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Exhibit 1

Revised Consent Decree

1 ELLEN M. MAHAN
Deputy Section Chief
2 SHEILA McANANEY (IL Bar No. 6309635)
Trial Attorney
3 Environmental Enforcement Section
Environment & Natural Resources Division
4 United States Department of Justice
P.O. Box 7611
5 Washington, D.C. 20044
Telephone: (202) 616-6535
6 sheila.mcananey@usdoj.gov

7 BRIAN J. STRETCH (CSBN 163973)
United States Attorney
8 SARA WINSLOW (DC Bar No. 457643)
Chief, Civil Division
9 MICHAEL T. PYLE (CSBN 172954)
Assistant United States Attorney
10 150 Almaden Boulevard, Suite 900
San Jose, California 95113
11 Telephone: (408) 535-5087
12 michael.t.pyle@usdoj.gov

13 Attorneys for Plaintiff United States of America
14 (Counsel cont'd on next page)

15 UNITED STATES DISTRICT COURT FOR THE
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 UNITED STATES OF AMERICA and)
19 NORTH COAST UNIFIED AIR)
20 QUALITY MANAGEMENT) No. 3:16-cv-00961-JD
21 DISTRICT)
22 Plaintiffs,) **CONSENT DECREE**
23 v.)
24 BLUE LAKE POWER, LLC,) Hon. James Donato
25 Defendant.)
26 _____)
27
28

1 NANCY DIAMOND (CSBN 130963)
District Counsel
2 Law Offices of Nancy Diamond
822 G Street, Suite 3
3 Arcata, CA 95521
Telephone: (707) 826-8540
4 Attorney for Plaintiff North Coast Unified Air
Quality Management District
5

6 JANE E. LUCKHARDT (CSBN 141919)
Day Carter Murphy LLP
7 3620 American River Drive, Suite 205
Sacramento, CA 95864
8 Telephone: (916) 246-7316
Attorney for Defendant Blue Lake Power LLC
9

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28

1 WHEREAS, Plaintiffs UNITED STATES OF AMERICA, on behalf of the United States
2 Environmental Protection Agency (“EPA”), and the NORTH COAST UNIFIED AIR QUALITY
3 MANAGEMENT DISTRICT (“District”), have filed a Complaint concurrently with this Consent
4 Decree, alleging that Defendant BLUE LAKE POWER, LLC (“Blue Lake”) violated and/or
5 continues to violate the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7401 *et seq.*, including
6 the California State Implementation Plan (“SIP”) authorized by Section 110(a) of the Act, 42
7 U.S.C. § 7410 *et seq.*, through violations of authority to construct (“ATC”) permits, and
8 conditions therein, issued by the District related to Blue Lake’s ownership and operation of a
9 biomass fueled electric generating facility in the City of Blue Lake (the “Facility”);

10 WHEREAS, the Complaint seeks injunctive relief and the assessment of civil penalties
11 for alleged violations of the Clean Air Act and rules promulgated under the California SIP,
12 related to its ownership and operation of the Facility;

13 WHEREAS, EPA issued a notice of violation (“NOV”) to Blue Lake with respect to such
14 allegations on March 3, 2014;

15 WHEREAS, Blue Lake denies the violations alleged in the Complaint and the NOV and
16 does not admit to any liability arising out of the transactions or occurrences alleged in the
17 Complaint or the NOV;

18 WHEREAS, notwithstanding any provisions of this Consent Decree related to the
19 payment of a civil penalty, the United States, the District, and Blue Lake (the “Parties”) agree
20 that Blue Lake has not admitted, and the United States and the District have not proven to the
21 Court, the existence of any of the alleged violations;

22 WHEREAS, the United States reviewed Financial Information and determined Blue Lake
23 has a limited ability to pay a civil penalty in this matter;

24 WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds,
25 that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation
26 among the Parties and that this Consent Decree is reasonable and in the public interest; and
27
28

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

4 **I. JURISDICTION AND VENUE**

5 1. This Court has jurisdiction over the subject matter of this action, pursuant to
6 28 U.S.C. §§ 1331, 1345, 1355, 1367, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and
7 over the Parties. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. §
8 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the
9 Complaint are alleged to have occurred in, and Blue Lake resides in and conducts business in,
10 this judicial district. For purposes of this Decree, or any action to enforce this Decree, Blue Lake
11 consents to the Court's jurisdiction over this Decree and any such action and over Blue Lake and
12 consents to venue in this judicial district.

13 2. For purposes of this Consent Decree, Blue Lake agrees that the Complaint states
14 claims upon which relief may be granted pursuant to Section(s) 113(a)(1)(C) and 113(b)(1) of
15 the Act, 42 U.S.C. §§ 7413(a)(1)(C) and 7413(b)(1).

16 **II. APPLICABILITY**

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

20 4. No transfer of ownership or operation of the Facility, whether in compliance with
21 the procedures of this Paragraph or otherwise, shall relieve Blue Lake of its obligation to ensure
22 that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake the
23 obligations required by Section V of this Decree and to be substituted for Blue Lake as a Party
24 under the Decree and thus be bound by the terms thereof, and (2) the United States and the
25 District consent to relieve Blue Lake of its obligations. The United States and the District may
26 refuse to approve the substitution of the transferee for Blue Lake if Plaintiffs determine that the
27 proposed transferee does not possess the requisite technical abilities or financial means. The
28 decision to refuse to approve the substitution of the transferee for Blue Lake shall not be subject

1 to judicial review. If the United States and the District approve such a substitution, it shall
2 constitute a material change to this Decree within the meaning of Paragraph 97. At least 30 Days
3 prior to such transfer, Blue Lake shall provide a copy of this Consent Decree to the proposed
4 transferee and shall simultaneously provide written notice of the prospective transfer, together
5 with a copy of the proposed written agreement, to EPA Region IX, the United States Attorney
6 for the Northern District of California, the District, and the United States Department of Justice,
7 in accordance with Section XVI of this Decree (Notices). Any attempt to transfer ownership or
8 operation of the Facility without complying with this Paragraph constitutes a violation of this
9 Decree.

10 5. Blue Lake shall provide a copy of this Consent Decree to all officers, employees,
11 and agents whose duties might reasonably include compliance with any provision of this Decree,
12 as well as to the contractor retained to perform the Boiler Engineering Study described in
13 Paragraph 13 of this Consent Decree. Blue Lake shall condition that contract upon performance
14 of the work in conformity with Paragraph 13 of this Consent Decree.

15 6. In any action to enforce this Consent Decree, Blue Lake shall not raise as a
16 defense the failure by any of its officers, directors, employees, agents, or contractors to take any
17 actions necessary to comply with the provisions of this Consent Decree.

18 **III. DEFINITIONS**

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

23 a. "Ammonia Slip" shall mean the amount of unreacted ammonia contained
24 in emissions from the Main Stack when the SNCR system is operating as measured in parts per
25 million. Ammonia Slip shall be calculated by subtracting Baseline Ammonia from Stack
26 Ammonia;

27 b. "Baseline Ammonia" shall mean the average (arithmetic mean) of the
28 ammonia in emissions from the Main Stack, as initially measured pursuant to Paragraph 30 prior

1 to installation of the SNCR when urea is not being injected into the Boiler. After installation of
2 the SNCR, Baseline Ammonia may be reconfirmed or reestablished periodically subject to EPA
3 approval, after consultation with the District;

4 c. “Blue Lake” shall mean Defendant Blue Lake Power, LLC;

5 d. “Boiler” shall mean the Zurn boiler used at the Facility to produce energy;

6 e. “Block Average” shall mean, for purposes of meeting an Emission Rate in
7 pounds per million British Thermal Units (lbs/MMBtu) set forth in this Consent Decree, the rate
8 of emission of CO or NO_x from the Main Stack expressed as lbs/MMBtu, and calculated in
9 accordance with the following procedure: first, sum the total pounds of the Pollutant in question
10 emitted from the Main Stack during the period covered by the Block Average Emission Rate, for
11 instance a 24-hour period, as measured pursuant to Section V; second, sum the total MMBtu
12 burned during the same period. A Block Average shall only be calculated once and will not
13 include any operating hours from the previous Block Average. For purposes of compliance with
14 the 24-hour Block Average Emission Rate set forth in Paragraph 19 during periods of Startup
15 and Shutdown, the Block Average may include periods that do not include Startup and Shutdown
16 as necessary to complete the requisite averaging period. For instance, if a startup only lasts 8
17 hours, then the emissions from the next 16 hours of operation will also be included in the Block
18 Average to complete the 24 hour averaging period;

