

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No.  
 )  
 COLORADO INTERSTATE GAS COMPANY )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**CONSENT DECREE**

WHEREAS, Plaintiff, the United States of America (the “United States”), on behalf of the United States Environmental Protection Agency (“EPA”), has simultaneously with lodging this Consent Decree filed a Complaint alleging that Colorado Interstate Gas Company (“CIG”) violated requirements of the Clean Air Act (the “Act”) and the federal regulations implementing the Act applicable to the Natural Buttes natural gas processing plant (“Natural Buttes Facility”) owned and operated by CIG in Uintah County, Utah, within the exterior boundaries of the Uintah and Ouray Indian Reservation;

WHEREAS, EPA administers the Act’s programs for the National Emission Standards for Hazardous Air Pollutants (“NESHAP”), New Source Performance Standards (“NSPS”), prevention of significant deterioration (“PSD”) of air quality, and federal operating permits under Title V (among other requirements) with respect to the Natural Buttes Facility;

WHEREAS, CIG does not admit the violations referenced in the Complaint occurred and further does not admit any liability for civil penalties, fines, or injunctive relief to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, the United States and CIG (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 at arm’s length, will avoid litigation among the Parties, and that this Consent Decree is fair, reasonable, consistent with the goals of the Act, and that its entry is in the best interest of the Parties and is 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 (Jurisdiction and Venue), 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 and the Parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477. 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(b) & (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and CIG conducts business in, this judicial district. The Natural Buttes Facility is located in Uintah County, Utah, within the exterior boundaries of the Uintah and Ouray Indian Reservation. For purposes of this Consent Decree, or any action to enforce this Consent Decree, CIG consents to and will not contest the jurisdiction of the Court over this matter.

2. For purposes of this Consent Decree, CIG agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477.

## **II. APPLICABILITY**

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

4. In any action to enforce this Consent Decree, CIG shall not raise as a defense the failure by any of its officers, directors, employees, agents, contractors, or corporate affiliates or subsidiaries to take any actions necessary to comply with the provisions of this Consent Decree.

## **III. DEFINITIONS**

5. 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. "Caterpillar Engines" shall mean the three Caterpillar engines identified as EG1, EG2, and EG3 in CIG's Title V Permit for the Natural Buttes Facility.
- b. "Consent Decree" or "Decree" shall mean this Consent Decree.
- c. "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.

d. "Facility" or "Natural Buttes Facility" shall mean the natural gas processing plant owned and operated by CIG in Uintah County, Utah, within the exterior boundaries of the Uintah and Ouray Indian Reservation, that is comprised of, among other things, five reciprocating internal combustion engines ("RICE"), one dehydration unit, slug catchers, pressure vessels, turbines, separators, a reboiler, a flare, generators, and storage tanks.

e. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

f. "CIG" shall mean Colorado Interstate Gas Company, a Delaware general partnership.

g. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral.

h. "Parties" shall mean the United States and CIG.

i. "Plaintiff" shall mean the United States.

j. "Section" shall mean a portion of this Decree identified by a Roman numeral.

k. "Title V Permit" shall mean a permit issued pursuant to the federal operating permit program established by Title V of the Act, 42 U.S.C. §§ 7661 - 7661f, and as implemented by 40 C.F.R. Parts 70 (applicable to states) or 71 (applicable to EPA).

l. "White Superior Engines" shall mean the engines identified as CG01 and CG02 in CIG's Title V Permit for the Natural Buttes Facility.

#### **IV. INJUNCTIVE REQUIREMENTS**

6. Control of Engines

a. Short Term Control of Caterpillar Engines. Not later than 30 Days after entry of this Consent Decree, CIG shall operate the Caterpillar Engines such that the engines meet an emission limit of 5 lbs. NOx/hr. Not later than 45 Days after entry of this Consent Decree, CIG shall submit a report to EPA, pursuant to Section VII of this Consent Decree, identifying the changes that were made to the Caterpillar Engines or their method of operation to enable them to meet the 5 lbs. NOx/hr. emission limit and the date such changes were completed and/or implemented.

