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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	1:11-cv-1826 (RMB-JS)
	)	
CITY OF VINELAND, NEW JERSEY,	)	
	)	
Defendant.	)	
_____	)	

**CONSENT DECREE**

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XXI. FINAL JUDGMENT. . . . . -28-

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant City of Vineland, New Jersey, violated Sections 502 and 504(a) of the Clean Air Act (“Act”), 42 U.S.C. §§ 7661a and 7661c(a); and N.J.A.C. 7:27-3.2; N.J.A.C. 7:27-16.8(b)(2); and N.J.A.C. 7:27-19.4(a).

WHEREAS, the Complaint against Defendant alleges that the City of Vineland, New Jersey owns and operates, through an agency of the City entitled the Vineland Municipal Electric Utility (“VMEU”), an electric generating station known as the Howard M. Down station located at 211 North West Avenue, Vineland, Cumberland County, New Jersey (“Facility”). The Facility includes four boilers (Units 7-10); Units 7, 8 and 9 fire fuel oil, and Unit 10 fires a combination of coal and fuel oil. The Facility currently operates pursuant to a Title V Operating Permit issued to VMEU by the State of New Jersey on August 31, 2005, which includes as applicable requirements, among other things, opacity limits, carbon monoxide (“CO”) emission limits, oxides of nitrogen (“NOx”) emission limits and monitoring requirements, approved into the federally-enforceable New Jersey State Implementation Plan (“SIP”). Prior to EPA’s approval of New Jersey’s Title V program, Units 8, 9 and 10 operated pursuant to construction and operating permits issued to the Facility by the New Jersey Department of Environmental Protection (“NJDEP”) pursuant to N.J.A.C. 7:27-8, which included, among other things, opacity limits, CO emission limits, NOx emission limits and monitoring requirements, approved into the federally-enforceable SIP.

WHEREAS, the Complaint alleges that since at least May 2004, VMEU has consistently failed to operate the Facility in compliance with the Act, the SIP and the Facility’s Subchapter 8

Permits and Title V Operating Permit. Specifically, the Facility has operated in excess of the applicable emission limits for opacity, CO and NO<sub>x</sub>, and VMEU has failed to monitor NO<sub>x</sub> and sulfur dioxide (“SO<sub>2</sub>”) emissions in compliance with the terms of the Facility’s Title V Operating Permit.

WHEREAS, Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391 and 1395(a), because the Facility is located, and the alleged violations occurred, in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court’s jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. Solely for purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113 of the Act, 42 U.S.C.

§ 7413.

## II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 2, the United States Attorney for the District of New Jersey, and the United States Department of Justice, in accordance with Section XIII of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract entered into after the Date of Lodging of this Consent Decree upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any

actions necessary to comply with the provisions of this Consent Decree.

### III. DEFINITIONS

7. Terms used in this Consent decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Complaint” shall mean the complaint filed by the United States in this action;
- b. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto;
- c. “Date of Lodging” shall mean the date on which this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of New Jersey;
- d. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- e. “Defendant” shall mean the City of Vineland, New Jersey;
- f. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- g. “Effective Date” shall have the definition provided in Section XIV;
- h. “Facility” shall mean the City of Vineland Municipal Electric Utility’s

Howard M. Down electric generating station, located at 211 North West Avenue in Vineland, Cumberland County, New Jersey;

i. “NJDEP” shall mean the New Jersey Department of Environmental Protection;

j. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral;

k. “Parties” shall mean the United States and Defendant;

l. “Permit” shall mean the Air Pollution Control Operating Permit BPO990001, issued to the Facility by NJDEP on August 31, 2005, and any subsequent and/or renewal Title V operating permit(s) issued to the Facility;

m. “Section” shall mean a portion of this Decree identified by a roman numeral;

n. “State” shall mean the State of New Jersey;

o. “Unit 7,” “Unit 8,” “Unit 9,” and “Unit 10” refer to the emission units identified as Units 7, 8, 9 and 10, respectively, in the Permit.

p. “United States” shall mean the United States of America, acting on behalf of EPA.