19 f. “CD Emissions Reductions” shall mean any emissions reductions that
20 result from any projects, controls, or any other actions utilized to comply with this Consent
21 Decree;

22 g. “CEMS” or “Continuous Emission Monitoring System,” shall mean, for
23 obligations involving the monitoring of NO_x and CO under this Consent Decree, the total
24 equipment and software required to sample and condition (if applicable), to analyze, and to
25 provide a record of NO_x and CO Emission Rates, and the raw data necessary to support the
26 reported Emission Rates, and that have been installed and calibrated in accordance with 40
27 C.F.R. § 60.13 and 40 C.F.R. Part 60, Appendix B and Appendix F;

1 h. “CO” shall mean carbon monoxide, measured in accordance with the
2 provisions of this Consent Decree;

3 i. “Complaint” shall mean the complaint filed by the United States and the
4 District in this action;

5 j. “Consent Decree” or “Decree” shall mean this consent decree;

6 k. “Continuously Operate” or “Continuous Operation” means that when a
7 pollution control technology or combustion control is required to be continuously used at a unit
8 pursuant to this Consent Decree, it shall be operated at all times such unit is in operation (except
9 as otherwise provided by Section X (Force Majeure)), consistent with the technological
10 limitations, manufacturers’ specifications, good engineering and maintenance practices, and
11 good air pollution control practices for minimizing emissions (as defined in 40 C.F.R. §
12 60.11(d)) for such equipment and the unit.

13 l. “Day” shall mean a calendar day unless expressly stated to be a business
14 day. In computing any period of time under this Consent Decree, where the last day would fall
15 on a Saturday, Sunday, federal, or state holiday, the period shall run until the close of business of
16 the next business day;

17 m. “Demonstration Period” shall mean the twelve (12) month period
18 following twelve (12) months after EPA’s approval of the Boiler Engineering Study Report as
19 set forth in Paragraph 20;

20 n. “District” shall mean the North Coast Unified Air Quality Management
21 District;

22 o. “Emission Rate” for a given Pollutant means the number of pounds of that
23 Pollutant emitted per million British thermal units of heat input (lb/MMBtu), measured in
24 accordance with the provisions of this Consent Decree;

25 p. “Effective Date” shall have the definition provided in Section XVII;

26 q. “EPA” shall mean the United States Environmental Protection Agency
27 and any of its successor departments or agencies;

28

1 r. “ESP” shall mean the electrostatic precipitator currently used on the Main
2 Stack to control particulate matter emissions from the Boiler;

3 s. “Facility” shall mean the biomass fueled electric generating facility owned
4 by Blue Lake and located at 200 Taylor Way, Blue Lake, California, together with all that
5 property more particularly described as Parcel 1 and Parcel 2 on that ALTA/ACSM Land Title
6 Survey as depicted in Exhibit 1;

7 t. “Financial Information” shall mean balance sheets, tax returns, financial
8 statements, cash flow statements, projections, and all other financial information whether
9 provided orally or in writing that Blue Lake made available to the United States prior to the Date
10 of Lodging of this Consent Decree;

11 u. “Good Air Pollution Control Practices” shall mean operating practices that
12 comply with the standard set forth in 40 C.F.R. § 60.11(d) and manufacturer specifications and
13 recommendations;

14 v. “Main Stack” shall mean the stack on the Boiler at the Facility where
15 gases are released to the atmosphere post combustion of fuel;

16 w. “NH₃” shall mean ammonia, as determined in accordance with the
17 provisions of this Consent Decree;

18 x. “NO_x” means oxides of nitrogen, measured in accordance with the
19 provisions of this Consent Decree;

20 y. “OFA” or “Over-Fire Air” means a gas conveyance system consisting of
21 an induction fan(s), ductwork, injection ports & nozzles, sensors and digital controls used for the
22 purpose of enhancing the combustion of gaseous fuel at a location above the primary combustion
23 zone;

24 z. “Operating Hour” shall mean any hour during which any material has
25 been burned in the Boiler;

26 aa. “Operating Day” shall mean any day during which any material has been
27 burned in the Boiler;

28

- 1 bb. “Paragraph” shall mean a portion of this Decree identified by an Arabic
2 numeral;
- 3 cc. “Parties” shall mean the United States, the District, and Blue Lake;
- 4 dd. “PM₁₀” shall mean particulates of less than 10 microns in diameter, as
5 measured in accordance with the provisions of this Consent Decree;
- 6 ee. “Pollutant” shall mean NO_x, CO, NH₃, and PM₁₀;
- 7 ff. “Rolling Average” shall mean, for purposes of complying with an
8 Emission Rate in pounds per million per BTU (lb/MMBtu) set forth in this Consent Decree, the
9 rate of emission of NO_x, CO, or PM₁₀ from the Main Stack, respectively, expressed as
10 lb/MMBtu, and calculated in accordance with the following procedure: first, sum the total
11 pounds of the Pollutant in question emitted from the Main Stack during the last Operating Hour
12 or Day, depending upon the period of compliance set forth for the applicable Emission Rate, and
13 the previous hours or days of operation to make the full length of the rolling average period (for
14 instance, if it is an 8-hour rolling average, then add the pounds of Pollutant emitted for the last 7
15 Operating Hours to the pounds calculated for the most recent hour); second, sum the total
16 MMBtu burned in the Boiler during the same Operating Hour or Day, depending upon the period
17 of compliance set forth for the applicable Emission Rate, and the previous number of Operating
18 Hours or Operating Days to make the full length of the Rolling Average period; and third, divide
19 the total number of pounds emitted from the Main Stack during the period in question by the
20 total MMBtu burned during the same period. A new Rolling Average Emission Rate shall be
21 calculated for each new Operating Hour or Operating Day;
- 22 gg. “Section” shall mean a portion of this Decree identified by a roman
23 numeral;
- 24 hh. “Shutdown” shall mean the period beginning with curtailment of fuel feed
25 and concluding when the recorded Main Stack temperature reaches 150°F and remains so for at
26 least one hour;
- 27
28

1 EPA Cincinnati Finance Office
2 26 Martin Luther King Drive
3 Cincinnati, Ohio 45268.

4 10. Blue Lake shall pay the portion of the civil penalty due to the District by check
5 made out to North Coast Unified Air Quality Management District, with “Blue Lake Power,
6 Consent Decree” in the memorandum line. Payment shall be delivered to Air Pollution Control
7 Officer, North Coast Unified Air Quality Management District, 707 L. St., Eureka, CA 95501.

8 11. Blue Lake shall not deduct any penalties paid under this Decree pursuant to this
9 Section or Section IX (Stipulated Penalties) in calculating its federal, state and local income tax.

10 **V. COMPLIANCE REQUIREMENTS**

11 12. Boiler Engineering Study Protocol. Blue Lake has submitted to EPA and the
12 District for review and approval pursuant to Paragraph 34 a protocol for the performance of the
13 Boiler Engineering Study required by Paragraph 13.

14 13. Boiler Engineering Study. No later than ninety (90) Days following the later of
15 recommencing operation of the Boiler or EPA’s approval of the protocol described in Paragraph
16 12, Blue Lake shall complete the Boiler Engineering Study in accordance with the approved
17 Boiler Engineering Study Protocol and submit to EPA and the District for review and approval
18 pursuant to Paragraph 34 a report containing the Study’s findings (“Boiler Engineering Study
19 Report”). The Boiler Engineering Study and Report shall include the following information and
20 analysis:

- 21 a. Completion of as-built drawings of the Boiler configuration;
- 22 b. Recommendations for improvements to the OFA system and the
23 configuration of the SNCR system designed to optimize the reduction of CO and NO_x emissions
24 to achieve the Emission Rates set forth in Paragraphs 18 and 19;
- 25 c. Assessment of the adequacy of the capacity of the Boiler’s induced draft
26 fan;
- 27 d. Testing of injection of air and urea at locations modeled and/or predicted
28 to best control CO and NO_x emissions and at rates up to the maximum achievable levels to
enable compliance with the levels identified in Paragraphs 18 and 19;

1 e. Recommendation as to the highest achievable urea injection level for the
2 SNCR, based upon the recommended location of injection ports and the urea injection testing,
3 while consistently maintaining Ammonia Slip at 20 parts per million (“ppm”) or less by volume,
4 corrected to 3% excess oxygen; and

5 f. Prediction of best achievable Emission Rates for CO and NO_x from the
6 Main Stack after installation and Continuous Operation of the optimized and/or improved OFA
7 and SNCR systems.

