dispute Resolution").

168. Invocation of Procedure. The dispute resolution procedure required herein shall be invoked by one Party to this Consent Decree giving written notice to another 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 shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days following receipt of such notice.

169. Informal Phase. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations among the parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting among the Parties' representatives unless they agree to shorten or extend this period.

170. Formal Phase. If the Parties are unable to reach agreement during the informal negotiation period, the Plaintiffs, shall provide VEPCO with a written summary of their position regarding the dispute. The written position provided by the Plaintiffs shall be considered binding unless, within thirty (30) calendar days thereafter, VEPCO files with this Court a petition that

describes the nature of the dispute and seeks resolution. The Plaintiffs may respond to the petition within forty-five (45) calendar days of filing. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Section may be shortened upon successful motion of one of the parties to the dispute.

171. Prohibited Inference. 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.

172. Alteration of Schedule. As part of the resolution of any dispute under this Section, in appropriate circumstances the parties may agree, or this Court may order if warranted by law, an extension or modification of the schedule for completion of work under this Consent Decree to account for the delay that occurred as a result of dispute resolution. VEPCO shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

173. Applicable Standard of Law. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes; provided, however, that the parties reserve their rights to argue for what the applicable standard of law should be for resolving any particular dispute. Notwithstanding the preceding sentence of this Paragraph, as to disputes involving the submittal for review and approval under Section VII, the Court shall sustain the position of the United States as to disputes involving PM CEMs, any Pollution Control Upgrade Analysis, and optimization measures for PM that should be undertaken – unless VEPCO demonstrates that the position of the United States is arbitrary or capricious.

XXVIII. SALES OR TRANSFERS OF OWNERSHIP INTERESTS

174. Joint and Several Liability By Transfer of Certain VEPCO Property. If VEPCO proposes to sell or transfer any of its real property or operations subject to this Consent Decree, VEPCO shall advise the purchaser or transferee in writing of the existence of this Consent Decree prior to such sale or transfer, and shall send a copy of such written notification to the Plaintiffs pursuant to Section XXIX, Paragraph 187 ("Notices") at least sixty (60) days before such proposed sale or transfer. Before closing such purchase or transfer, a modification of this Consent Decree shall make the purchaser or transferee a party defendant to this Decree and jointly and severally liable with VEPCO for all the requirements of this Decree that may be applicable to the transferred or purchased property or operations, including joint and several liability with VEPCO for all Unit-specific requirements and all VEPCO System-Wide requirements, namely: VEPCO System-Wide Annual Average Emission Rate for NO_x (Section IV), SO_2 Allowance surrenders (Section VI), and VEPCO System NO_x annual tonnage caps (Section IV) .

175. Option for Alternative Request on System-Wide obligations. VEPCO may propose and the United States may agree to restrict the scope of joint and several liability of any purchaser or transferee for any VEPCO System-Wide obligations to the extent such obligations may be adequately separated in an enforceable manner using the methods provided by or approved under Section X ("Permits").

176. Option for Alternative Request on Particular VEPCO System Units. VEPCO also may propose, and the United States may agree to execute, a modification that transfers responsibility for completing Decree-required capital improvements from VEPCO to the

purchaser of property at which the capital improvement is required.

177. Standard for Reviewing a VEPCO Request. Liability transfers sought by VEPCO under this Section of the Decree shall be granted by the United States (or by all the Plaintiffs, as applicable) if the relevant Plaintiffs agree that:

(A) The purchaser or transferee has appropriately contracted with VEPCO to assume the obligations and liabilities applicable to the Unit; and

(B) VEPCO and the purchaser or transferee have properly allocated any emission allowance, credit requirement, or other Decree-imposed obligation on the VEPCO System, which also implicates the Unit to be transferred.

In the case of transfers of VEPCO System Units at Chesterfield and/or Mount Storm, VEPCO's scope of liability for either VEPCO System-Wide requirements or for Decree-required capital improvement on Units at those plants shall not be transferred unless the States of New York, New Jersey, and Connecticut concur with the United States' determination to accept liability of only the purchaser or transferee, as opposed to joint and several liability between VEPCO and the purchaser.

178. No limit on contractual allocation of responsibility that does not affect rights of the Plaintiffs. This Section of the Decree shall not be construed to impede VEPCO and any purchaser or transferee of real property or operations subject to this Decree from contractually allocating as between themselves the burdens of compliance with this Decree, provided that both VEPCO and such purchaser or transferee shall remain jointly and severally liable to the Plaintiffs for those obligations of the Decree specified above, absent approval under this Section of a VEPCO request to allocate liability.

XXIX. GENERAL PROVISIONS

179. Effect of Settlement. This Consent Decree is not a permit; compliance with its terms does not guarantee compliance with all applicable Federal, State, or Local laws or regulations.

180. Criminal Liability. This Consent Decree does not apply to any claim(s) of alleged criminal liability, which are reserved, nor to any claims resolved and then reopened under the terms of this Decree.

181. Limitation on Procedural Bars to Other Claims. In any subsequent administrative or judicial action initiated by Plaintiffs for injunctive relief or civil penalties relating to the facilities covered by this Consent Decree, VEPCO shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defense based upon any contention that the claims raised by the Plaintiffs in the subsequent proceeding were brought, or should have been brought, in the instant case; provided, however, that nothing in this Paragraph is intended to affect the validity of Sections XI through XVII (Resolution of Certain Civil Claims).

182. Other Laws. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve VEPCO of its obligation to comply with all applicable Federal, State, and Local laws and regulations. Subject to Sections XI through XVII, nothing contained in this Consent Decree shall be construed to prevent or limit the Plaintiffs' rights to obtain penalties or injunctive relief under the Clean Air Act or other federal, state, or local statutes or

regulations.

183. Third Parties. This Consent Decree does not limit, enlarge, or affect the rights of any party to this Consent Decree as against any third parties.

184. Costs. Each party to this action shall bear its own costs and attorneys' fees.

185. Public Documents. All information and documents submitted by VEPCO to the United States or the other Plaintiffs under this Consent Decree shall be subject to public inspection, unless subject to legal privileges or protection or identified and supported as business confidential, under applicable law. VEPCO may not seek such protection concerning submittals required by the Decree that concern mitigation projects (Section XXI).