b. Long Term Control of Caterpillar Engines. Not later than 30 Days after entry of this Consent Decree, CIG shall apply for a Certificate of Abandonment for the Natural Buttes Facility from the Federal Energy Regulatory Commission ("FERC"). Not later than 90 Days after entry of this Consent Decree or final FERC action on the application for a Certificate of Abandonment (whichever is later), CIG shall either (1) operate the Caterpillar Engines such that each engine meets an emission limit of 3.3 lbs. NOx/hr.; (2) certify pursuant to Paragraph 16 that the Caterpillar Engines, specifically identified by Title V Permit Emission Unit ID and serial number, have been replaced and/or decommissioned; or (3) certify pursuant to Paragraph 16 that the Caterpillar Engines, specifically identified by Title V Permit Emission Unit ID and serial number, have been converted to emergency standby status and will only be used as Emergency Stationary Reciprocating Internal Combustion Engines ("RICE") as defined in 40 C.F.R. § 63.6675. In the event FERC does not rule on the application for a Certificate of Abandonment within one (1) year after entry of this Consent Decree, CIG shall, not later than thirteen (13)

months after entry of this Consent Decree, either (1) operate the Caterpillar Engines such that each engine meets an emission limit of 3.3 lbs. NOx/hr.; (2) certify pursuant to Paragraph 16 that the Caterpillar Engines, specifically identified by Title V Permit Emission Unit ID and serial number, will be replaced and/or decommissioned not later than sixteen (16) months after entry of this Consent Decree; or (3) certify pursuant to Paragraph 16 that the Caterpillar Engines, specifically identified by Title V Permit Emission Unit ID and serial number, will be converted to emergency standby status and will only be used as Emergency Stationary Reciprocating Internal Combustion Engines (“RICE”) as defined in 40 C.F.R. § 63.6675 not later than sixteen (16) months after entry of this Consent Decree. Not later than seventeen (17) months after entry of this Consent Decree, CIG shall submit a report to EPA, pursuant to Section VII of this Consent Decree, identifying (1) the changes that were made to the Caterpillar Engines or their method of operation to enable them to meet the 3.3 lbs. NOx/hr. emission limit and the date such changes were completed and/or implemented or (2) the date the Caterpillar Engines were replaced, decommissioned and/or converted to emergency standby status.

i. Notwithstanding the provisions of Subparagraph 6.b. that permit CIG to elect to operate the Caterpillar Engines an Emergency Stationary RICE as defined in 40 C.F.R. § 63.6675, the Caterpillar Engines must meet the short term emission limit set forth in Paragraph 6.a.

ii. If CIG complies with Subparagraph 6.b. by replacing, decommissioning, and/or converting to emergency standby service the Caterpillar Engines, CIG shall, not later than 120 Days after the engines are replaced, decommissioned, and/or converted

to emergency standby service, submit an amendment to its Title V Permit reflecting the change in the operation of the Facility.

iii. If CIG complies with Subparagraph 6.b. by controlling the Caterpillar engines, CIG shall, not later than 90 Days after the control equipment is installed, submit an amendment to its Title V Permit reflecting an emission limit of 3.3 lbs. NOx/hr. for the Caterpillar Engines. Not later than 120 Days after the control equipment is installed, CIG shall submit to EPA for review and approval a protocol for testing each engine for NOx (using EPA Reference Method 7(e) or other method subject to EPA approval). If EPA does not approve or disapprove of the testing protocol within 30 Days of its submission, CIG shall deem the protocol approved. CIG shall complete the testing of each engine for NOx pursuant to the testing protocol not later than ninety (90) days after EPA approval of such protocol. CIG shall submit to EPA a test report indicating the results of the reference method testing not later than 60 Days after the completion of the testing. CIG shall retest the Caterpillar engines using a portable analyzer semi-annually, using the State of Wyoming Air Quality Division Portable Analyzer Monitoring Protocol or other method approved by EPA in writing. CIG shall submit to EPA the results of the portable analyzer testing with the semi-annual monitoring report required by the Title V Permit for the Facility.

c. Control of White Superior Engines. Not later than 30 Days after entry of this Consent Decree, CIG shall submit an amendment to its Title V Permit reflecting an emission limit of 3.9 lbs. NOx/hr. for the White Superior engines. Not later than 120 Days after entry of this Consent Decree, CIG shall submit to EPA for review and approval a protocol for testing each engine for NOx (using EPA Reference Method 7(e) or other method subject to EPA approval). If

EPA does not approve or disapprove of the testing protocol within 30 Days of its submission, CIG shall deem the protocol approved. CIG shall complete the testing of each engine for NOx pursuant to the testing protocol not later than 90 Days after EPA approval of such protocol. CIG shall submit to EPA a test report indicating the results of the reference method testing not later than 60 Days after the completion of the testing. CIG shall retest the White Superior engines using a portable analyzer semi-annually, using the State of Wyoming Air Quality Division Portable Analyzer Monitoring Protocol or other method approved by EPA in writing. CIG shall submit to EPA the results of the portable analyzer testing with the semi-annual monitoring report required by the Title V Permit for the Facility.