8 ***Control Technologies and Emission Rates***

9 14. No later than ninety (90) Days following EPA’s approval of the Boiler
10 Engineering Study Report, Blue Lake shall have entered into a contract for the purchase of the
11 new equipment necessary for the installation of the improved OFA and SNCR systems. Within
12 thirty (30) days of entry into such contract, Blue Lake shall submit to EPA and the District the
13 contract and/or documentation evidencing the purchase of such equipment.

14 15. No later than twelve (12) months following EPA’s approval of the Boiler
15 Engineering Study Report, Blue Lake shall install and Continuously Operate the improved OFA
16 and SNCR systems consistent with the parameters set forth in the approved Boiler Engineering
17 Study Report and in a manner that optimizes combustion and minimizes NO_x and CO emissions
18 at all times when the Boiler is in operation.

19 16. ESP Optimization.

20 a. Blue Lake may only recommence operation of the Boiler after it has
21 submitted to EPA and the District the following:

- 22 i. Certification by a Member that all damaged discharge electrodes and
23 collecting plates in the ESP have been replaced and that the ESP can
24 operate in conformity with Good Air Pollution Control Practices when
25 the Facility is operating at 95% of its permitted operational capacity;
26 ii. Recommended operating parameters for the ESP that ensure PM₁₀
27 emission reductions at all times the Boiler is in operation, including
28 both Start Up and Shut Down and steady state operations. These

1 recommended operating parameters must include the monitoring
2 parameters that are recorded from the transformer/rectifier controller
3 and the rapper control panel; and

4 iii. Confirmation that Blue Lake's employees have been trained in proper
5 operation of the ESP in accordance with the recommended operating
6 parameters.

7 b. Blue Lake shall operate the ESP in accordance with the recommended
8 operating parameters submitted to EPA and the District pursuant to Paragraph 16.a.ii at all times
9 until final approval of the ESP optimization plan referred to in Paragraph 16.d.

10 c. Within fourteen (14) Days of recommencing operation of the Boiler, a
11 consultant qualified in ESP operation shall conduct a full technical evaluation of the Facility's
12 ESP, including testing of rappers, to confirm that the ESP is operating in accordance with Good
13 Air Pollution Control Practices when the Facility is operating at 95% of its permitted operational
14 capacity. The engineer shall provide a full report of the evaluation, including any identified
15 deficiencies and recommended repairs or actions, to Blue Lake, EPA, and the District within
16 thirty (30) Days of the evaluation. Blue Lake shall take all steps recommended by the report
17 within 30 Days of receiving the report, unless otherwise approved by EPA in consultation with
18 the District.

19 d. Within sixty (60) Days of recommencing operation of the Boiler, Blue
20 Lake shall submit to EPA and the District for review and approval pursuant to Paragraph 34 an
21 ESP optimization plan, which analyzes and recommends operating parameters for the ESP that
22 ensure PM₁₀ emission reductions at all times, including Start Up and Shut Down, that the Boiler
23 is in operation sufficient to meet the Emission Rates set forth in Paragraphs 18 and 19. The ESP
24 optimization plan shall comply with the monitoring requirements contained at 40 C.F.R. § 64.3
25 (compliance assurance monitoring).

26 17. At all times, including periods of Startup and Shutdown, Defendant shall, to the
27 extent practicable, maintain and operate the Boiler, including associated air pollution control
28

1 equipment, in a manner consistent with Good Air Pollution Control Practices for minimizing
2 emissions.

3 18. No later than twelve (12) months following EPA's approval of the Boiler
4 Engineering Study Report, Blue Lake shall achieve and maintain emissions from the Main Stack,
5 excluding periods of Startup or Shutdown at or below the following Emission Rates:

6 a. NO_x emissions of 0.12 lb/MMBtu on a 24-hour Rolling Average basis and
7 0.10 lb/MMBtu on an annual Rolling Average Basis;

8 b. CO emissions of 0.40 lb/MMBtu on a 24-hour Rolling Average basis; and

9 c. PM₁₀ emissions of 0.02 lb/MMBtu on a 3-hour average basis as required
10 to be measured in Paragraph 33.

11 19. No later than twelve (12) months following EPA's approval of the Boiler
12 Engineering Study Report, Blue Lake shall achieve and maintain emissions from the Main Stack
13 during periods of Startup or Shutdown at or below the following Emission Rates:

14 a. NO_x emissions of 0.15 lb/MMBtu on a 24-hour Block Average basis;

15 b. CO emissions of 0.50 lb/MMBtu on a 24-hour Block Average basis; and

16 c. PM₁₀ emissions of 0.02 lb/MMBtu on a 3-hour average basis as verified
17 by operation in compliance with the approved ESP optimization plan.

18 20. Petition for Alternative Emission Rate(s). The twelve (12) month period
19 beginning twelve (12) months after EPA's approval of the Boiler Engineering Study Report shall
20 comprise the Demonstration Period. During the Demonstration Period, and six (6) months
21 thereafter, Blue Lake's failure to achieve and maintain the Emission Rates set forth in
22 Paragraphs 18 and 19 shall not be deemed a violation of this Consent Decree, nor shall Blue
23 Lake be responsible for stipulated penalties pursuant to Section IX (Stipulated Penalties).
24 However, it shall be deemed a violation, and Blue Lake shall be responsible for stipulated
25 penalties, if Blue Lake fails to Continuously Operate the OFA and SNCR systems consistent
26 with the parameters set forth in the approved Boiler Engineering Study Report and in a manner
27 that optimizes combustion and minimizes NO_x, CO, and PM₁₀ emissions. Additionally, if Blue
28 Lake fails to achieve and maintain the PM₁₀ Emission Rates set forth in Paragraphs 18 and 19, it

1 shall also be deemed a violation, and Blue Lake shall be responsible for stipulated penalties, if
2 Blue Lake fails to operate the ESP consistent with the approved ESP optimization plan.

3 21. At any time within six (6) months after the Demonstration Period described in
4 Paragraph 20, Blue Lake may submit a petition to EPA and the District for review and approval
5 pursuant to Paragraph 34, for a proposed revision to the NO_x, CO, and/or PM₁₀ Emission Rates
6 set forth in Paragraphs 18 and 19. In such a petition, Blue Lake must demonstrate that it is
7 technically infeasible to achieve one or more of the NO_x, CO, and/or PM₁₀ Emissions Rates in
8 Paragraphs 18 and/or 19, considering the results of the Boiler Engineering Study and all
9 information and data collected during the Demonstration Period. Blue Lake shall propose in such
10 a petition the lowest NO_x, CO and/or PM₁₀ Emission Rate that it can practicably achieve and
11 maintain while maintaining an Ammonia Slip of 20 parts per million (corrected to 3% O₂) or
12 less. With any such petition, Blue Lake shall include all pertinent information, documents, and
13 data that support, or were considered in preparing such alternative Emission Rate, including all
14 data collected during the Demonstration Period. In no event shall the proposed alternative
15 Emission Rate be higher than the following:

- 16 a. During periods that do not include Startup and Shutdown:
- 17 i. NO_x emissions of 0.15 lb/MMBtu on a 24-hour Rolling Average basis
18 and 0.125 lb/MMBtu on an annual Rolling Average basis;
- 19 ii. CO emissions of 0.55 lb/MMBtu on a 24-hour Rolling Average Basis;
20 and
- 21 iii. PM₁₀ emissions of 0.03 lb/MMBtu on a 3-hour Average Basis, as
22 required to be measured in Paragraph 33.
- 23 b. During periods that include Startup and Shutdown
- 24 i. NO_x emissions of 0.175 lb/MMBtu on a 24-hour Block Average basis;
25 ii. CO emissions of 0.69 lb/MMBtu on a 24-hour Block Average basis;
26 and
- 27
- 28

- iii. PM₁₀ emissions of 0.03 lb/MMBtu on a 3-hour Average Basis, as verified by operation in compliance with the approved ESP Optimization Plan.