186. Public Comment. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the policy statement reproduced at Title 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

187. Notice. Unless otherwise provided herein, notifications to or communications with the Plaintiffs or VEPCO shall be deemed submitted on the date they are postmarked and sent either by overnight mail, return receipt requested, or by certified or registered mail, return receipt requested. Except as otherwise provided herein, when written notification to or communication with the Plaintiffs or VEPCO is required by the terms of this Consent Decree, it shall be addressed as follows:

For the United States of America:

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
DJ# 90-5-2-1-07122

– and –

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

– and –

Regional Administrator
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19106

For Commonwealth of Virginia:
Director
Virginia Department of Environmental Quality
629 East Main Street
P.O. Box 10009
Richmond, VA 23240-0009

For State of West Virginia:
Director, Division of Air Quality
Department of Environmental Protection
7012 MacCorkle Avenue SE
Charleston, WV 25304

For State of New York:
Bureau Chief
Environmental Protection Bureau
New York Attorney General's Office

120 Broadway
New York, New York 10271

For State of New Jersey:
Administrator
Air and Environmental Quality Compliance and Enforcement
P.O. Box 422
401 East State Street, Floor 4
Trenton, NJ 08625

– and –

Section Chief
Environmental Enforcement
Division of Law
P.O. Box 093
25 Market Street, 7th Floor
Trenton, NJ 08625

For State of Connecticut:
Department Head
Environmental Protection Department
Connecticut Attoreny General's Office
55 Elm Street
Hartford, CT 06106

For VEPCO:
Senior Vice President – Fossil and Hydro
Dominion Energy – Dominion Generation
5000 Dominion Boulevard
Glenn Allen, VA 23060

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

188. Procedure for Modification. There shall be no modification of this Decree unless such modification is in writing , is filed with the Court, and either:

(a) bears the written approval of all of the Parties and is approved by the Court, or

(b) is otherwise allowed by applicable law.

189. Continuing Jurisdiction. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, or modification. During the term of this Consent Decree, any party may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

190. Complete Agreement. 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. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree, including Appendices A ("Coal-Fired Steam-Electric Generating Units Constituting the VEPCO System"), B ("Consent Decree Reporting Form"), and C ("Mitigation Projects that Shall be Completed Under this VEPCO Consent Decree"). Appendices A through C are incorporated into and part of this Consent Decree

191. Non-Severability Absent Re-Adoption by the Parties. If this Consent Decree, in whole or in part, is held invalid by a court vested with jurisdiction to make such a ruling, and if such ruling becomes a final judgment, then after entry of such final judgment, no Party shall be bound to any undertaking that would come due or have continued under this Decree after the date of that final judgment, and the Decree shall be void from the entry of such final judgment. At any time, upon consent of all the Parties, the Parties may preserve that portion of this Decree not held invalid by agreeing, in a writing submitted to this Court, to keep in force that portion of this Decree not held invalid.

192. Citations to Law. Except as expressly provided otherwise by this Decree,

provisions of law expressly cited by this Decree shall be construed to mean the provision cited as it is defined under law.

193. Meaning of Terms. Every term expressly defined by this Decree shall have the meaning given to that term by this Decree, and every other term used in this Decree that is a term used under the Act or the regulations implementing the Act shall mean in this Decree what such term means under the Act or those regulations.

194. Calculating and Measuring Performance. Performance standards, emissions limits, and other quantitative standards set by or under this Decree must be met to the number of significant digits in which the standard or limit is expressed. Thus, for example, an Emissions Rate of 0.090 is not met if the actual Emissions Rate is 0.091. VEPCO shall round the fourth significant digit to the nearest third significant digit, or the third significant digit to the second significant digit, depending upon whether the limit is expressed to two or three significant digits. Thus, for example, if an actual Emissions Rate is 0.0904, that shall be reported as 0.090, and shall be in compliance with an Emissions Rate of 0.090, and if an actual Emissions Rate is 0.0905, that shall be reported as 0.091, and shall not be in compliance with an Emissions Rate of 0.090. VEPCO shall collect and report data to the number of significant digits in which the standard or limit is expressed. As otherwise applicable and unless this Decree expressly directs otherwise, the calculation and measurement procedures established under 40 C.F.R. Parts 75 and 76 apply to the measurement and calculation of NO_x and SO_2 under this Decree.

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

196. Written Statements to be Sent to all Plaintiffs. Notwithstanding any other

provision of this Decree, VEPCO shall supply to all Parties to this Decree all notices, reports, applications, elections, and any other written statement that the Decree requires VEPCO to supply to any Party to the Decree.

197. Applicable Law on Data Use Still Applies. Nothing in this Consent Decree alters or waives any applicable law (including, but not limited to, any defenses, entitlements, or clarifications related to the Credible Evidence Rule (62 Fed. Reg. 8314, Feb. 27, 1997)) concerning use of data for any purpose under the Act, generated by the reference methods specified herein or otherwise.

XXX. CONDITIONAL TERMINATION OF ENFORCEMENT, CONTINUATION OF TERMS, AND FIRST RESORT TO TITLE V PERMIT

198. Termination as to Completed Tasks. As soon as VEPCO completes any element of construction required by this Decree or completes any requirement that will not recur, VEPCO may seek termination of that portion of the Decree that dictated such requirement.

199. Conditional Termination of Enforcement through Consent Decree. Once VEPCO:

(A) believes it has successfully completed and commenced successful operation of all pollution controls (new and upgrades) required by Decree;

(B) holds final, Title V Permits -- covering all Units in the VEPCO System -- that include as enforceable permit terms all of the performance and other requirements for the VEPCO System as required by Section X ("Permits"), and

(C) certifies that the date is later than December 31, 2015;

then VEPCO may file a notice with the Court of these facts. Unless within forty-five

(45) days after VEPCO files such a notice, any Plaintiff objects to the accuracy of that notice, enforcement based on Decree violations that occurred after the filing of the notice shall be through the applicable Title V Permit and not through this Decree.

200. Resort to Enforcement under this Consent Decree. Notwithstanding paragraph 199, if enforcement of a provision of this Decree cannot be pursued by a party under the applicable Title V permit, or if a Decree requirement was intended to be part of the Title V Permit and did not become or remain part of such permit, then such requirement may be enforced under the terms of this Decree at any time.

SO ORDERED, THIS 3rd DAY OF October, 2003.

Leonie M. Brinkema

UNITED STATES DISTRICT COURT JUDGE

FOR THE UNITED STATES OF AMERICA:

Tom Sansonetti

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

THOMAS A. MARIANI
Assistant Chief
Environmental Enforcement Section
Environmental and Natural Resources Division
United States Department of Justice

JOHN PETER SUAREZ
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Bruce C. Buckheit

BRUCE C. BUCKHEIT
Director, Air Enforcement Division
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for ROBERT G. BURNLEY
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Commonwealth of Virginia

FOR THE STATE OF WEST VIRGINIA:

JOHN BENEDICT
Director
Division of Air Quality
West Virginia Department of Environmental Protection

ROLAND T. HUSON, III
Senior Counsel
Office of Legal Services
West Virginia Department of Environmental Protection

FOR VIRGINIA ELECTRIC AND POWER COMPANY:

Edward Rivas

EDWARD RIVAS
Sr. Vice President
Fossil and Hydro
Virginia Electric and Power Company

APPENDIX A TO "VEPCO" CONSENT DECREE
THE UNITS COMPRISING THE "VEPCO SYSTEM" IN
UNITED STATES, ET AL. V. VIRGINIA ELECTRIC AND POWER CO.