7. Dehydrator Compliance

a. CIG's dehydrator at the Natural Buttes Facility is subject to 40 C.F.R. Part 63, Subpart HH – National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities.

b. CIG shall operate and maintain the flare located on the dehydrator at the Natural Buttes Facility pursuant to the requirements of 40 C.F.R. § 63.11(b) and the manufacturer's written instructions or procedures for its operation.

**V. CIVIL PENALTY/EMISSION FEE PAYMENT**

8. Not later than thirty (30) Days after the Effective Date of this Consent Decree, CIG shall pay to the United States a civil penalty pursuant to Section 113 of the Act, 42 U.S.C. § 7413, in the amount of \$987,757, with interest accruing from the date on which the Consent Decree is lodged with the Court at the rate specified in 28 U.S.C. § 1961 as of the date of lodging. CIG shall make payment by Electronic Funds Transfer ("EFT") to the United States

Department of Justice (“DOJ”), in accordance with current EFT procedures, referencing DOJ Case Number 90-5-2-1-07660/2. Payment shall be made in accordance with instructions provided by the United States Attorney’s Office for the District of Utah (“USAO”). Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. CIG shall provide notice of payment, referencing DOJ Case Number 90-5-2-1-07660/2 and the civil case name and case number, to DOJ and to EPA, as provided in Section XIV (“Notices”).

9. No amount of the civil penalty to be paid by CIG shall be used to reduce its federal or state tax obligations.

10. Not later than 30 Days after the Effective Date of this Consent Decree, CIG shall pay to EPA unpaid permit fees pursuant to 40 C.F.R. § 71.9 in the amount of \$32,243. CIG shall make the payment by check payable to “Environmental Protection Agency” and sent by first class mail to:

United States Environmental Protection Agency  
FOIA and Miscellaneous Payments  
Cincinnati Finance Center  
P.O. Box Number 979078  
St. Louis, MO 63197-9000

The amount will be deemed paid on the date it is postmarked. CIG shall enclose a completed copy of EPA Form 5900-06 with the payment. CIG shall send a copy of the check and the completed form (also referencing DOJ Case Number 90-5-2-1-07660/2 and the civil case name and case number) to DOJ and to EPA, as provided in Section XIV (“Notices”).

## **VI. AMBIENT AIR MONITORING**

11. CIG shall fund the operation and maintenance of two ambient air quality and meteorological monitoring station(s) (“Monitoring Stations”) located in the Uinta Basin and shall

fund the collection and distribution of monitoring data for the two Monitoring Stations. The two Monitoring Stations shall be those installed and/or utilized to monitor ozone, NO<sub>x</sub> and PM<sub>2.5</sub> concentrations and collect certain meteorological data pursuant to the Consent Decrees in *United States v. Kerr-McGee Corporation* (D. Colo. Civil Action No. 07-cv-01034-WDMMJW) and *United States v. Miller Dyer* (D. Utah Civil Action No. 2:09-CV-003320 DAK). CIG shall fund the monitoring at the two Monitoring Stations for a consecutive time period of two years following the completion of the monitoring period funded in the *Miller Dyer* Consent Decree. Not later than 30 Days after entry of this Consent Decree (unless such time period is extended by written agreement of the parties), CIG shall enter into a contract for the operation and maintenance of the two Monitoring Stations. CIG shall select a contractor that is acceptable to EPA. The ambient air quality monitors shall monitor ozone, NO<sub>x</sub> and PM<sub>2.5</sub> concentrations. The meteorological stations shall monitor wind speed, wind direction, temperature and solar radiation.