22. Following receipt of a petition submitted to EPA and the District pursuant to Paragraph 21, EPA, in consultation with the District, may (a) determine that Blue Lake failed to successfully demonstrate that it could not achieve and maintain the applicable Emission Rate, (b) approve the proposed alternative Emission Rate(s), or (c) establish a different Emission Rate than the one specified in this Decree or proposed by Blue Lake in its petition, based upon EPA's review of the information submitted in the petition, as well as other available and relevant information. In no event shall the approved alternative Emission Rate(s) be higher than the applicable Emission Rate(s) listed in Paragraph 21. EPA reserves the right to require Blue Lake to perform additional source testing, RATA testing, or other relevant testing before responding to Blue Lake's petition. If EPA determines that Blue Lake has demonstrated that it could not maintain compliance with the Emission Rate(s) specified in this Decree and approves one or more alternative Emission Rates, such Emission Rate(s) shall be deemed to have replaced the relevant NO_x, CO and/or PM₁₀ Emission Rate(s) in question during (a) the time during which achievement of the Emission Rate(s) was infeasible (including any period of time that occurred prior to submittal of the request) and (b) the pendency of EPA and the District's review of Blue Lake's request.

23. No later than thirty (30) Days following Blue Lake's receipt of EPA's approval of one or more alternative Emission Rates, Blue Lake shall achieve and maintain the new Emission Rate(s).

24. In the event that, pursuant to Paragraph 22 above, EPA approves one or more alternative Emission Rates to those set forth in Paragraphs 18 and 19, a Notice shall be lodged with the Court informing it of the new applicable Emission Rate(s).

Fugitive Dust Controls and Good Combustion Control Practices

25. Fuel Management Plan: Blue Lake has submitted to EPA and the District for review and approval pursuant to Paragraph 34 a plan for proper management of Boiler fuel

1 (“Fuel Management Plan”). The Plan shall establish measures for adequate drying of the fuel
2 while minimizing fugitive dust from fuel handling sufficient to ensure that no visible dust leaves
3 the Facility. The Plan shall contain, at a minimum, the following measures: (i) standards and
4 procedures for ensuring that the fuel is adequately dry prior to burning in the Boiler, including,
5 as appropriate and warranted, off-site storage, covering of the fuel piles to shield them from
6 moisture, protecting fuels from moisture seepage from the ground, and limiting the amount of
7 time that fuel is stored on-site; (ii) identification, purchase (if necessary) and proper operation of
8 equipment to ensure that fuel is chipped to an optimal size for burning; (iii) a procedure and
9 schedule for routine cleanup and application of water, tarps, or dust suppressants to storage piles,
10 processing areas, and other disturbed areas to control fugitive dust to the maximum extent
11 practicable; (iv) measures to ensure that truck loading and unloading of fuel materials is
12 conducted in a manner that minimizes spillage and fugitive dust; and (v) measures to minimize
13 fugitive dust from grinding, chipping, unloading and conveying of fuel, including consideration
14 of, as appropriate and warranted, shielding of the operations and/or limiting such operations to
15 avoid periods of high wind.

16 26. Fugitive Road Dust Plan. Blue Lake has submitted to EPA and the District for
17 review and approval pursuant to Paragraph 34 a plan to control fugitive dust from roads at the
18 Facility (“Fugitive Road Dust Plan”) sufficient to ensure that no visible dust leaves the Facility.
19 The Plan shall contain, at a minimum, the following measures: (i) procedures, application
20 intensity, and schedule for application of water and/or non-aqueous dust suppressant to all
21 unpaved roads at the Facility; and (ii) procedures and schedule of sweeping and maintenance of
22 all paved roads at the Facility.

23 27. Ash Handling and Disposal Procedures. As of the Effective Date of this Consent
24 Decree or upon recommencing operation of the Boiler, whichever is earlier, all ash shall be
25 transported in a wet condition in covered containers or stored in closed containers at all times.
26 Ash that will not be used at the Facility shall be disposed of in accordance with all applicable
27 rules and regulations.

28 ***Continuous Emission Monitoring Systems and Stack Testing***

1 28. As of the Effective Date of this Consent Decree, except during periods of
2 breakdowns, repairs, calibration checks, and zero span adjustments, Blue Lake shall maintain
3 and operate the CEMS to collect data on NO_x and CO emissions from the Main Stack at all times
4 the Boiler is in operation in accordance with installation, certification, calibration, and
5 maintenance requirements of 40 C.F.R. Part 60, Subpart A, and Appendices B and F.

6 29. The CEMS shall be used to demonstrate compliance with the NO_x and CO
7 Emission Rates set forth in Paragraphs 18 and 19 of this Decree, or as otherwise established
8 pursuant to Paragraph 22, and shall monitor and record the applicable Emission Rates in units of
9 pounds of Pollutant per million BTU.

10 30. Baseline Ammonia Stack Tests. Blue Lake shall conduct the following ammonia
11 stack tests on the Main Stack consistent with Test Method BAAQMD ST-1B at conditions
12 representing normal operations:

13 a. Prior to the installation and operation of the SNCR, Blue Lake shall
14 conduct sampling pursuant to section 8 of Test Method BAAQMD ST-1B. If the results indicate
15 any detectable concentrations of ammonia in any of the three test runs, Blue Lake shall conduct
16 sampling on two additional days within 60 Days of the date of the initial test; and

17 b. After installation and during Continuous Operation of the SNCR during
18 months 6 through 9 of the Demonstration Period, when the system is achieving and maintaining
19 the NO_x limit set forth in Paragraph 18.a (alternatively, if the NO_x limit has not been achieved,
20 despite Blue Lake operating the SNCR consistent with the approved Boiler Engineering Study
21 report, then during a period when NO_x emissions reductions have been optimized to the
22 maximum extent possible consistent with the approved Boiler Engineering Study report):

23 i. Blue Lake shall conduct sampling pursuant to section 8 of Test
24 Method BAAQMD ST-1B.

25 ii. If the results of these tests indicate the average concentration of
26 ammonia for the three test runs to be greater than or equal to 15 ppm,
27 correct to 3% O₂, Blue Lake shall conduct sampling pursuant to
28 section 8 of Test Method BAAQMD ST-1B on two additional Days

1 within 60 Days of the date of the first test conducted in accordance
2 with Paragraph 30.b.i;

3 c. Ninety (90) Days prior to each set of stack tests, Blue Lake shall submit a
4 stack test plan to EPA and the District for review and approval pursuant to Paragraph 34. If EPA
5 has not taken action on the test plan within sixty (60) days of submittal, the plan shall be deemed
6 approved pursuant to Paragraph 34. The results of each ammonia stack test shall be submitted to
7 EPA and the District within sixty (60) Days following completion of each test.

8 31. Ammonia Slip Calculation. Within thirty (30) Days of completion of the ammonia
9 stack tests required by Paragraph 30.b, Blue Lake shall calculate the Ammonia Slip. If the
10 Ammonia Slip is above 20 ppm corrected to 3% O₂, BLP shall:

11 a. Calculate the mass emission rate of ammonia in excess of 20 ppm
12 corrected to 3% O₂.

13 b. Within sixty (60) Days of completion of ammonia stack tests required by
14 Paragraph 30.b, Blue Lake shall perform stack tests consistent with the procedures set forth in
15 Paragraph 30.b, reducing urea injection by the excess mass emission rate of ammonia (corrected
16 to reflect the mass ratio of urea to ammonia) determined under Paragraph 31.a.

17 c. Within thirty (30) Days of completion of the tests required by Paragraph
18 31.b, Blue Lake shall calculate the Ammonia Slip. If the Ammonia Slip is above 20ppm
19 corrected to 3% O₂ and the NO_x Emission Rate is below the NO_x limit set forth in Paragraph
20 19.a, Blue Lake shall repeat the procedure set forth in Paragraphs 31.a and 31.b.