Steam Electric Generating Unit: Plant Name, Unit Number, Unit Abbreviation, & Nominal Nameplate ("MW")	Improved Unit for SO_2 Under Decree Paragraph 64	Improved Unit for NO_x Under Decree Paragraph 56	Optimization for PM Required under Decree Section VII
Bremo Unit 3 ("BR 3") 69 MW	NO	NO	YES
Bremo Unit 4 ("BR 4") 185 MW	NO	NO	YES
Chesapeake Unit 1 ("CEC 1") 112 MW	NO	NO	YES
Chesapeake Unit 2 ("CEC 2") 112 MW	NO	NO	YES
Chesapeake Unit 3 ("CEC 3") 185 MW	NO	YES	YES
Chesapeake Unit 4 ("CEC 4") 239 MW	NO	YES	YES
Clover Unit 1 ("CL 1") 393 MW	YES	NO	YES
Clover Unit 2 ("CL 2") 393 MW	YES	NO	YES
Chesterfield Unit 3 ("CH 3") 112 MW	NO	NO	YES
Chesterfield Unit 4 ("CH 4") 187 MW	NO	YES	YES
Chesterfield Unit 5 ("CH 5") 359 MW	YES	YES	YES
Chesterfield Unit 6 ("CH 6") 694 MW	YES	YES	YES

APPENDIX A (continued)			
Steam Electric Generating Unit: Plant Name, Unit Number, Unit Abbreviation, & Nominal Nameplate ("MW")	Improved Unit for SO_2 Under Decree Paragraph 64	Improved Unit for NO_x Under Decree Paragraph 56	Optimization for PM Required under Decree Section VII
Mt. Storm Unit 1 ("MS 1") 551 MW	YES	YES	YES
Mt. Storm Unit 2 ("MS 2") 551 MW	YES	YES	YES
Mt. Storm Unit 3 ("MS 3") 552 MW	YES	YES	YES
North Branch ("NB") 92 MW	NO	NO	YES
Possum Point Unit 3 ("PP 3") 114 MW	YES	YES	NO
Possum Point Unit 4 ("PP 4") 239 MW	YES	YES	NO
Yorktown Unit 1 ("YT 1") 187 MW	NO	NO	YES
Yorktown Unit 2 ("YT 2") 187 MW	NO	NO	YES

Appendix A: Coal Specifications for Sulfur

Unit	Fuel SO2 Specification (lbs SO2/mmBtu)	Fuel Sulfur Specification (lbs S/mmBtu)	Fuel Sulfur Specification (% by weight)
Bremo Unit 3	2.64		
Bremo Unit 4	2.64		
Chesapeake Unit	2.64		
Chesapeake Unit	2.64		
Chesapeake Unit	2.64		
Chesapeake Unit	2.64		
Chesterfield Unit	2.64		
Chesterfield Unit	2.64		
Chesterfield Unit	2.64		
Chesterfield Unit	2.64		
Clover Unit 1	N/A		
Clover Unit 2	N/A		
Mt. Storm Unit 1		1.9	
Mt. Storm Unit 2		1.9	
Mt. Storm Unit 3		1.9	
North Branch			4
Possum Point	N/A		
Possum Point	N/A		
Yorktown Unit 1	2.64		
Yorktown Unit 2	2.64		

APPENDIX B - REPORTING REQUIREMENTS

VEPCO shall submit its semi-annual report as required by Paragraph 137 electronically and in hard copy form. Each semi-annual report shall be certified as required by Paragraph 139 of this Consent Decree. The semi-annual report is in addition to all other notices and reporting obligations under the Consent Decree. VEPCO shall provide the following information in each of the required semi-annual reports:

I. NO_x Reporting Requirements

A. Installation and Seasonal/Annual Operation of SCRs

1. The progress of construction (such as, if construction is not underway, the construction schedule, dates of contract execution, major component delivery, and, if construction is underway, the estimated percent of installation and estimated construction completion date) and, once construction is complete, the date of final installation and of acceptance testing under the SCR contract, of SCR controls required under Paragraph 56 of the Consent Decree.

2. Commencing when 30-Day Rolling Average Emission Rates become applicable, the 30-Day Rolling Average Emission Rate (lbs/mmBTU) as defined in Paragraph 5, for each operating day for each Unit utilizing SCRs required under Paragraph 56 of the Consent Decree.

3. Within the first report that identifies a 30-Day Rolling Average Emission Rate (lbs/mmBTU) for each SCR, at least five (5) example calculations (including raw CEM data in electronic format for the calculation) used to determine the 30-Day Rolling Average Emission Rate. If at any time VEPCO changes any aspect within the methodology used in determining the 30-Day Rolling Average Emission Rate, VEPCO shall explain the change and the reason for using the new methodology.

4. All instances, and explain events, that cause deviations from any 30-Day Rolling Average Emission Rate in lbs/mmBTU required in Paragraph 56. VEPCO shall identify any corrective actions taken in response to such deviation.

5. A description of the how VEPCO met the SCR performance efforts required in Paragraph 57 (Best Efforts).

B. Interim Control of NO_x Emissions

1. In addition to the notice required under paragraph 59, within each semi-annual report covering activities in 2004 through 2007, identify the compliance option selected as between Paragraph 59(A) and 59(B) for that given year and

the date that the notification required in Paragraph 59 was submitted to the Plaintiffs, if any such notification is required under Paragraph 59.

2. If VEPCO implements option (A) under Paragraph 59, report which Unit or Units will utilize year-round SCR control(s) and the amount of MW represented by the identified Units and report for each Unit controlled with year-round SCR the 30-Day Rolling Average Emission Rate (lbs/mmBTU) as defined in Paragraph 5 for each operating day.

3. If VEPCO implements option (B) under Paragraph 59, the Seasonal System-Wide Emission Rate (lbs/mmBTU) as defined in Paragraph 44, within the first report that identifies a Seasonal System Wide Emission Rate, provide at least five (5) example calculations (including raw CEM data in electronic format for the calculations) used to determine the Seasonal System Wide Emission Rate. If at any time VEPCO changes any aspect within the methodology used in determining the Seasonal System-Wide Emission Rate, VEPCO shall explain the change and the reason for using the new methodology.

C. Annual NO_x System-Wide Requirements

1. Within the last report for any given year for which a report is due, report the total NO_x emissions from the VEPCO System, and for each VEPCO System Unit, for the calendar year covered by the report as tons per year.

2. Within the last report for any given year for which a report is due, commencing in 2013, report the System Wide Annual Emission Rate and the underlying calculation for the VEPCO System for the previous calendar year (starting with the year 2013) as lbs/mmBTU.

D. Miscellaneous NO_x Provisions

1. For each Unit in the "VEPCO System" that utilizes SCR control pursuant to a requirement of the Consent Decree, all NO_x emissions (in tons) excluded from any NO_x emission calculation, as permitted in Paragraph 5 and an explanation for excluding such emission, as specified in subparagraph 2, below. The requirement to report tons of emissions excluded, but no other provisions, shall expire on December 31, 2015.