12. CIG shall work cooperatively with EPA, UDEQ, and the Ute Indian Tribe of the Uintah and Ouray Indian Reservation regarding the operation and maintenance of the Monitoring Stations. The Monitoring Stations shall meet the methodology and operational requirements set forth in 40 C.F.R. Part 58 and the data capture requirements set forth in 40 C.F.R. Part 50. Additional guidance for meteorological and air quality monitoring is contained in “Quality Assurance Handbook for Air Pollution Measurement Systems,” Vol. IV, “Meteorological Measurements” and the “Quality Assurance Handbook for Air Pollution Measurement Systems.”

13. CIG shall certify, in accordance with Paragraph 16, that it has met all the requirements of this Section VI (Ambient Air Monitoring).

14. EPA and CIG intend and contemplate that CIG will utilize the two air monitoring sites on a turnkey basis, including but not limited to utilizing (i) the site access and rights of surface use for the two air monitoring sites, and (ii) the air monitoring equipment purchased pursuant to the Kerr McGee Consent Decree. In the event that the operational conditions in (i) and (ii) are not met, CIG may demonstrate compliance with this provision by asserting and establishing a Force Majeure claim pursuant to Section IX (Force Majeure).

## **VII. REPORTING REQUIREMENTS**

15. All reports required to be submitted pursuant to this Consent Decree shall be submitted to the persons designated in Section XIV (Notices) of this Consent Decree.

16. Each report submitted by CIG shall be signed by an authorized official 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.

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

18. 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.

**VIII. STIPULATED PENALTIES**

19. CIG shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

a. Injunctive Requirements (Section IV)

Violation	Stipulated Penalty
For failure to either (1) replace, decommission, and/or convert to emergency standby use the Caterpillar Engines or 2) meet an emission limit of 3.3 lbs. NOx/hr within the time frame specified in Paragraph 6.b.	\$1,000 per day for the first 30 days of noncompliance, \$2,000 per day from the 31 <sup>st</sup> to 60 <sup>th</sup> day of noncompliance, and \$3,000 per day thereafter.

<p>For failure to submit an amendment to the Title V permit reflecting (1) the replacement, decommissioning, or conversion to emergency standby use of the Caterpillar Engines or (2) an emission limit of 3.3 lbs. NOx/hr for the Caterpillar Engines as required in Paragraph 6.b.ii.</p>	<p>\$200 per day for the first 30 days of noncompliance, \$500 per day from the 31<sup>st</sup> to 60<sup>th</sup> day of noncompliance, and \$1,000 per day thereafter.</p>
<p>For failure to submit a protocol for testing or failure to conduct testing as specified in Paragraph 6.b.iii.</p>	<p>\$500 per day for the first 30 days of noncompliance, \$1,000 per day from the 31<sup>st</sup> to 60<sup>th</sup> day of noncompliance, and \$1,500 per day thereafter.</p>
<p>For failure to submit any report as required in Paragraph 6.b.</p>	<p>\$200 per day for the first 30 days of noncompliance, \$500 per day from the 31<sup>st</sup> to 60<sup>th</sup> day of noncompliance, and \$1,000 per day thereafter.</p>
<p>For failure to submit an amendment to the Title V permit reflecting an emission limit of 3.9 pounds NOx/hour for the White Superior Engines) as specified in Paragraph 6.c.</p>	<p>\$200 per day for the first 30 days of noncompliance, \$500 per day from the 31<sup>st</sup> to 60<sup>th</sup> day of noncompliance, and \$1,000 per day thereafter.</p>

b. Ambient Air Monitoring (Section VI)

Violation	Stipulated Penalty
For failure to fund, operate, maintain and certify the Monitoring Stations as required by Paragraph 11.	\$200 per day for the first 30 days of noncompliance, \$500 per day from the 31 <sup>st</sup> to 60 <sup>th</sup> day of noncompliance, and \$1,000 per day thereafter.

20. Late Payment of Civil Penalty. If CIG fails to pay the civil penalty and emission fee required to be paid under Section V (Civil Penalty/Emission Fee Payment) of this Consent Decree to the United States when due, CIG shall pay a stipulated penalty of \$1,000 per day for each day that the payment is late.

21. 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.

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

23. CIG shall pay stipulated penalties in accordance with the payment instructions set forth in Paragraph 8.

24. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree.