21 d. Within thirty (30) Days of completion of additional tests required under
22 Paragraph 31.c, Blue Lake shall submit to EPA and the District all test results, the calculated
23 Ammonia Slip, and all calculations done pursuant to Paragraph 31.c.

24 32. Annual Ammonia Stack Tests.

25 a. No later than eighteen (18) months following EPA's approval of the
26 Boiler Engineering Study Report, Blue Lake shall conduct a stack test on the Main Stack to
27 determine the Ammonia Slip consistent with Test Method BAAQMD ST-1B, during
28 representative operating conditions. The test shall consist of three separate runs performed under

1 representative operating conditions not including periods of startup, shutdown, or malfunction.
2 Within fifteen (15) months following EPA's approval of the Boiler Engineering Study Report,
3 Blue Lake shall submit a stack test plan consistent with this Paragraph to EPA and the District
4 for review and approval pursuant to Paragraph 34. If EPA has not taken action on the test plan
5 within sixty (60) Days of submittal, the plan shall be deemed approved pursuant to Paragraph 34.
6 The results of the ammonia stack test shall be submitted to EPA and the District within ninety
7 (90) Days following completion of the test.

8 b. On an annual basis, Blue Lake shall conduct ammonia stack testing in
9 accordance with the procedures in Paragraph 32.a, including submission of a stack test plan
10 ninety (90) days prior to the test and submission of the test results within ninety (90) days
11 following completion of the test. Each test shall be performed no later than thirteen (13) months
12 after the previous one.

13 33. PM₁₀ Stack Tests.

14 a. No later than forty-five (45) Days following Blue Lake's restart of
15 operation of the Boiler, Blue Lake shall conduct a stack test on the Main Stack to determine
16 compliance with PM₁₀ Emission Rates in its current Title V Permit. Blue Lake shall use EPA
17 Method 5 or EPA Method 201a (filterable portion only), and each test shall consist of three
18 separate runs performed under representative operating conditions not including periods of
19 startup, shutdown, or malfunction. The sampling time for each run shall be at least 60 minutes
20 and the volume of the sample in each run shall be at least 0.85 dry standard cubic meters (30 dry
21 standard cubic feet). Blue Lake shall calculate the PM₁₀ Emission Rate from the stack test results
22 in accordance with 40 C.F.R. § 60.8(f). No later than fifteen (15) Days prior to recommencing
23 operation of the Boiler, Blue Lake shall submit a stack test plan consistent with this Paragraph to
24 EPA and the District for review and approval pursuant to Paragraph 34. If EPA has not taken
25 action on the test plan within fifteen (15) Days of submittal, the plan shall be deemed approved
26 pursuant to Paragraph 34. The results of the PM₁₀ stack test shall be submitted to EPA and the
27 District within sixty (60) Days following completion of the test.
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1 requirements of the plan, report, or other document, as approved. If the submission is
2 conditionally approved or approved only in part, pursuant to Paragraph 34.b or 34.c, Blue Lake
3 shall, upon written direction from EPA, after consultation with the District, take all actions
4 required by the approved plan, report, or other item that EPA, after consultation with the District,
5 determines are technically severable from any disapproved portions, subject to Blue Lake's right
6 to dispute only the specified conditions or the disapproved portions, under Section XI of this
7 Decree (Dispute Resolution).

8 36. If the submission is disapproved in whole or in part pursuant to Paragraph 34.c
9 or 34.d, Blue Lake shall, within 45 Days or such other time as the Parties agree to in writing,
10 correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion
11 thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is
12 approved in whole or in part, Blue Lake shall proceed in accordance with the preceding
13 Paragraph.

14 37. Any stipulated penalties applicable to the original submission, as provided in
15 Section IX of this Decree, shall accrue during the 45-Day period or other specified period, but
16 shall not be payable unless the resubmission is untimely or is disapproved in whole or in part;
17 provided that, if the original submission was so deficient as to constitute a material breach of
18 Blue Lake's obligations under this Decree, the stipulated penalties applicable to the original
19 submission shall be due and payable notwithstanding any subsequent resubmission.

20 38. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in
21 whole or in part, EPA, after consultation with the District, may again require Blue Lake to
22 correct any deficiencies, in accordance with the preceding Paragraphs, or may themselves correct
23 any deficiencies, subject to Blue Lake's right to invoke Dispute Resolution and the right of EPA
24 and the District to seek stipulated penalties as provided in the preceding Paragraphs.

25 **VI. PROHIBITION ON NETTING CREDITS OR OFFSETS FROM REQUIRED**
26 **CONTROLS**

27 39. Emissions reductions that result from actions to be taken by Blue Lake after the
28 Effective Date of this Consent Decree to comply with the requirements of this Consent Decree

1 shall not be considered as a creditable contemporaneous emission decrease for the purpose of
2 obtaining a netting credit or offset under the Clean Air Act’s Nonattainment NSR and PSD
3 programs.

4 40. Nothing in this Section is intended to prohibit Blue Lake from seeking to use or
5 generate emissions reductions from emissions units that are covered by this Consent Decree to
6 the extent that the proposed emissions reductions represent the difference between CD Emissions
7 Reductions and more stringent control requirements that Blue Lake may elect to accept for those
8 emissions units in a permitting process.

9 **VII. ENVIRONMENTAL MITIGATION**

10 41. Within thirty (30) Days after the Effective Date, Blue Lake shall contribute
11 \$ 10,000 to the North Coast Air Quality Management District’s Wood Stove Incentive
12 Replacement Program, which assists in the replacement of older, non-certified wood stoves, with
13 cleaner, more fuel-efficient wood heating devices or other less polluting heating appliances. The
14 contribution shall be made by check made payable to North Coast Unified Air Quality
15 Management District, with “Blue Lake Power, Consent Decree” in the memorandum line.
16 Payment shall be delivered to the Air Pollution Control Officer, North Coast Unified Air Quality
17 Management District, 707 L Street, Eureka, CA 95501. The District shall use such funds for its
18 Wood Stove Incentive Replacement Program and shall make good faith efforts to prioritize the
19 availability of such funds for wood stove replacement within an approximate two-mile radius of
20 the Facility, as deemed appropriate by the District.

21 42. Within thirty (30) Days of such contribution, Blue Lake shall submit to EPA and
22 the District documentation of such contribution.

23 **VIII. REPORTING REQUIREMENTS**

24 43. Blue Lake shall submit the following reports, in addition to those reports already
25 required by permits issued to the Facility or this Consent Decree:

26 a. Within thirty (30) Days after the end of each half calendar-year (i.e., June
27 30, December 31) after the Effective Date of this Consent Decree, until termination of this
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1 Decree pursuant to Section XX, Blue Lake shall submit a semi-annual report to EPA and the
2 District for the immediately preceding half calendar year period that shall include the following:

- 3 i. Identify the progress of installation, including any and all dates of
4 completed installation, of each control technology required for the
5 Facility by this Consent Decree and describe any problems
6 encountered or anticipated during such installation, together with
7 implemented or proposed solutions;
- 8 ii. Completion of milestones;
- 9 iii. Problems encountered or anticipated, together with proposed solutions;
- 10 iv. Status of permit applications;
- 11 v. All CEMS data collected for the Main Stack, reduced to 1-hour
12 averages, in accordance with 40 C.F.R. § 60.13(h)(2) and in electronic
13 format that can be manipulated with Microsoft Excel, including an
14 explanation of any periods of CEMS downtime;
- 15 vi. Identification of all periods, reduced to 1-hour periods, of Startup,
16 Shutdown, and Malfunction of the Boiler;
- 17 vii. Identification of each period when the Boiler was operating in excess
18 of one or more Emission Rates;
- 19 viii. Identification of the magnitude of excess emissions during each period
20 of excess emissions as computed in accordance with 40 C.F.R. §
21 60.13(h), including any conversion factors used;
- 22 ix. If applicable and feasible, identification of the nature and cause of the
23 Boiler malfunction during periods of excess emissions, corrective
24 actions taken, or preventative measures adopted; and
- 25 x. The date and time of each period during which the CEMS was
26 inoperative except for zero and span checks and the nature of the
27 system repairs or adjustments or a statement that there was no such
28 period.