#### IV. CIVIL PENALTY

8. No later than 30 Days after the Effective Date of this Consent Decree, Defendant shall pay a civil penalty in the amount of \$850,000 to the United States. If Defendant fails to pay the civil penalty, or any portion thereof, by the deadline set forth above, interest shall accrue, at the rate specified in 28 U.S.C. § 1961 as of the Effective Date, on the unpaid amount from the



due date through the date of payment. Failure to timely pay the civil penalty shall also subject Defendant to stipulated penalties in accordance with Section VII of this Consent Decree.

9. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of New Jersey, 970 Broad Street, 7th Floor, Newark, New Jersey 07102. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. City of Vineland, New Jersey*, and shall reference the civil action number and DOJ case number DJ # 90-5-2-1-09529, to the United States in accordance with Section XIII of this Decree (Notices); by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

10. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

#### V. COMPLIANCE REQUIREMENTS

11. No later than the Effective Date of this Consent Decree, Vineland shall be in compliance with the applicable SIP-approved opacity, CO, and NOx RACT emission limits for Units 7, 8, 9, and 10, as set forth in the Permit.

12. Units 7 and 8. No later than 15 Days after the Date of Lodging of this Consent Decree, Defendant shall submit written certification to EPA and NJDEP that Units 7 and 8 have

been permanently retired from service and are no longer included in Defendant's Permit.

Defendant shall not restart or operate Unit 7 or 8 and shall not seek permits or permit modifications to operate such units.

13. Unit 9. No later than 15 Days after the Date of Lodging of this Consent Decree, Defendant shall submit written certification to EPA and NJDEP that it has requested the removal of Unit 9 from its Permit and any applicable prevention of significant deterioration ("PSD") permits, and that Unit 9 will be permanently retired from service. Defendant shall not restart or operate Unit 9 and shall not seek permits or permit modifications to operate such unit.

14. Unit 10.

a. Upon the Date of Lodging of the Consent Decree or no later than December 31, 2010, whichever is earlier, Defendant shall cease burning coal in Unit 10.

b. Defendant is currently conducting a study to evaluate whether to install selective non-catalytic reduction ("SNCR") to control NOx emissions from Unit 10. No later than 15 Days after the Date of Lodging of this Consent Decree, Defendant shall submit to EPA the results of this study, including but not limited to whether and how installation of SNCR will allow Unit 10 to operate within applicable NOx emission limits. EPA reserves the right to review and comment on the results of the study.

c. No later than June 1, 2011, Defendant shall provide EPA with its decision whether to proceed with installation of SNCR on Unit 10.

i. In the event that Defendant decides to install SNCR on Unit 10, it shall either (1) complete such installation no later than September 1, 2012; or (2) cease operating Unit 10 no later than September 1, 2012, and not commence operation until SNCR is installed

and in service.

ii. In the event that Defendant decides that it will not install SNCR on Unit 10, Defendant shall: (1) on or before July 1, 2011, submit written certification to EPA and NJDEP that Unit 10 will permanently cease operation and be retired from service no later than September 1, 2012; and (2) within 30 Days after submittal of the written certification, request the removal of Unit 10 from its Permit and any applicable PSD permit(s), effective September 1, 2012.

15. Construction and Operation of Natural Gas Turbine. Defendant shall design, install and operate a 60 megawatt (nominal) dual-fuel natural gas and number 2 fuel oil turbine (“Unit 11”) at the Facility. Defendant shall commence construction of Unit 11 no later than June 1, 2011, and provide EPA with notice of such within 15 Days of commencement. Defendant shall complete construction of Unit 11 no later than September 30, 2012.

16. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit complete applications and take all other actions necessary to obtain all such permits or approvals to timely comply with any requirement contained herein. Defendant may seek relief under the provisions of Section VIII of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to timely obtain all such permits or approvals to comply with any requirement contained herein.