25. Stipulated penalties shall continue to accrue as provided in Paragraph 21 during any dispute, with interest on accrued stipulated penalties payable and calculated by the Secretary of Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of Plaintiff pursuant to Section X (Dispute Resolution) of this Consent Decree that is not appealed to the Court, CIG shall pay accrued stipulated penalties agreed or determined to be owing, together with accrued interest, within 30 Days of the effective date of the agreement or the receipt of Plaintiff's decision.

b. If the dispute is appealed to the Court, and the Plaintiff prevails in whole or in part, CIG shall pay all accrued stipulated penalties determined by the Court to be owing, together with accrued 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 Court's decision, CIG shall pay all accrued penalties determined to be owing, together with accrued interest, within 15 Days of receiving the final appellate court decision.

26. CIG shall not deduct stipulated penalties paid under this Section VIII in calculating its federal income tax.

27. Subject to the provisions of Section XII (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 CIG's violation of this

Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Act or regulatory requirements of the Act, CIG shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### **IX. FORCE MAJEURE**

28. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Consent Decree (*e.g.* would require operation in an unsafe manner), and which CIG believes qualifies as an event of Force Majeure, CIG shall notify the United States in writing as soon as practicable, but in any event within 30 Days of when CIG first knew of the event or should have known of the event by the exercise of due diligence. In this notice CIG shall specifically reference this Paragraph of this Consent Decree and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by CIG to prevent or minimize the delay and the schedule by which those measures will be implemented. CIG shall adopt all reasonable measures to avoid or minimize such delays.

29. Failure by CIG to substantially comply with the notice requirements of Paragraph 28, as specified above, shall render this Section voidable by the United States, as to the specific event for which CIG has failed to comply with such notice requirement. If so voided, it shall be of no effect as to the particular event involved.

30. The United States shall notify CIG in writing regarding its claim of a delay or impediment to performance within 45 Days of receipt of the Force Majeure notice provided under Paragraph 28.

31. If the United States agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of CIG, including any entity controlled or contracted by it, and that CIG could not have prevented the delay by the exercise of due diligence, the Parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances, or such other period as may be appropriate in light of the circumstances. Such stipulation may be filed as a modification to this Consent Decree by agreement of the parties pursuant to the modification procedures established in this Consent Decree. CIG shall not be liable for stipulated penalties for the period of any such delay.

32. If the United States does not agree that the delay or impediment to performance has been or will be caused by circumstances beyond the control of CIG, including any entity controlled or contracted by CIG, the position of the United States on the Force Majeure claim shall become final and binding upon CIG, and CIG shall pay applicable stipulated penalties, unless CIG submits the matter to this Court for resolution by filing a petition for determination with this Court within 10 business Days after receiving the written notification of the United States as set forth in Paragraph 30. Once CIG has submitted such matter to this Court, the United States shall have 20 business Days to file a response to the petition. If CIG submits the matter to this Court for resolution and the Court determines that the delay or impediment to performance has been or will be caused by circumstances beyond the control of CIG, including any entity controlled or contracted by CIG, and that CIG could not have prevented the delay by the exercise of due diligence, CIG shall be excused as to that event(s) and delay (including stipulated

penalties) for all requirements affected by the delay for a period of time equivalent to the delay caused by such circumstances or such other period as may be determined by the Court.

33. CIG shall bear the burden of proving that any delay of any requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond its control, including any entity controlled or contracted by CIG, and that CIG could not have prevented the delay by the exercise of due diligence. CIG shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates. Unanticipated or increased costs or expenses associated with the performance of obligations under this Consent Decree shall not constitute circumstances beyond the control of CIG.

34. As part of the resolution of any matter submitted to this Court under this Section, the Parties by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay or impediment to performance agreed to by the United States or approved by this Court. CIG shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule, except to the extent that such schedule is further modified, extended or otherwise affected by a subsequent Force Majeure event under this Section IX.

## **X. DISPUTE RESOLUTION**

35. 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.

36. 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 CIG sends the United States a written Notice of Dispute. The 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 20 Days after the conclusion of the informal negotiation period, CIG invokes formal dispute resolution procedures as set forth below.

37. Formal Dispute Resolution. CIG may only 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 may not necessarily be limited to, any factual data, analysis, or opinion supporting CIG's position and any supporting documentation relied upon by CIG.

38. The United States shall serve its Statement of Position within 30 Days of receipt of CIG's Statement of Position. The United States' Statement of Position shall include, but may not necessarily 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 become binding on CIG 14 Days from when it is served. During this fourteen-day period, the United States and CIG shall, in good faith, enter into discussions in an attempt to resolve the dispute. If the dispute is not resolved during this time, the United States' Statement of Position shall become binding upon CIG unless CIG files a motion for judicial review of the dispute in accordance with the following Paragraph.