1 b. If Blue Lake violates, or is on notice that it may materially violate, any
2 requirement of this Consent Decree, Blue Lake shall notify the United States and the District of
3 such violation and its likely duration, in writing, within ten business Days of the Day Blue Lake
4 first becomes aware of the violation or prospective violation, with an explanation of the
5 violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize
6 such violation. If the cause of a violation cannot be fully explained at the time the notification is
7 due, Blue Lake shall so state in the notification. Blue Lake shall investigate the cause of the
8 violation and shall then provide a full explanation of the cause of the violation in the next report
9 due pursuant to subparagraph 43.a. Nothing in this Paragraph or the following Paragraph
10 relieves Blue Lake of its obligation to provide the notice required by Section X of this Consent
11 Decree (Force Majeure).

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

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

20 46. Each report submitted by Blue Lake under this Section shall be signed by an
21 official of Blue Lake and include the following certification:

22 I certify under penalty of law that this document and all attachments were
23 prepared under my direction or supervision in accordance with a system designed
24 to assure that qualified personnel properly gather and evaluate the information
25 submitted. Based on my inquiry of the person or persons who manage the system,
26 or those persons directly responsible for gathering the information, the
27 information submitted is, to the best of my knowledge and belief, true, accurate,
28 and complete. I am aware that there are significant penalties for submitting false
information, including the possibility of fine and imprisonment for knowing
violations.

1 This certification requirement does not apply to emergency or similar notifications where
 2 compliance would be impractical.

3 47. The reporting requirements of this Consent Decree do not relieve Blue Lake of
 4 any reporting obligations required by the Clean Air Act or implementing regulations, or by any
 5 other federal, state, or local law, regulation, permit, or other requirement.

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

9 **IX. STIPULATED PENALTIES**

10 49. Blue Lake shall be liable for stipulated penalties to the United States and the
 11 District for violations of this Consent Decree as specified below, unless excused under Section X
 12 (Force Majeure). A violation includes failing to perform any obligation required by the terms of
 13 this Decree, including any work plan or schedule approved under this Decree, according to all
 14 applicable requirements of this Decree and within the specified time schedules established by or
 15 approved under this Decree.

16 50. Late Payment of Civil Penalty. If Blue Lake fails to pay the entirety of the civil
 17 penalty required to be paid under Section IV of this Decree (Civil Penalty) to both Plaintiffs
 18 when due, Blue Lake shall pay a stipulated penalty of \$100 per Day for each Day that the
 19 payment, to either or both Plaintiffs, is late.

20 51. Emissions Rates. The following stipulated penalties shall accrue per violation per
 21 Day for each violation of the Emission Rates set forth in Paragraphs 18 and 19 or an alternative
 22 Emission Rate approved by EPA pursuant to Paragraph 22:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 750	31st day and beyond

26 52. Compliance Milestones.

27 a. The following stipulated penalties shall accrue per violation per Day for
 28 each violation of the requirements identified in subparagraph 52.b:

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<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$ 1000	15th through 30th day
\$ 1500	31st day and beyond

- b. Compliance Milestones:
- i. Completion of the Boiler Engineering Study and submission of Report in accordance with the timeframe and requirements set forth in Paragraph 13;
 - ii. Contract to purchase equipment necessary to install the improved OFA and SNCR systems in accordance with the timeframe and requirements set forth in Paragraph 14;
 - iii. Installation and operation of SNCR and improved OFA system in accordance with the timeframes and requirements set forth in Paragraph 15;
 - iv. Completion of the requirements in Paragraph 16.a prior to recommencing operation of the Boiler;
 - v. Completion of the ESP evaluation and compliance with the ESP evaluation report required by Paragraph 16.c;
 - vi. Submission of the ESP Optimization Plan in accordance with the timeframes and requirements set forth in Paragraph 16.d;
 - vii. Operation of the ESP in accordance with the timeframes and requirements set forth in Paragraph 16;
 - viii. Operation of CEMS in accordance with the timeframes and requirements set forth in Paragraph 29.

53. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VIII (Reporting Requirements), and for each violation of the deadlines for submissions required by Section V (Compliance Requirements) of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 1000	31st day and beyond

54. For any other violation of this Consent Decree, the following stipulated penalties shall accrue per violation per Day for each violation:

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<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 1000	31st day and beyond

55. 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.

56. Blue Lake shall pay stipulated penalties to the United States and the District within 30 Days of a written demand by either Plaintiff. Blue Lake shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to the District. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

57. Either Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

58. Stipulated penalties shall continue to accrue as provided in Paragraph 55, 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 or the District that is not appealed to the Court, Blue Lake shall pay accrued penalties determined to be owing, together with interest, to the United States or the District, or to both, within 30 Days of the effective date of the agreement or the receipt of EPA’s or the District’s decision or order.

b. If the dispute is appealed to the Court and the United States or the District prevails in whole or in part, Blue Lake 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, Blue Lake shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

1 Blue Lake's best efforts to fulfill the obligation to obtain such approvals, including submitting
2 complete and timely applications for required approvals and providing full and timely responses
3 to requests for additional information and/or data from the entity providing a required approval.

4 63. If any event occurs or has occurred that may delay the performance of any
5 obligation under this Consent Decree, whether or not caused by a force majeure event, Blue Lake
6 shall provide notice orally or by electronic or facsimile transmission to Chief, Air and TRI
7 Section, Enforcement Division, U.S. Environmental Protection Agency, Region IX, within 72
8 hours of when Blue Lake first knew that the event might cause a delay. Within seven days
9 thereafter, Blue Lake shall provide in writing to EPA and the District an explanation and
10 description of the reasons for the delay; the anticipated duration of the delay; all actions taken or
11 to be taken to prevent or minimize the delay; a schedule for implementation of any measures to
12 be taken to prevent or mitigate the delay or the effect of the delay; Blue Lake's rationale for
13 attributing such delay to a force majeure event if it intends to assert such a claim; and a statement
14 as to whether, in the opinion of Blue Lake, such event may cause or contribute to an
15 endangerment to public health, welfare or the environment. Blue Lake shall include with any
16 notice all available documentation supporting the claim that the delay was attributable to a force
17 majeure. Failure to comply with the above requirements shall preclude Blue Lake from asserting
18 any claim of force majeure for that event for the period of time of such failure to comply, and for
19 any additional delay caused by such failure. Blue Lake shall be deemed to know of any
20 circumstance of which Blue Lake, any entity controlled by Blue Lake, or Blue Lake's contractors
21 knew or should have known.

22 64. If EPA, after a reasonable opportunity for review and comment by the District,
23 agrees that the delay or anticipated delay is attributable to a force majeure event, the time for
24 performance of the obligations under this Consent Decree that are affected by the force majeure
25 event will be extended by EPA, after a reasonable opportunity for review and comment by the
26 District, for such time as is necessary to complete those obligations. An extension of the time for
27 performance of the obligations affected by the force majeure event shall not, of itself, extend the
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1 time for performance of any other obligation. EPA will notify Blue Lake in writing of the length
2 of the extension, if any, for performance of the obligations affected by the force majeure event.

3 65. If EPA, after a reasonable opportunity for review and comment by the District,
4 does not agree that the delay or anticipated delay has been or will be caused by a force majeure
5 event, EPA will notify Blue Lake in writing of its decision.

6 66. If Blue Lake elects to invoke the dispute resolution procedures set forth in Section
7 XI (Dispute Resolution), it shall do so no later than 30 days after receipt of EPA's notice. In any
8 such proceeding, Blue Lake shall have the burden of demonstrating by a preponderance of the
9 evidence that the delay or anticipated delay has been or will be caused by a force majeure event,
10 that the duration of the delay or the extension sought was or will be warranted under the
11 circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and
12 that Blue Lake complied with the requirements of Paragraphs 62 and 63, above. If Blue Lake
13 carries this burden, the delay at issue shall be deemed not to be a violation by Blue Lake of the
14 affected obligation of this Consent Decree identified to EPA and the Court.