2. Commencing when any VEPCO System Unit becomes subject to a 30-Day Rolling Average Emissions Rate for NO_x and utilizes an SCR pursuant to a requirement of the Consent Decree, VEPCO shall report:

    a. The date and time that the fire is extinguished;

b. The date and time that the Unit is restarted and the date and time that the Unit is synchronized with an utility electric distribution system after the restart;

c. The NO_x emissions emitted by the Unit prior to the time that the Unit was synchronized with an utility electric distribution system;

d. On the fifth and subsequent Cold Start Up Periods that occur within any 30-Day period, the earlier of the date and time that (1) is eight hours after the Unit is synchronized with a utility electric distribution system, or (2) the flue gas has reached the SCR operational temperature as specified by the catalyst manufacturer;

e. The NO_x emissions emitted during the fifth and subsequent Cold Start Up Periods;

f. Identification of the date, time and duration of any period when emissions are excluded due to a malfunction of the SCR, as provided by Paragraph 5, and supporting information regarding the malfunction, the cause, and corrective actions taken, and the amount of NO_x emissions during the malfunction.

E. Possum Point

The tons of NO_x from Possum Point Units 3 and 4 rolled daily as determined by Paragraph 96.

II. SO_2 Reporting Requirements

A. SO_2 Removal Efficiency Requirements

1. The progress of construction and improvement (such as, if construction is not underway, the dates of contract execution, the estimated percent of installation, and major component delivery) and, once construction and improvement is complete, the date of final installation, improvement, and operation of FGDs required under Paragraph 64 of the Consent Decree, and of initial performance testing, if any.

2. Commencing when any 30-Day Rolling Average Removal Efficiency for SO_2 becomes applicable for each FGD as defined in Paragraph 64, the 30-Day Rolling Average Removal Efficiency for SO_2 for each operating day.

3. Within the first report that identifies a 30-Day Rolling Average Removal Efficiency for each FGD, at least five (5) example calculations (including raw CEM data in electronic format for the calculations) used to determine the 30-Day Rolling Average Removal Efficiency for SO_2. If at any time VEPCO

changes any aspect within the methodology used in determining the 30-Day Rolling Average Removal Efficiency for SO_2, VEPCO shall explain the change and the reason for using the new methodology.

B. SO_2 Emission Rate

1. For Clover Units 1 & 2, Mt. Storm Units 1, 2, & 3 and Chesterfield Units 5 & 6 upon qualifying for a 30-Day Rolling Average Emission Rate as provided in Paragraph 66 of the Consent Decree, the 30-Day Rolling Average Emission Rate (lbs/mmBTU), as defined in Paragraph 5, for each operating day for each Unit qualifying for the SO_2 emission rate.

2. Within the first report that identifies a 30-Day Rolling Average Emission Rate for each FGD, at least five (5) example calculations (including raw CEM data in electronic format for the calculations) used to determine the 30-Day Rolling Average Emission Rate. If at any time VEPCO changes any aspect within the methodology used in determining the 30-Day Rolling Average Emission Rate, VEPCO shall explain the change and the reason for using the new methodology.

3. A description of the how VEPCO met the FGD performance efforts required in Paragraph 69 (Best Efforts).

C. FGD Bypass Days at Mt. Storm (Consent Decree Paragraph 67)

1. For each FGD outage or FGD downtime at Mt. Storm Units 1, 2 or 3, as allowed under Paragraph 67, the following information:

   a. The date and time the outage/downtime began;
   b. The date and time that the FGD that was offline was returned to operation and the duration of the FGD outage/downtime;
   c. A narrative explanation of corrective or maintenance actions taken by VEPCO;
   d. The total SO_2 emitted from the Unit during the FGD outage/downtime;
   e. The total amount of SO2 emission, in tons, that would have been emitted at the Unit during the FGD outage/downtime had VEPCO burned coal with the sulfur content required by the Consent Decree, during the FGD outage/downtime;
   f. The amount of allowances to be surrendered and provide evidence that VEPCO surrendered to EPA the amount of SO_2 Allowances required to be surrendered under Paragraph 67;
   g. Report that the Unit with the FGD outage/downtime was not dispatched ahead of the other Mount Storm Units or the Clover Power Station Units during the FGD outage/downtime and the dispatch order

for each Unit of the VEPCO System during the FGD outage/downtime; and

h. By Unit, a year-to-date tabulation of the number and duration of FGD outages/downtime at Mt. Storm Units 1, 2, & 3, and the total amount of FGD outage/downtime permitted by the Consent Decree for that year.

D. Miscellaneous SO_2 Provisions

1. Commencing when any VEPCO System Unit becomes subject to a 30-Day Rolling Average Removal Efficiency or Emission Rate requirement for SO_2, for each Unit in the "VEPCO System" that utilizes FGD control pursuant to a requirement of the Consent Decree, when a Unit is taken out of service and the fire in the boiler is extinguished during the reporting period:

   a. The date and time that the fire is extinguished;
   b. The date and time the Unit is restarted;
   c. The date and time that the Unit is synchronized with an utility electric distribution system after the restart; and
   d. SO_2 emissions emitted by the Unit prior to the time that the Unit was synchronized with a utility electric distribution system, ending on December 31, 2015.

2. Within the last report for any given year, report the total SO_2 emissions from the VEPCO System for the calendar year covered by the report as tons per year, and for each Unit in the VEPCO System, report the annual SO_2 emissions in tons per year for the calendar year covered by the report.

E. Annual Surrender of SO_2 Allowances

1. Beginning in 2013, whether it made the annual SO_2 allowance surrender required by the Consent Decree to the U.S. EPA and shall provide documentation verifying this surrender.

2. If VEPCO surrenders the SO_2 allowances to a third party, the following information:

   a. The identity of the third-party recipients(s) of the SO_2 allowances and a listing of the serial numbers of the transferred allowances;
   b. A certification from the third-party recipient(s) that it (they) will not sell, trade or otherwise exchange any of the allowances and will not use any of the allowances to meet any obligation imposed by any law.
   c. Within 12 months after the first report of the transfer, VEPCO shall provide documentation that the third-party recipients(s) of the SO_2 allowances permanently surrendered the allowances to U.S. EPA

within one year after VEPCO transferred the allowances the third-party recipient(s).

F. Super-compliance Trading of Allowances

1. The amount of SO_2 Allowances and NO_x emission allowances or credits used or traded pursuant to Paragraph 75 and Section XVIII and the calculations or data justifying the generation of the used or traded allowances or credits.