39. CIG may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of CIG'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.

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

41. Except as otherwise provided in this Consent Decree, in any dispute brought under this Section X (Dispute Resolution), CIG shall bear the burden of demonstrating that its position complies with this Consent Decree.

42. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of CIG 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. If CIG does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

#### **XI. INFORMATION COLLECTION AND RETENTION**

43. The United States, and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Natural Buttes Facility at all reasonable times, upon presentation of credentials, for the purpose of monitoring compliance with any the provisions of this Consent Decree, including to:

- a. monitor the progress of activities required under this Consent Decree;
- b. inspect equipment and facilities covered by this Consent Decree; and
- c. inspect and copy documents, records, or other information to be maintained in accordance with the terms of this Consent Decree.

44. Until five years after the termination of this Consent Decree, CIG shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to CIG'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, CIG shall provide copies of any non-privileged documents, records, or other information required to be maintained under this Paragraph.

45. At the conclusion of the information-retention period provided in the preceding Paragraph, CIG 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, CIG shall deliver the requested non-privileged documents, records, or other information to EPA.

46. CIG 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 CIG 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 CIG. However, no documents, records, or other information that CIG is explicitly required to create or generate to satisfy a specific requirement of this Consent Decree shall be withheld on the grounds of privilege.

47. CIG 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. As to any information that CIG seeks to protect as CBI, CIG shall follow the procedures set forth in 40 C.F.R. Part 2.

48. 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 or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of CIG to

maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

## **XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

49. This Consent Decree resolves all civil or administrative claims of the United States for violations alleged in the Complaint through the date of lodging of this Consent Decree.

50. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. 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 or state laws, regulations, or permit conditions.

51. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Nothing in this Consent Decree shall relieve CIG of its obligation to achieve and maintain complete compliance with all applicable federal, State, and local laws, regulations, and permits. CIG's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that CIG's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, or with any other provisions of federal, State, or local laws, regulations, or permits.

52. This Consent Decree does not limit or affect the rights of CIG 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 CIG, except as otherwise provided by law.

53. 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.

### **XIII. COSTS**

54. 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 attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties when due.

### **XIV. NOTICES**

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

As to the DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-07660/2

As to EPA

Assistant Regional Administrator  
Office of Enforcement, Compliance, and Environmental Justice  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

As to CIG:

Colorado Interstate Gas Company  
2 North Nevada  
Colorado Springs, CO 80903  
Attn: Manager, Environmental Compliance

and

Colorado Interstate Gas Company  
2 North Nevada  
Colorado Springs, CO 80903  
Attn: General Counsel

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

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

**XV. SALES OR TRANSFERS OF OWNERSHIP/OPERATOR INTERESTS**

58. If CIG proposes to sell or transfer all or part of its ownership or its responsibility as operator of the Natural Buttes Facility, CIG shall advise the buyer 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 Plaintiff pursuant to Section XIV (Notices) of this Consent Decree at least 60 Days before such proposed sale or transfer; provided, however, that if CIG has completed the obligations required under Paragraph 6 of this Consent Decree CIG need not advise buyer or transferee of the existence of this Consent Decree.

59. Unless CIG has completed the obligations required under Paragraph 6 of this Consent Decree, no sale or transfer of ownership to a buyer or transferee shall take place before the buyer or transferee consents in writing, by a stipulation to be filed with the Court, to: (a) accept all of the obligations, terms, and conditions of this Consent Decree with the exception of the obligations, terms, and conditions contained in Sections V (Civil Penalty/Emission Fee Payment) and VI (Ambient Air Monitoring); (b) accept the jurisdiction of the Court to enforce the terms of this Consent Decree (with the exception of Sections V (Civil Penalty/Emission Fee Payment) and VI (Ambient Air Monitoring)) as to such party; and (c) become a party to this Consent Decree (consistent with the limitations set forth in (a) and (b), above). Notwithstanding such a sale or transfer, CIG shall remain jointly and severally liable with the buyer or transferee unless the Consent Decree is modified or CIG's joint and several liability is restricted in accordance with Paragraph 60.