15 **XI. DISPUTE RESOLUTION**

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

22 68. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under
23 this Consent Decree shall first be the subject of informal negotiations. The dispute shall be
24 considered to have arisen when Blue Lake sends the United States a written Notice of Dispute.
25 Such Notice of Dispute shall state clearly the matter in dispute. The period of informal
26 negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is
27 modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations,
28 then the position advanced by the United States shall be considered binding unless, within 10

1 Days after the conclusion of the informal negotiation period, Blue Lake invokes formal dispute
2 resolution procedures as set forth below.

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

8 70. The United States shall serve its Statement of Position within 45 Days of receipt
9 of Blue Lake's Statement of Position. The United States' Statement of Position shall include,
10 but need not be limited to, any factual data, analysis, or opinion supporting that position and any
11 supporting documentation relied upon by it. The United States' Statement of Position shall be
12 binding on Blue Lake, unless Blue Lake files a motion for judicial review of the dispute in
13 accordance with Paragraph 72.

14 71. The United States shall maintain the administrative record for any dispute
15 following these procedures. The administrative record shall consist of the Parties' Statements of
16 Position and supporting documentation submitted with the Statements of Position.

17 72. Blue Lake may seek judicial review of the dispute by filing with the Court and
18 serving on the United States and the District, in accordance with Section XVI of this Consent
19 Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be
20 filed within 10 Days of receipt of the United States' Statement of Position pursuant to the
21 preceding Paragraph. The motion shall contain a written statement of Blue Lake's position on
22 the matter in dispute, including any supporting factual data, analysis, opinion, or documentation,
23 and shall set forth the relief requested and any schedule within which the dispute must be
24 resolved for orderly implementation of the Consent Decree.

25 73. The United States and District shall respond to Blue Lake's motion within the
26 time period allowed by the Local Rules of this Court. Blue Lake may file a reply memorandum,
27 to the extent permitted by the Local Rules.

1 77. Notwithstanding the reference to Blue Lake’s Title V Permit in this Consent
2 Decree, the enforcement of such permit shall be in accordance with its own terms and the Act.
3 Blue Lake’s Title V Permit for the Facility shall not be enforceable under this Consent Decree
4 regardless of whether such term has or will become part of a Title V Permit, subject to the terms
5 of Section XX (Termination) of this Consent Decree.

6 78. Within thirty (30) months of EPA’s approval of the Boiler Engineering Study
7 Report, Blue Lake shall submit an application to the District to permanently include the
8 requirements and limitations enumerated in this Consent Decree into a federally-enforceable
9 permit (other than a Title V operating permit), such that the requirements and limitations
10 enumerated in this Paragraph become and remain ‘applicable requirements’ as that term is
11 defined in 40 C.F.R. Part 70.2 and these requirements shall survive the termination of this
12 Consent Decree in accordance with Section XX (Termination) in the form of a federally-
13 enforceable permit (other than a Title V operating permit). The permit shall require compliance
14 with the following: (a) any applicable Emission Rate; (b) all Continuous Operation requirements;
15 (c) any requirements of a plan approved pursuant to this Consent Decree, including the Fuel
16 Management, ESP Optimization, and Fugitive Road Dust Plans; (d) the Ash Handling and
17 Disposal Procedures in Paragraph 27; (e) all monitoring requirements of this Consent Decree; (f)
18 all limitations set forth in Section VI (Prohibition on Netting Credits or Offsets from Required
19 Controls; and (g) all compliance methods imposed by this Consent Decree.

20 79. Within ninety (90) Days of obtaining the permit required under Paragraph 78,
21 Blue Lake shall apply for amendment of its Title V Permit to incorporate the requirements and
22 limitations of such permit into the Title V Permit for the Facility.

23 80. Blue Lake shall provide the United States with a copy of each application for a
24 federally enforceable permit required by this Section, as well as a copy of any permit proposed
25 as a result of such application, to allow for timely EPA participation in any public comment
26 opportunity.

27 81. This Consent Decree shall not terminate before all the requirements and
28 limitations enumerated in this Consent Decree, including, but not limited to, those listed in

1 Paragraph 78, are incorporated into Blue Lake’s federally enforceable construction permits and
2 Title V Permit for the Facility.

3 **XIII. INFORMATION COLLECTION AND RETENTION**

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

- 7 a. monitor the progress of activities required under this Consent Decree;
- 8 b. verify any data or information submitted to the United States or the
9 District in accordance with the terms of this Consent Decree;
- 10 c. obtain samples and, upon request, splits of any samples taken by Blue
11 Lake or its representatives, contractors, or consultants;
- 12 d. obtain documentary evidence, including photographs and similar data; and
- 13 e. assess Blue Lake’s compliance with this Consent Decree.

14 83. Until five (5) years after the termination of this Consent Decree, Blue Lake shall
15 retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all
16 documents, records, or other information (including documents, records, or other information in
17 electronic form) in its or its contractors’ or agents’ possession or control, or that come into its or
18 its contractors’ or agents’ possession or control, and that relate in any manner to Blue Lake’s
19 performance of its obligations under this Consent Decree. This information-retention
20 requirement shall apply regardless of any contrary corporate or institutional policies or
21 procedures. At any time during this information-retention period, upon request by the United
22 States or the District, Blue Lake shall provide copies of any documents, records, or other
23 information required to be maintained under this Paragraph.

24 84. At the conclusion of the information retention period provided in the preceding
25 Paragraph, Blue Lake shall notify the United States and the District at least ninety (90) Days
26 prior to the destruction of any documents, records, or other information subject to the
27 requirements of the preceding Paragraph and, upon request by the United States or the District,
28 Blue Lake shall deliver any such documents, records, or other information to EPA or the District.

1 Blue Lake may assert that certain documents, records, or other information is privileged under
2 the attorney-client privilege or any other privilege recognized by federal law. If Blue Lake
3 asserts such a privilege, it shall provide the following: (1) the title of the document, record, or
4 information; (2) the date of the document, record, or information; (3) the name and title of each
5 author of the document, record, or information; (4) the name and title of each addressee and
6 recipient; (5) a description of the subject of the document, record, or information; and (6) the
7 privilege asserted by Blue Lake. However, no documents, records, or other information created
8 or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of
9 privilege.

10 85. Blue Lake may also assert that information required to be provided under this
11 Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to
12 any information that Blue Lake seeks to protect as CBI, Blue Lake shall follow the procedures
13 set forth in 40 C.F.R. Part 2.

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

19
20 **XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

21 87. This Consent Decree resolves the civil claims of the United States and the District
22 against Blue Lake for the violations alleged in the Complaint filed in this action through the date
23 of lodging.

24 88. The United States and the District reserve all legal and equitable remedies
25 available to enforce the provisions of this Consent Decree, except as expressly stated in
26 Paragraph 87. This Consent Decree shall not be construed to limit the rights of the United States
27 or the District to obtain penalties or injunctive relief under the Act or implementing regulations,
28 or under other federal or state laws, regulations, or permit conditions, except as expressly

1 specified in Paragraph 87. The United States and the District further reserve all legal and
2 equitable remedies to address any imminent and substantial endangerment to the public health or
3 welfare or the environment arising at, or posed by, Blue Lake's Facility, whether related to the
4 violations addressed in this Consent Decree or otherwise.

5 89. In any subsequent administrative or judicial proceeding initiated by the United
6 States or the District for injunctive relief, civil penalties, or other appropriate relief relating to the
7 Facility, Blue Lake shall not assert, and may not maintain, any defense or claim based upon the
8 principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-
9 splitting, or other defenses based upon any contention that the claims raised by the United States
10 or the District in the subsequent proceeding were or should have been brought in the instant case,
11 except with respect to claims that have been specifically resolved pursuant to Paragraph 87 of
12 this Section.

13 90. This Consent Decree is not a permit, or a modification of any permit, under any
14 federal, State, or local laws or regulations. Blue Lake is responsible for achieving and
15 maintaining complete compliance with all applicable federal, State, and local laws, regulations,
16 and permits; and Blue Lake's compliance with this Consent Decree shall be no defense to any
17 action commenced pursuant to any such laws, regulations, or permits, except as set forth herein.
18 The United States and the District do not, by their consent to the entry of this Consent Decree,
19 warrant or aver in any manner that Blue Lake's compliance with any aspect of this Consent
20 Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401 *et seq.*, or with any
21 other provisions of federal, State, or local laws, regulations, or permits. This Consent Decree
22 does not limit or affect the rights of the District to incorporate additional and/or more stringent
23 conditions than those established in this Consent Decree in its permits or approvals for the
24 Facility as may be authorized or warranted under federal, state, or local laws or regulations.