III. PM Requirements

A. Use of PM Controls Existing at the Time the Decree was Entered and PM Emissions Rate

1. Until a Unit is subject to a PM emissions rate pursuant to this Consent Decree, the following information for each Unit:

   a. The calendar days on which the ESP was not operating at any time that the Unit was in operation;
   b. If, in accordance with Paragraphs 78 and 79, an ESP or portion thereof fails, does not perform in accordance with the equipment manufacturer's specifications or is shutdown by VEPCO, the calendar date of each such instance, the time that the failure or inadequate performance of the ESP began, all corrective actions undertaken by VEPCO and the calendar date and time that the ESP was restored to the mode of operation required by Paragraphs 78 and 79. VEPCO shall also report any additional corrective actions undertaken in response to the event.

2. For each Unit in the VEPCO System at which a PM emission rate applies pursuant to this Consent Decree, the following information:

   a. The PM Emission Rate (lbs/mmBTU) for the Unit, determined under the Consent Decree;
   b. If, in accordance with Paragraphs 78 and 79, an ESP or portion thereof fails, or does not perform in accordance with the equipment manufacturer's specifications, the calendar date of each such instance, the time that the failure or sub-par performance of the ESP began, all corrective actions undertaken by VEPCO and the calendar date and time that the ESP was restored to the mode of operation required by Paragraphs 78 and 79. VEPCO shall also report any additional corrective actions undertaken in response to the event.

3. Information required to be reported within the approved PM optimization plans.

4. A description of the how VEPCO met the PM control device performance efforts required in Paragraph 78 (Best Efforts).

B. PM CEMs

1. For each PM CEM installed on a Unit in the VEPCO System:

   a. If the PM CEM was installed during the reporting period, the date of installation of the PM CEM;
   b. The dates that the PM CEM operated;
   c. If the PM CEM did not operate continuously throughout the quarter without interruption whenever the Unit it serves was operating, the date and time that the PM CEM was not operating, a description of the cause of the PM CEM's outage, the steps taken by VEPCO to fix the PM CEM, any additional corrective actions undertaken by VEPCO in response to the event and the time and date that the PM CEM was returned to service.

C. Performance Testing/Monitoring of PM Emission

1. For each Unit in the VEPCO System:

   a. If the Unit was required to perform a stack test pursuant to the Consent Decree, the executive summary and results of the stack test;
   b. If the Unit has a PM CEM, the three-hour average emission rate for PM emissions (or such longer period as is specified in any applicable PM emissions limitation requirement), in lb/mmBtu.

IV. Deviation Reporting

A. In addition to reporting under Paragraph 137, a summary of all deviations that occurred during the reporting period and the date that the deviation was initially reported under Paragraph 138.

B. Within each deviation report submitted under Paragraph 138, the following information:

1. The Consent Decree requirement under which the deviation occurred, with a reference to the Consent Decree paragraph containing the requirement;

2. The date and time that the deviation occurred;

3. The date and time that the deviation was corrected;

4. The data, calculations or other information indicating that a deviation occurred; and

5. A narrative description of the cause or suspected cause of the deviation, the steps taken by VEPCO to correct the deviation and any additional corrective actions taken by VEPCO in response to the deviation.

V. Mitigation Project Reporting

A. The progress such as the schedule for completion of the project dates of contract execution, and estimated percent of completion of the Mitigation Projects required in Section XXI of the Consent Decree.

B. The amount of Project Dollars expended on Mitigation Projects.

VI. VEPCO Submissions

A list all plans or submissions and the date submitted to the Plaintiffs for the reporting period, and identify if any are pending the review and approval of the Plaintiff.

VII. VEPCO Capital Projects

A list of all Capital Expenditures performed throughout the VEPCO System on the Boiler Islands in order to determine meeting the threshold established in Paragraphs 111, 124, and 133.

VIII. Additional Information

Provide a response to any reasonable request by the Plaintiffs for any additional information regarding these reporting requirements or the obligations and requirements of this Consent Decree.

APPENDIX C – MITIGATION PROJECTS REQUIREMENTS

In compliance with and in addition to the requirements in Section XXI of the Consent Decree, VEPCO shall comply with the requirements of this Appendix to ensure that the benefits of the environmental mitigation protects are achieved. No Party may submit a proposed plan for a mitigation project until after entry of the Consent Decree.

I. Clean Diesel, Idle Reduction and School Bus Retrofit Project - To Be Conducted within the District of Columbia, Delaware, Maryland, Pennsylvania, Virginia and West Virginia and Resource Lands Project

A. Within 90 days after entry of the Consent Decree, VEPCO shall submit a plan to EPA for review and approval for the completion of the Clean Diesel, Idle Reduction and School Bus Retrofit Project in which VEPCO shall spend no less than $2,500,000 Project Dollars to retrofit diesel engines with emission control equipment, replace diesel engines with cleaner engines, subsidize the use of clean diesel fuels or install equipment or implement strategies that will reduce engine idling in the above listed jurisdictions.

B. The plan shall satisfy the following criteria:

1. Involve fleets located in geographically diverse areas and/or fleets operated in nonattainment areas or areas at significant risk of nonattainment status within the listed states, taking into account other clean diesel projects called for under this Decree.
2. Provide for the retrofit of high emitting, in service heavy-duty diesel engines with verified emissions control equipment. Retrofit technology may include but not be limited to oxidation catalysts and particulate matter filters that will reduce particulate matter and hydrocarbon emissions.
3. Provide for the replacement of engines with those that meet the 2007 engine standards and/or are equipped with verified emission control technology.
4. Involve vehicles that are located in areas in which ultra low sulfur diesel fuel (ULSD) is already available or is scheduled to become available and where such fuel is required for retrofit technology. For affected municipalities, school districts or similar local government entities whose fleet will be retrofitted, the plan may provide for (a) the procurement of tanks or other infrastructure required enabling that fleet to obtain and use ULSD and (b) offsetting higher fuel costs from the requirement to use ULSD.
5. Provide for the use of alternative diesel fuels that reduce emissions of particulate matter, nitrogen oxides and/or hydrocarbons including but not

limited to emulsions and biodiesel fuels.

6. Provide for the installation of verified idle reduction technology and/or idle reduction strategies that effectively reduce emissions from idling engines through equipment such as electrification stations and/or implementation of outreach and education programs to implement policies that reduce idling time.
7. Account for hardware and installation costs, and may provide also for incremental maintenance costs and/or costs of repairs on such hardware for a period of up to four years after installation.
8. Limit recipients of retrofits to fleets that legally bind themselves to maintain any equipment installed in connection with the project during and after completion of the project.
9. Establish minimum standards for any third-party with whom VEPCO might contact to carry out this program that include prior experience in arranging vehicle retrofits, ULSD purchases, anti-idling campaigns, etc. and a record of prior ability to interest and organize fleets, school districts, community groups, etc. to join a clean diesel program.
10. A schedule for completing each portion of the project.

C. Within 180 days after entry of the Consent Plans, VEPCO shall submit a plan to EPA for review and approval for the identification, acquisition, restoration, management and/or preservation of resource lands to mitigate or compensate for lost service uses possibly resulting from past power plant emissions in which VEPCO shall spend no less than $500,000. The proposed plan shall satisfy the following criteria:

1. Provide a means for the identification of available resource lands which may be used to mitigate any past impacts of acid rain deposition or other possible effects of power plant emissions and assess the value of such lands in providing such benefits as contributing to carbon sequestration, restoring forest productivity and other relevant factors.