60. If the United States agrees, the Parties and the buyer or transferee may execute a modification to this Consent Decree, that relieves CIG of its liability under this Consent Decree for, and makes the buyer or transferee liable for, all obligations and liabilities applicable to the purchased or transferred facilities or operator responsibility. Notwithstanding the foregoing, however, CIG may not assign, and may not be released from, obligations under this Consent Decree to pay the civil penalty in accordance with Section V (Civil Penalties/Emission Fee Payment), undertake the project set forth Section VI (Ambient Air Monitoring), pay stipulated penalties with respect to actions occurring prior to the date of transfer of ownership or operator responsibility in accordance with Section VIII (Stipulated Penalties), or maintain documents or provide reports with respect to those obligations in accordance with Sections VII (Reporting

Requirements) and XI (Information Collection and Retention). CIG may propose, and the United States may agree, to restrict the scope of the joint and several liability of any purchaser or transferee for any obligations of this Consent Decree that are not specific to the transferred or purchased facilities or operator responsibility, to the extent such obligations may be adequately separated in an enforceable manner.

#### **XVI. EFFECTIVE DATE**

61. Unless otherwise specifically provided herein, the Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

#### **XVII. RETENTION OF JURISDICTION**

62. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree pursuant to Section X (Dispute Resolution) or entering orders modifying this Decree, pursuant to Sections XV (Sales or Transfers of Ownership/Operator Interests) and XVIII (Modification), or effectuating or enforcing compliance with the terms of this Consent Decree.

#### **XVIII. MODIFICATION**

63. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. With respect to any modification that constitutes a material change to this Decree, such written agreement shall be filed with the Court and effective only upon the Court's approval. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution) of this Consent Decree.

## **XIX. TERMINATION**

64. This Consent Decree shall be in effect until it is terminated in accordance with the provisions of this Section.

65. Upon completing all obligations of this Consent Decree (with the exception of the semi-annual retesting of engines required under Paragraphs 6.b. and 6.c.), CIG shall serve upon the United States a Request for Termination. The Request for Termination shall certify that CIG has paid the civil penalty and all stipulated penalties, if any, that have accrued, and has fulfilled all other obligations of this Consent Decree.

66. If the United States does not agree that the Consent Decree may be terminated, CIG may invoke Dispute Resolution under Section X (Dispute Resolution) of this Consent Decree. However, CIG shall not seek Dispute Resolution under Section X (Dispute Resolution) of this Consent Decree until 60 Days after service of its Request for Termination.

67. If the United States agrees that the Consent Decree may be terminated, the Parties shall jointly move the Court for termination of the Consent Decree.

## **XX. PUBLIC PARTICIPATION**

68. 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. CIG 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 Consent Decree, unless the United States has notified CIG in writing that it no longer supports entry of the Consent Decree.

#### **XXI. SIGNATORIES/SERVICE**

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

70. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

71. CIG 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.

#### **XXII. INTEGRATION**

72. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the deliverables that are subsequently submitted and approved pursuant to this Decree, 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.

**XXIII. FINAL JUDGMENT**

73. 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 CIG.

Dated and entered this \_\_\_\_ day of \_\_\_\_\_, 2009

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UNITED STATES DISTRICT JUDGE  
District of Utah

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Colorado Interstate Gas Co.*, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR COLORADO INTERSTATE GAS COMPANY

Date: 6-24-09

U U Pres. *dnf*  
Colorado Interstate Gas Company  
2 North Nevada  
Colorado Springs, CO 80903

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Colorado Interstate Gas Co.*, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF, UNITED STATES OF AMERICA

JOHN C. CRUDEN  
Acting Assistant Attorney General  
Environment & Natural Resources Division  
United States Department of Justice

Date \_\_\_\_\_

JAMES D. FREEMAN  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
1961 Stout Street – 8<sup>th</sup> Floor  
Denver, CO 80294  
Telephone (303) 844-1489

Date 7/22/09

BRETT L. TOLMAN  
United States Attorney  
District of Utah  
185 South State Street  
Suite #300  
Salt Lake City, UT 84111  
Phone: (801) 524-5682  
Fax: (801) 524-6924

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Colorado Interstate Gas Co.*, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 07

\_\_\_\_\_  
EDDIE A. SIERRA  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Colorado Interstate Gas Co.*, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/17/09

\_\_\_\_\_  
CYNTHIA GILES  
Assistant Administrator  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460