

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

COMMONWEALTH OF PENNSYLVANIA)
DEPARTMENT OF GENERAL SERVICES and)
DEPARTMENT OF CORRECTIONS,)

Defendants.)

Civil Action No: 4:10-CV-2672-CCC

FIRST AMENDMENT TO MARCH 10, 2011 CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA") lodged a Complaint and Consent Decree on December 30, 2010 pursuant to Section 113(b) of the Clean Air Act (the "Act" or "CAA"), 42 U.S.C. § 7413(b), with the Defendants, the Commonwealth of Pennsylvania's Department of Corrections ("PA Department of Corrections") and the Commonwealth of Pennsylvania's Department of General Services ("PA Department of General Services") (collectively referred to as the "Defendants"), for alleged violations of the Act at four state correctional institutions;

WHEREAS, the Consent Decree among the United States and the Defendants was entered on March 10, 2011 (hereinafter referred to as "Consent Decree") by this Court;

WHEREAS, the PA Department of General Services owns and PA Department of Corrections operates the State Correctional Institution at Huntingdon ("Huntingdon Facility") in Huntingdon County, Huntingdon, Pennsylvania;

WHEREAS, in the Complaint filed in this matter, the United States alleged, *inter alia*, that the Defendants are in violation of Sections 110 and 113 of the Act, 42 U.S.C §§ 7410 and 7413, through their failure to operate boilers at the Huntingdon Facility in compliance with the applicable opacity limits provided in the Pennsylvania State Implementation Plan ("SIP");

WHEREAS, the Defendants requested an extension on the time to complete actions required by Paragraphs 23 and 24 of the Consent Decree at the Huntingdon Facility to address the visible emissions from the Huntingdon Facility;

WHEREAS, Paragraph 89 of the Consent Decree provided that the Consent Decree could be modified by a subsequent written agreement signed by all Parties and that the modification would only be effective upon approval by the Court.

WHEREAS the Parties recognize, and the Court by entering this First Amendment to the March 10, 2011 Consent Decree ("Amended Consent Decree") finds, that this Amended Consent Decree has been negotiated in good faith and at arm's length and that this Amended Consent Decree is fair, reasonable, consistent with the goals of the Act, and in the public interest; and

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

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and pursuant to Sections 113 and 502 of the Act, 42 U.S.C. §§ 7413 and 7661a. Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c). The Defendants shall not challenge the terms of this Amended Consent Decree or this Court's jurisdiction to enter and enforce this Amended Consent Decree. Except as expressly provided for herein, this Amended Consent Decree shall not modify or alter any provision from the Consent Decree and that Consent Decree remains in full force and effect.

II. HUNTINGDON FACILITY MODIFICATION

2. The Parties hereby agree to amend the date for action at the Huntingdon Facility in Paragraph 23 of the Consent Decree such that no later than June 30, 2013, the Defendants shall cease burning coal at Huntingdon Facility Units 1, 2, 3 and 4. In addition, the Parties hereby agree to amend the date for action at the Huntingdon Facility in Paragraph 24 of the Consent Decree such that no later than June 30, 2013, the Defendants will be in compliance with the option in Paragraph 24(c) of the Consent Decree by permanently retiring the Huntingdon Facility Units 1, 2, 3, and 4 as coal burning units. After June 30, 2012, Defendants are prohibited from seeking approval to operate pursuant to Paragraph 24(a) of the Consent Decree for reducing particulate matter emissions. However, Defendants may convert Huntingdon Facility Units 1, 2, 3 and 4 after June 30, 2012 to natural gas-fired units subject to EPA written approval and subject to Defendants' compliance with all applicable federal and state environmental laws and regulations including obtaining permits or plan approvals for installation of all required pollution controls prior to Defendants commencing construction on the conversion of Huntingdon Facility Units 1, 2, 3, and 4 to natural gas-fired units.