2. Establish a process for carrying out the plan, including the identification of resources, staff and/or other entities charged with project execution, management and oversight during the terms of the Decree, and develop a related schedule for completing each portion of the project.

3. Within 180 days after approval of the proposed selection process identify particular plots of land that are consistent with the specifications outlined.

4. Submit the identified plots of land with recommended selection criteria

within a reasonable period of time. Develop legal options for acquiring, restoring and assuring the continued preservation of identified lands.

D. Performance - Upon approval of plan by the United States, VEPCO shall complete the mitigation project according to the approved plan and schedule.

II. **Solar Photovoltaic (PV) Project – To Be Conducted in New York State**

A. New York shall propose to VEPCO and the U.S. a plan using $2.1 million to accomplish the installation of solar photovoltaics ("PVs") on municipal buildings in New York. These building would then use the PV-generated energy, in part to help remove some demand for energy from the electrical grid during peak demand periods. The project will be administered through the New York State Energy Research and Development Authority's (NYSERDA) Solar Photovoltaics program.

B. New York's proposed plan must:

1. Describe how the work or project to be performed is consistent with requirements of Section II.A, above;

   a) Include a general schedule and budget (for $2.1 million) for completion of the work; including payment instructions for VEPCO's submission of funds to the State, along with a requirement of periodic reports to all Parties on the progress of the work called for in the proposed plan through completion of the project;
   b) Describe generally the expected environmental benefit for project or work called for under the proposed plan; and
   c) Describe briefly how work or project described in the proposed plan meets the requirements of Section XXI of the Decree.

C. VEPCO's obligation for this project shall terminate once a plan exists for this project or work and VEPCO has transferred at least $2.1 million to New York to complete the project or work described in the plan. VEPCO shall transfer this sum as soon as possible after the proposed plan is developed but no later than December 31, 2003, unless untimely submission of the proposed plan or material deficiency in such plan requires payment after that date.

D. If New York (or NSYERDA) is later unwilling or unable to perform the project specified here, then New York, in consultation with VEPCO, shall select an alternative project or projects designed to accomplish the same kinds of goals as intended for this project. After proceeding through this proposed plan process

for the alternative project, VEPCO shall fund such project or projects in the amount of $2.1 million.

III. Mitigating Harm to Health Related to Air Pollution in New Jersey and New York: Public Transit – Diesel Bus Catalyzed Particulate Filters

A. New Jersey shall supply to VEPCO and the U.S. a plan to use $2.7 million to accomplish the installation of catalyzed particulate filters (CPFs) on late-model conventional diesel buses used to transport commuters from various locations in the State of New Jersey into New York City. Operating exclusively on ultra-low sulfur diesel fuel, these CPF-equipped buses will further significantly reduce harmful emissions of carbon monoxide, hydrocarbons, and particulate matter in both New Jersey and New York. The project will be administered by the New Jersey Transit Corporation.

B. New Jersey's proposed plan must:

1. Describe how the work or project to be performed is consistent with requirements of Section III.A, above;
2. Include a general schedule and budget (for $2.7 million) for completion of the work, including payment instructions for VEPCO's submission of funds to the State, along with a requirement of periodic reports to all Parties on the progress of the work called for in the proposed plan through completion of the project;
3. Describe generally the expected environmental benefit for project or work called for under the proposed plan; and
4. Describe briefly how the work or project described in the proposed plan meets the requirements of Section XXI of the Decree.

C. VEPCO's obligation for this project shall terminate once a plan exists for this project or work and VEPCO has transferred at least $2.7 million to New Jersey to complete the project or work described in the plan. VEPCO shall transfer this sum as soon as possible after the proposed plan is developed but no later than December 31, 2003, unless untimely submission of the proposed plan or material deficiency in such plan requires payment after that date.

IV. School Bus Retrofit Project – To be Conducted in the State of Connecticut

A. The State of Connecticut will supply VEPCO and the U.S. a plan to use $1.1 million to purchase and install particulate filters for diesel school buses that operate in selected urban communities in that State. The proposed plan may include any combination of the following: (i) conversion of conventional diesel-powered, school buses to buses with particulate traps; (ii) procuring of ultra-low sulfur diesel fuel (and

necessary infrastructure) to power for up to three years buses converted in the manner described in (i), and/or (iii) install additional air pollution controls on such buses. The proposed plan will be limited to pollution control devices, fuels, and other measures needed to convert diesel buses to include CRT or other particulate traps and other controls (including support infrastructure).

B. Connecticut's proposed plan must:

1. Describe how the work or project to be performed is consistent with requirements of Section IV.A, above;
2. Include a general schedule and budget (for $1.1 million) for completion of the work, including payment instructions for VEPCO's submission of funds to the State, along with a requirement of periodic reports to all Parties on the progress of the work called for in the proposed plan through completion of the project;
3. Describe generally the expected environmental benefit for project or work called for under the proposed plan; and
4. Describe briefly how the work or project described in the proposed plan meets the requirements of Section XXI of the Decree.

C. VEPCO's obligation for this project shall terminate once a plan exists for this project or work and VEPCO has transferred at least $1.1 million to Connecticut to complete the project or work described in the plan. VEPCO shall transfer this sum as soon as possible after the proposed plan is developed but no later than December 31, 2003, unless untimely submission of the proposed plan or material deficiency in such plan requires payment after that date.

V. School Bus Retrofit Program to be Carried Out in Commonwealth of Virginia

A. Commonwealth of Virginia shall supply to VEPCO and the U.S. a plan to use $2.0 million to accomplish any combination of the following concerning in-service diesel-powered school buses in the Commonwealth: retrofitting buses with pollution control devices and techniques and infrastructure needed to support such retrofits, engine replacements that will reduce emissions of particulates or ozone precursors, and changeover to CNG fuel or low diesel fuel. These projects are to be carried out in areas either non in attainment with ambient air quality standards in the Commonwealth or at risk of being reclassified as nonattainment, such as Fairfax, Hampton Roads, and Virginia Beach

B. Commonwealth's proposed plan must:

1. Describe how the work or project to be performed is consistent with requirements of Section V.A, above;
2. Include a general schedule and budget (for $2.0 million) for completion of

the work, including payment instructions for VEPCO's submission of funds to the Commonwealth, along with a requirement of periodic reports to all Parties on the progress of the work called for in the proposed plan through completion of the project;

3. Describe generally the expected environmental benefit for project or work called for under the proposed plan; and
4. Describe briefly how the work or project described in the proposed plan meets the requirements of Section XXI of the Decree.