VI. REPORTING REQUIREMENTS

17. Quarterly Reports.

a. Within 30 Days after the end of each calendar-year quarter (i.e., by April 30, July 30, October 30, and January 30) after the Date of Lodging of this Consent Decree, until termination of this Decree pursuant to Section XVII (Termination), Defendant shall submit to EPA a quarterly report for the preceding quarter that shall include, at a minimum:

i. A description of the actions taken by Defendant to meet the requirements of Section V, and any modifications thereof (collectively, “Compliance Requirements”), including the date of completion of each action and the Paragraph of this Consent Decree with which the action was intended to comply;

ii. A description of any impediments encountered by Defendant in timely meeting the Compliance Requirements, and the steps taken by Defendant to overcome such impediments;

iii. Identification of the specific actions remaining to be accomplished to comply with the Compliance Requirements, including the anticipated date on which each such action is expected to be accomplished and the Paragraph of this Consent Decree with which the action is intended to comply;

iv. A description of any penalties paid pursuant to Section VII of this Consent Decree (Stipulated Penalties); and

v. A summary of the status of any Air Pollution Control Operating Permit or PSD permit applications and/or discussions with NJDEP and/or EPA, if applicable.

b. The report shall also include a description of any non-compliance with the

requirements of this Consent Decree arising after the Date of Lodging and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree after the Date of Lodging, Defendant shall notify the United States of such violation and its likely duration, in writing, within ten (10) business days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section VIII of this Consent Decree (Force Majeure).

18. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendant's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA and the State orally and by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

19. All reports shall be submitted to the persons designated in Section XIII of this Consent Decree (Notices).

20. Each report submitted by Defendant under this Section shall be signed by an

official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were 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 inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

21. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

22. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### VII. STIPULATED PENALTIES

23. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure) or determined not to be owing after resolution of a dispute in accordance with Section IX (Dispute Resolution). A violation includes Defendant's failure to perform any obligation required by the terms of this Decree, including its failure to implement any compliance measures in accordance with all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

24. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required

to be paid under Section IV of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$3,500 per Day for each Day that the payment is late.

25. Emission Limits. The following stipulated penalties shall accrue per violation per Day for each failure to comply with the applicable SIP-approved opacity, CO, and NOx RACT emission limits for Units 9 and 10, as set forth in the Permit, in accordance with Paragraph 11:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th Day
\$3,000	15th through 30th Day
\$5,000	31st Day and beyond

26. Compliance Milestones

a. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th Day
\$3,000	15th through 30th Day
\$5,000	31st Day and beyond

b. The compliance milestones include:

i. Submission of written certification regarding Units 7 and 8 to EPA and NJDEP in accordance with the timeframe and requirements set forth in Paragraph 12;

ii. Submission of written certification regarding Unit 9 to EPA and NJDEP in accordance with the timeframe and requirements set forth in Paragraph 13;

iii. Cessation of coal burning in Unit 10 in accordance with the

timeframe set forth in Paragraph 14.a;

iv. Performance of and submission of report on SNCR study for Unit 10 in accordance with the timeframe and requirements set forth in Paragraph 14.b;

v. Submission of report of decision whether to install SNCR on Unit 10 in accordance with the timeframe set forth in Paragraph 14.c;

vi. Installation of SNCR or cessation of operation of Unit 10, in accordance with the timeframes and requirements set forth in Paragraph 14.c.i and 14.c.ii;

vii. Construction and operation of Unit 11 in accordance with the timeframe set forth in Paragraph 15.

27. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$2,500	15th through 30th Day
\$5,000	31st Day and beyond

28. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

29. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.



30. Stipulated penalties shall continue to accrue as provided in Paragraph 28, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

31. Obligations Prior to the Effective Date. Upon the Effective Date of this Consent Decree, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations of Section V of this Consent Decree (Compliance Requirements) that have occurred prior to the Effective Date of the Consent Decree, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

32. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s)

the penalties are being paid.

33. If Defendant fails to pay stipulated penalties in accordance with the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

34. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Act or regulations promulgated thereunder, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### VIII. FORCE MAJEURE

35. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to

perform any obligation under this Consent Decree.

36. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally and by electronic or facsimile transmission to EPA, in accordance with Section XIII of this Consent Decree (Notices), within 48 hours of when Defendant first knew that the event might cause a delay. Within 5 Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

37. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force

majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

38. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

39. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 35 and 36, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

#### IX. DISPUTE RESOLUTION

40. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

41. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be

considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 15 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

42. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

43. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

44. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The

motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

45. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

46. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 42 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 42, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better further the objectives of the Consent Decree.

47. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent

Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 30. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

48. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain documentary evidence, including photographs and similar data; and
- d. assess Defendant's compliance with this Consent Decree.

49. Until five years after the termination of this Consent Decree, Defendant shall retain all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) generated by Defendant, and all data collected and all reports generated by Defendants contractors (including data and reports in electronic form), that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any

documents, records, or other information required to be maintained under this Paragraph.

50. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

51. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. See 41 Fed. Reg. 36, 902 (Sept. 1, 1976). As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

52. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations,



or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

53. This Consent Decree resolves only the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging.

54. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 53. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 53.

55. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 53 of this Section.

56. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein.

The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

57. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

58. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

## XII. COSTS

59. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including the cost of its attorneys' time) incurred in any action necessary to enforce any requirement of this Consent Decree or to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

## XIII. NOTICES

60. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, DC 20044-7611  
Re: DOJ No. 90-5-2-1-09529

To EPA:

Kenneth Eng, Air Compliance Branch Chief  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2  
290 Broadway – 21st Floor  
New York, NY 10007  
Phone: 212-637-4080  
Fax: 21  
Email:

And

Flaire Mills, Air Branch Chief  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 2  
290 Broadway – 16th Floor  
New York, NY 10007  
Phone: 212-637-3198  
Fax: 2  
Email:

To Defendant:

City Clerk  
City of Vineland, New Jersey  
City Hall  
640 E. Wood Street  
PO Box 1508  
Vineland, NJ 08362-1508

And

Director  
Vineland Municipal Electric Utility  
City Hall  
640 E. Wood Street  
PO Box 1508  
Vineland, NJ 08362-1508

61. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

62. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### XIV. EFFECTIVE DATE

63. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

#### XV. RETENTION OF JURISDICTION

64. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

#### XVI. MODIFICATION

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

66. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 46, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

#### XVII. TERMINATION

67. After Defendant has completed the requirements of Section V (Compliance Requirements) of this Decree, has thereafter maintained continuous satisfactory compliance with this Consent Decree and Defendant's Permit for a period of two years, has complied with all other requirements of this Consent Decree including the reporting requirements set forth in Section VI (Reporting Requirements), and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

68. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for

termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

69. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 42 of Section IX, until 60 Days after service of its Request for Termination upon the United States.

#### XVIII. PUBLIC PARTICIPATION

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

#### XIX. SIGNATORIES/SERVICE

71. Each undersigned representative of Defendant and the Chief or Deputy Chief for the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

72. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

73. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXI. FINAL JUDGMENT

74. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

Dated and entered this \_\_\_ day of \_\_\_\_\_, 2011.

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UNITED STATES DISTRICT JUDGE  
District of New Jersey

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Vineland, New Jersey.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: \_\_\_\_\_

ELLEN M. MAHAN  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

Date: 3/30/11

BETHANY ENGEL  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-6892

PAUL J. FISHMAN  
United States Attorney  
District of New Jersey

SUSAN STEELE  
Assistant United States Attorney  
970 Broad Street, 7th Floor  
Newark, NJ 07102  
(973) 645-2920



FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 3/24/11

JUDITH A. ENCK  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007-1866

Date: 3/17/11

ERIC SCHAAF  
Regional Counsel  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007-1866

Date: 3/21/11

MARIE T. QUINTIN  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Vineland, New Jersey.

FOR DEFENDANT CITY OF VINELAND, NEW JERSEY:

Date: 3-10-11

ROBERT ROMANO  
Mayor  
City of Vineland, New Jersey  
City Hall  
640 E. Wood Street  
PO Box 1508  
Vineland, NJ 08362-1508