III. CIVIL PENALTY

3. Because Defendants will not achieve compliance with the Act and the Pennsylvania SIP by June 30, 2012 regarding visible emissions from the Huntingdon Facility and because the United States believes violations of the Act and Pennsylvania SIP are continuing at the Huntingdon Facility until June 30, 2013, the Defendants shall pay to the United States a civil

penalty in the amount of \$39,000 within thirty (30) calendar days after entry of this Amended Consent Decree. The civil penalty shall be paid in the manner provided by Paragraph 33 of the Consent Decree. Failure to timely pay the civil penalty shall subject the Defendants to interest, charges, costs, fees, and penalties as provided for in Paragraph 34 of the Consent Decree.

IV. RESOLUTION OF CLAIMS

4. This Amended Consent Decree settles all civil claims for Defendants' violations of the opacity limits in the Pennsylvania SIP at 25 Pa. Code § 123.41 by coal-fired Units 1, 2, 3 and 4 at the Huntingdon Facility from the date of entry of the Consent Decree (March 10, 2011) through and including the date of the lodging of this Amended Consent Decree.

V. STIPULATED PENALTIES

5. For any failure by the Defendants to comply with the terms of this Amended Consent Decree or with the Consent Decree, the stipulated penalties provided for in Paragraph 44 of the Consent Decree still apply except that the dates for compliance at the Huntingdon Facility before stipulated penalties accrue as provided in Paragraph 44(b), (c), (d), and (e) are hereby extended to June 30, 2013.

6. For any failure by the Defendants to pay the civil penalty as specified in Paragraph 3 of this Amended Consent Decree, Defendants shall pay a stipulated penalty of \$10,000 per day. Payment of stipulated penalties shall be in accordance with the provisions in Paragraphs 44-52 of Section XIII of the Consent Decree. All other provisions in Section XIII of the Consent Decree remain applicable to Defendants except as otherwise expressly stated in Paragraph 5 of the

Amended Consent Decree regarding the extension of compliance at Huntingdon Facility.

VI. GENERAL PROVISIONS

7. The effective date of this Amended Consent Decree shall be the date upon which this Amended Consent Decree is entered by the Court.

8. Nothing in this Amended Consent Decree shall relieve the Defendants of their obligations to comply with all applicable federal, state, and local laws and regulations. Except as expressly provided, nothing contained in this Amended Consent Decree shall be construed to prevent or limit the rights of the United States to obtain penalties, injunctive relief or other relief under the Act or other federal, state, or local statutes, regulations, or permits.

VII. SIGNATORIES AND SERVICE

9. The undersigned representatives of Defendants and the Assistant Attorney General for the United States each certify that he or she is duly authorized to enter into the terms and conditions of this Amended Consent Decree and to execute and legally bind the Party he or she represents to the terms of the Amended Consent Decree.

10. This Amended Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect. Each Party hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Amended Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

VIII. PUBLIC COMMENT


11. The Parties agree and acknowledge that final approval by the United States and entry of this Amended Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Amended Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that the Amended Consent Decree is inappropriate, improper, or inadequate. The Defendants shall not oppose entry of this Amended Consent Decree by this Court or challenge any provision of this Amended Consent Decree unless the United States has notified the Defendants, in writing, that the United States no longer supports entry of the Amended Consent Decree.

SO ORDERED, THIS _____ DAY OF _____, 2012.

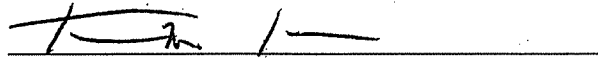
Honorable Christopher C. Conner
United States District Court Judge

FOR THE UNITED STATES OF AMERICA:


8/6/12
Date


ROBERT MAHER
Acting Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

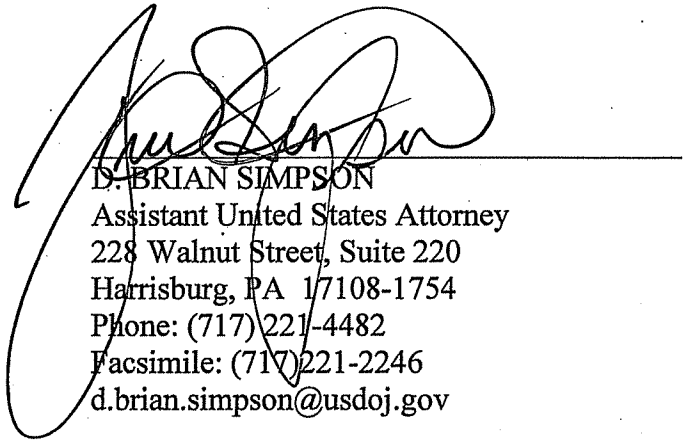
8/6/12
Date


KATHERINE M. KANE
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

8/10/12
Date

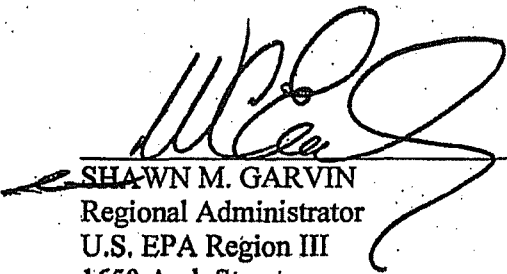

PETER J. SMITH
United States Attorney
Middle District of Pennsylvania

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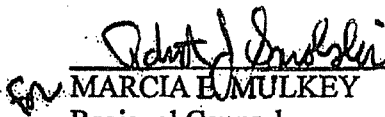
FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

6/20/12
Date



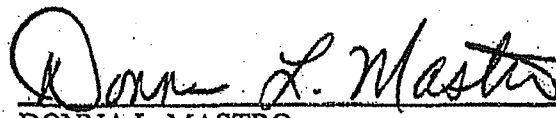
SHAWN M. GARVIN
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Philadelphia, PA 19103

6/25/2012
Date



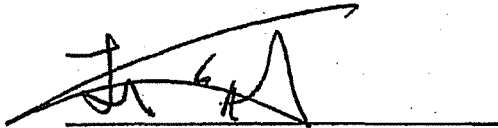
MARCIA E. MULKEY
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1650 Arch Street
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6/21/2012
Date



DONNA L. MASTRO
Senior Assistant Regional Counsel
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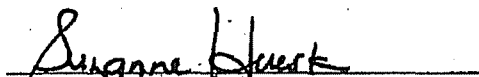
**FOR THE COMMONWEALTH OF PENNSYLVANIA:
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS**



Secretary

6/13/12
Date

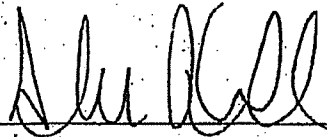
Approved for Form and Legality:



Office of Chief Counsel
Department of Corrections

6/13/12
Date

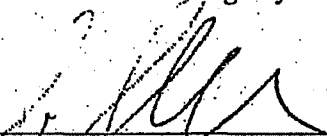
**FOR THE COMMONWEALTH OF PENNSYLVANIA:
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES**



Secretary

6/13/12
Date

Approved for Form and Legality:



Office of Chief Counsel
Department of General Services

6/13/12
Date

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UNITED STATES OF AMERICA,)

Plaintiff)

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COMMONWEALTH OF PENNSYLVANIA)
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DEPARTMENT OF CORRECTIONS)

Defendants)

CIVIL ACTION NO.
4:10-CV-2672-CCC

NOTICE OF LODGING OF PROPOSED
AMENDMENT TO CONSENT DECREE

Notice is hereby given that on this date an Amendment to the Consent Decree has been lodged with the Court in the above-referenced action.^{1/} Pursuant to 28 C.F.R. § 50.7 and Paragraph 103 of the original Consent Decree, a "Notice of Lodging" will be published in the Federal Register. The Notice of Lodging will be subject to a thirty (30) public comment period. At the conclusion of the public comment period, the United States will evaluate any comments to determine whether to go forward with the amendment. Any comments and the United States' responses thereto will be filed with the Court at the same time as it seeks entry of

^{1/} The original Consent Decree was entered by this Court on March 10, 2011.

the Amendment or to withdraw the Amendment. No action is required of the Court until such time as the United States files its motion.

Respectfully submitted,

ROBERT MAHER
Acting Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice

/s/ Katherine M. Kane
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