C. VEPCO's obligation for this project shall terminate once a plan exists for this project or work and VEPCO has transferred at least $2.0 million to the Commonwealth to complete the project or work described in the plan. VEPCO shall transfer this sum as soon as possible after the proposed plan is developed but no later than December 31, 2003, unless untimely submission of the proposed plan or material deficiency in such plan requires payment after that date

VI. Protecting Forests and other Natural Resources in West Virginia's Cheat Gorge / Big Sandy Area.

A. The State of West Virginia will supply VEPCO and the U.S. a $2.0 million proposed plan for the purchase and maintenance of property and/or conservation easements that would preserve forests and other environmentally sensitive areas in and around the Cheat Gorge / Big Sandy area of the West Virginia, for the purposes of making or expanding a public wildlife management area in the State and thus preserving an important sources of carbon sequestration. The proposed plan also will include needed steps for securing and maintaining valid conservation easements under applicable law and for securing clear title, as applicable.

B. West Virginia's proposed plan must:

1. Describe how the work or project to be performed is consistent with requirements of Section VI.A, above;
2. Include a general schedule and budget (for $2.0 million) for completion of the work; including payment instructions for VEPCO's submission of funds to the State or its designee, along with a requirement of periodic reports to all Parties on the Progress of the work called for in the proposed plan through completion of the project;
3. Describe generally the expected environmental benefit for project or work called for under the proposed plan; and
4. Describe briefly how work or project described in the proposed plan meets the requirements of Section XXI of the Decree.

C. VEPCO's obligation for this project shall terminate once a plan exists for this project

or work and VEPCO has transferred at least $2.0 million to West Virginia or its designee. VEPCO shall transfer this sum as soon as possible after the proposed plan is developed but no later than December 31, 2003, unless untimely submission of the proposed plan or material deficiency in such plan requires payment after that date.

D. If West Virginia is unwilling or unable to perform the project specified here, West Virginia, in consultation with VEPCO, shall select an alternative project or projects designed to accomplish the same kinds of goals as intended for this project. After proceeding through this proposed plan process for this alternative project(s), VEPCO shall fund such project or projects in the amount of $2.0 million.

VII. National Park Service Alternative-Fueled and Hybrid Vehicles Project.

A. The National Park Service will supply VEPCO a plan for using $1.0 million in accordance with the Park System Resource Protection Act, 16 U.S.C Section 19jj, to improve air quality in and about the Shenandoah National Park, either by securing alternative-fueled vehicles for trial use in and around the Park (including necessary ancillary equipment such as a fueling station) or for implementing another project also intended to reduce damage to those resources caused by air pollution suffered by the Park.

B. NPS's proposed plan must:

1. Describe how the work or project to be performed is consistent with requirements of Section VII.A, above;
2. Include a general schedule and budget (for $1.0 million) for completion of the work; including payment instructions for VEPCO's submission of funds to the Natural Resource Damage and Assessment Fund, along with a requirement of periodic reports to all Parties on the Progress of the work called for in the proposed plan through completion of the work.
3. Describe generally the expected environmental benefit for project or work called for under the proposed plan; and
4. Describe briefly how work or project described in the proposed plan meets the requirements of Section XXI of the Decree.

C. VEPCO's obligation for this project shall terminate once an approved plan exists for this project or work and VEPCO has transferred at least $1.0 million to the Natural Resource Damage and Assessment Fund. VEPCO shall transfer this sum as soon as possible after the proposed plan is approved but no later than December 31, 2003, unless untimely submission of the proposed plan or material deficiency in such plan requires payment after that date.

Marion

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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By Express Mail

June 20, 2003

Thomas J. Sansonetti
Assistant Attorney General
Environment & Natural Resources Division
Department of Justice, P.O. Box 7611
Washington, D.C. 20044-7611

Re: Consent Decree in *United States v. Virginia Electric and Power Co.*, D.J. Ref. 90-5-2-1-07122.

Dear ~~Mr. Sansonetti~~ Tom:

Pursuant to 28 C.F.R. § 50.7, we are writing today to offer comments on the proposed Consent Decree that the Department of Justice lodged on April 21, 2003, in *United States v. Virginia Electric and Power* Co. We submit these comments on behalf of the Commonwealth of Massachusetts ("the Commonwealth"). The Commonwealth has an interest in this matter because pollutants emitted from Virginia and West Virginia power plants are transported to Massachusetts on the prevailing winds.

The proposed Consent Decree requires the Defendant to install various emissions control equipment designed to reduce emissions of sulfur and nitrogen oxides. While this equipment will result in some emissions reductions, it is our understanding that there has been no demonstration that the level of controls required constitutes Best Available Control Technology (BACT). In fact, we understand from our state Department of Environmental Protection that the levels of controls required by the Consent Decree would not meet current BACT levels for sulfur dioxide and nitrogen oxides (no less strict than a 98% removal efficiency for SO_2, and a 0.050 lb/mm BTU emissions rate for NO_x). We do not question your exercise of enforcement discretion to settle this case without a BACT demonstration. Indeed, without knowing the evidence in your possession regarding the violations alleged in your Complaint, we are not even in a position to make any judgment on this. We did, however, want to comment on one structural aspect of the proposed settlement.

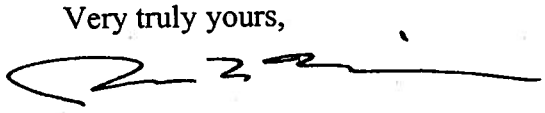
Consistent with standard practice, the Consent Decree seeks to resolve past claims under federal and state law. *See* Consent Decree ¶¶ 107, 117, 126. It also seeks, however, to resolve

JUN 25 2003

future claims. *See* Consent Decree ¶¶ 108, 118, 127. We obviously have no problem with the provisions that make it clear that you, Virginia, and West Virginia will not sue the company over future modifications "that this Consent Decree expressly directs VEPCO to undertake." The protection afforded the Defendant goes significantly further, however. The Consent Decree seeks to preclude you, Virginia, and West Virginia – subject to certain stated qualifications – from bringing suit over future modifications regardless of whether they are required by the Consent Decree. In other words, so long as the Defendant's actions do not trigger the stated exceptions, the Defendant would be shielded from an enforcement suit brought by you for future violations of the NSR or PSD programs. Thus, even if the Defendant took actions in the future that otherwise violated NSR or PSD, you may well not be able to force the Defendant to install what constitutes BACT at that time, despite the fact that it appears that the company is not installing what constitutes BACT today. This "safe harbor" would last until 2016.[1]

In this manner, you seek at this time to limit the future exercise of your enforcement discretion as to violations that may not first occur until over a decade from now. Whatever the extent of your ability to do this, we want to put all parties on notice that we do not consider the Commonwealth so bound. *Cf. Citizens for a Better Environment-California v. Union Oil*, 83 F.3d 1111, 1119-20 (9th Cir. 1996)(citizen suit under Clean Water Act not barred by prior settlement that limited the enforcement discretion of government regulators), *cert. denied* 519 U.S. 1101; *same case,* 996 F.Supp. 934 (N.D. CA 1997)(summary judgment granted for citizen plaintiffs). We reserve any and all rights the Commonwealth may have pursuant to Section 304 of the Clean Air Act to enforce against future violations by VEPCO of the NSR and PSD programs.

Very truly yours,



James R. Milkey
Assistant Attorney General, Chief
Environmental Protection Division

cc. Margaret Stolfa, DEP
Parties of Record

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[1]While this provision shares some similarities with the Clean Unit Exemption regulations promulgated on December 31, 2002, it is inconsistent with them in various respects. In addition, we note that those regulations are being challenged by the Commonwealth and thirteen other states in the D.C. Circuit Court of Appeals.

1 UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF ILLINOIS

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5 UNITED STATES OF AMERICA, :

6 Plaintiff, :

7 v. : Number

8 ILLINOIS POWER COMPANY and : 99-CV-833-MJR

9 DYNEGY MIDWEST GENERATION, INC., :

10 Defendants. :

11 - - - - - - - - - - - - - - - - - - -x

12

13

14 DEPOSITION OF MATT HABER

15

16

17 Washington, D.C.

18 Wednesday, August 14, 2002

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21 REPORTED BY:

22 CARMEN SMITH

1 C O N T E N T S

2

3 WITNESS EXAMINATION

4 MATT HABER

5 by Mr. Gutermann 4

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7 E X H I B I T S

8

9 EXHIBIT NUMBER IDENTIFIED

10

11 Haber 1 - Haber Expert Report 6

12 Haber 2 - Expert Report Derivation of

13 Particulate Removal Efficiency Table

14 Revisions 54

15 Haber 3 - Region 9 Guidance Document 118

16 Haber 4 - Federal Register Notice 131

17 Haber 5 - Howekamp Letter to Hilberg with

18 Attached Ambient Air Quality Impact

19 Report 137

20 Haber 6 - Howekamp Letter to Clausen with

21 Attached Air Quality Impact Report 150

22 -- continued --

1 E X H I B I T S

2 EXHIBIT NUMBER IDENTIFIED

3

4 Haber 7 - "Prevention of Significant
5 Deterioration Workshop Manual" 161
6 Haber 8 - 3/25/82 Konter letter to Mathur 212
7 Haber 9 - construction permit 215
8 Haber 10 - 8/6/92 Sutton letter to Newton 221
9 Haber 11 - 1/4/79 USEPA guidance letter 255
10 Haber 12 - 12/1/87 Potter memo 260
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12 Recess..... 54
13 Recess..... 89
14 Recess 2:14 to 2:33 p.m..... 146
15 Recess 3:23 to 3:34 p.m..... 181
16 Recess 4:56 to 5:07 p.m..... 229

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Best Available Control Technologies for the Baldwin Generating Station, Baldwin, Illinois

Expert Report of

Matt Haber

Prepared for the United States in connection with:
United States v. Illinois Power Company And Dynegy Midwest Generation, Inc.,
Civil Action No. 99-833-MJR
in the U.S. District Court for the Southern District of Illinois

APRIL 2002

PORTIONS OF THIS REPORT CONTAIN INFORMATION IDENTIFIED AS CONFIDENTIAL BUSINESS INFORMATION. PAGES MARKED AS CONTAINING SUCH INFORMATION MAY NOT BE DISCLOSED TO UNAUTHORIZED PERSONS.

PENGAD-Bayonne, N. J.
DEPOSITION EXHIBIT
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Haber
5-14-02

permits were being issued as of the date this report is submitted.

II. Summary of Conclusions

In summary, and for the reasons described herein, I have concluded that the following emission rates and technologies would have been BACT for the pollutants at issue, and the Baldwin Station Units at issue, in the time frames specified below.

	SO_2	NO_x	PM
1982 (Unit 3)	0.30 pounds per million BTU, based on 95% scrubbing and assuming coal with a 3-3.5% sulfur content, and use of a wet limestone scrubber Averaging time: 30 day rolling Monitored via CEMS[2]	0.40 pounds per million BTU, based on use of Low NO_x Burners. Averaging time: 3 hour Monitored via CEMS	0.036 pounds per million BTU, 99.4% control, based on use of (then existing) ESP Averaging time: 3 hour Monitored via EPA method 5[3], opacity monitor
1985 (Unit 1)	0.30 pounds per million BTU, based on 95% scrubbing and assuming coal with a 3-3.5% sulfur content, and use of a wet limestone scrubber Averaging time: 30 day rolling Monitored via CEMS	0.90 pounds per million BTU, based on use of selective catalytic reduction Averaging time: 3 hour Monitored via CEMS	0.003 pounds per million BTU, based on use of a baghouse Averaging time: 3 hour Monitored via EPA method 5, opacity monitor

1990), page B.55: "the BACT emission limit in a new source permit is not set until the final permit is issued."

[2] Continuous Emissions Monitoring System

[3] See 40 C.F.R 60 Appendix A

1988 (Unit 2)	0.30 pounds per million BTU, based on 95% scrubbing and assuming coal with a 3-3.5% sulfur content, and use of a wet limestone scrubber Averaging time: 30 day rolling Monitored via CEMS	0.36 pounds per million BTU, based on use of selective catalytic reduction Averaging time: 3 hour Monitored via CEMS	0.003 pounds per million BTU, based on use of a baghouse Averaging time: 3 hour Monitored via EPA method 5, opacity monitor
2002 (Units 1 & 2)	0.095 pounds per million BTU, based on 95% scrubbing, and assuming use of coal with 0.6% sulfur content Averaging time: 30 day rolling Monitored via CEMS	0.14 pounds per million BTU, based on use of overfire air, selective catalytic reduction, and an optimization system Averaging time: 3 hour Monitored via CEMS	0.006 pounds per million BTU, based on use of a baghouse Averaging time: 3 hour Monitored via EPA method 5, triboelectric broken bag monitors
2002 (Unit 3)	0.095 pounds per million BTU, based on 95% scrubbing, and assuming use of coal with 0.6% sulfur content Averaging time: 30 day rolling Monitored via CEMS	0.020 pounds per million BTU, based on use of low-NO_x burners, selective catalytic reduction, and an optimization system. Limit may be adjusted as high as 0.040 pounds per million BTU if lower limit is demonstrated to be unachievable. Averaging time: 3 hour Monitored via CEMS	0.015 pounds per million BTU, based on use of a ESP. Averaging time: 3 hour Monitored via EPA method 5, PM CEMS[4]

III. Qualifications

I have been involved in BACT decisions in a variety of capacities at EPA's Region 9 for over twenty one years. I began work for EPA Region 9 in 1980 as a staff engineer in the New Source Section of what was then called the Enforcement Division. The primary function of this section

[4] See http://www.epa.gov/ttn/emc/propperf/ps-11&fmotice.pdf, proposed Performance Specification for Continuous PM Monitoring Systems.

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