25 91. This Consent Decree does not limit or affect the rights of Blue Lake or of the
26 United States or the District against any third parties, not party to this Consent Decree, nor does
27 it limit the rights of third parties, not party to this Consent Decree, against Blue Lake, except as
28 otherwise provided by law.

1 riedel.brian@epa.gov

2 To EPA:

3 Director, Enforcement Division (ENF-1)
4 U.S. Environmental Protection Agency, Region IX
5 75 Hawthorne Street
6 San Francisco, CA 94105
7 Attn: Mark Sims, ENF-2-1
8 sims.mark@epa.gov

9 To the District:

10 Air Pollution Control Officer
11 North Coast Unified Air Quality Management District
12 707 L. St.
13 Eureka, CA 95501

14 and

15 Nancy Diamond
16 District Counsel
17 Law Offices of Nancy Diamond
18 822 G Street, Suite 3
19 Arcata, CA 95521

20 To Blue Lake:

21 Blue Lake Power, LLC
22 Attn: Glenn Zane
23 1615 Continental Street, Suite 100
24 Redding, CA 96001
25 and

26 David O'Neill
27 LandGas Technology LLC
28 5487 N. Milwaukee Avenue
Chicago, IL 60630

and

Jane E. Luckhardt
Day Carter & Murphy LLP
3620 American River Drive, Suite 205
Sacramento, CA 95864

1 **XVII. EFFECTIVE DATE**

2 95. The Effective Date of this Consent Decree shall be the date upon which this
3 Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted,
4 whichever occurs first, as recorded on the Court's docket.

5 **XVIII. RETENTION OF JURISDICTION**

6 96. The Court shall retain jurisdiction over this case until termination of this Consent
7 Decree, for the purpose of resolving disputes arising under this Decree or entering orders
8 modifying this Decree, pursuant to Sections XI and XIX, or effectuating or enforcing compliance
9 with the terms of this Decree.

10 **XIX. MODIFICATION**

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

15 98. Any disputes concerning modification of this Decree shall be resolved pursuant to
16 Section XI of this Decree (Dispute Resolution), provided, however, that, instead of the burden of
17 proof provided by Paragraph 74, the Party seeking the modification bears the burden of
18 demonstrating that it is entitled to the requested modification in accordance with Federal Rule of
19 Civil Procedure 60(b).

20 **XX. TERMINATION**

21 99. After Blue Lake has completed the requirements of Section V (Compliance
22 Requirements) of this Decree, has thereafter maintained continuous satisfactory compliance with
23 this Consent Decree for a period of four (4) years, has obtained federally-enforceable permits
24 that comply with the requirements of Section XII (Permits), and has paid the civil penalty and
25 any accrued interest and stipulated penalties as required by this Consent Decree, Blue Lake may
26 serve upon the United States and the District a Request for Termination, stating that Blue Lake
27 has satisfied those requirements, together with all necessary supporting documentation.
28

1 Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this
2 Consent Decree and to execute and legally bind the Party he or she represents to this document.

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

8 106. The Parties agree that Defendant need not file an answer to the Complaint in this
9 action unless or until the Court expressly declines to enter this Consent Decree.

10 **XXIII. INTEGRATION**

11 107. This Consent Decree constitutes the final, complete, and exclusive agreement and
12 understanding among the Parties with respect to the settlement embodied in the Decree and
13 supersedes all prior agreements and understandings, whether oral or written, concerning the
14 settlement embodied herein. Other than deliverables that are subsequently submitted and
15 approved pursuant to this Decree, no other document, nor any representation, inducement,
16 agreement, understanding, or promise, constitutes any part of this Decree or the settlement it
17 represents, nor shall it be used in construing the terms of this Decree.

18 **XXIV. HEADINGS**

19 108. Headings to the sections and subsections of this Consent Decree are provided for
20 convenience and do not affect the meaning or interpretation of the provisions of this Consent
21 Decree.

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XXV. FINAL JUDGMENT

109. 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, the District, and Blue Lake.

SO ORDERED.

Dated and entered this ___ day of _____, _____.


Hon. James Donato
UNITED STATES DISTRICT JUDGE
Northern District of California

1 Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

2
3 FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

4
5 BRIAN J. STRETCH
6 United States Attorney
7 Northern District of California

8 9/6/16
9 DATE:

10 
11 MICHAEL T. PYLE
12 Assistant United States Attorney
13 Northern District of California
14 150 Almaden Boulevard, Suite 900
15 San Jose, California 95113
16 Telephone: (408) 535-5087
17 michael.t.pyle@usdoj.gov
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1 Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

2 FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

3
4 7 Sept 2016
5 DATE:


6 ALEXIS STRAUSS
7 Acting Regional Administrator
8 United States Environmental Protection Agency, Region IX

8
9 7 Sept 2016
10 DATE:


11 CYNTHIA GILES
12 Assistant Administrator for Enforcement
13 and Compliance Assurance
14 United States Environmental Protection Agency


14 OF COUNSEL:
15 BRIAN RIEDEL
16 Assistant Regional Counsel
17 U.S. Environmental Protection Agency, Region IX
18 75 Hawthorne Street
19 San Francisco, California 94105

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1 Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

2 FOR PLAINTIFF NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT:

3
4 9/6/16
DATE:

5 
BRIAN WILSON
Air Pollution Control Officer
North Coast Unified Air Quality Management District

6
7
8 9/2/16
DATE:

9 
NANCY DIAMOND
District Counsel
North Coast Unified Air Quality Management District
Law Offices of Nancy Diamond
822 G Street, Suite 3
Arcata, CA 95521
Telephone: (707) 826-8540
Email: ndiamond@ndiamondlaw.com

1 Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

2 FOR DEFENDANT BLUE LAKE POWER, LLC:

3

4 9/2/2016

5 DATE:

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10 9/2/2016

11 DATE:

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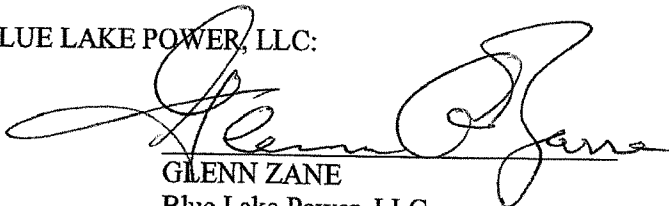
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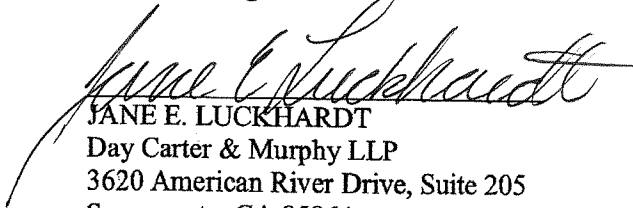
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28



GLENN ZANE
Blue Lake Power, LLC
1615 Continental Street, Suite 100
Redding, CA 96001
Telephone: (530) 246-2455
Email: gzane@crsinet.com



JANE E. LUCKHARDT
Day Carter & Murphy LLP
3620 American River Drive, Suite 205
Sacramento, CA 95864
Telephone: (916) 246-7316
Email: jluckhardt@daycartermurphy.com

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Exhibit 2

**Redline Comparing Revised Consent Decree to
Original Proposed Consent Decree**

1 ELLEN M. MAHAN
Deputy Section Chief
2 SHEILA McANANEY (IL Bar No. 6309635)
Trial Attorney
3 Environmental Enforcement Section
Environment & Natural Resources Division
4 United States Department of Justice
P.O. Box 7611
5 Washington, D.C. 20044
Telephone: (202) 616-6535
6 sheila.mcananey@usdoj.gov

7 BRIAN J. STRETCH (CSBN 163973)
United States Attorney
8 SARA WINSLOW (DC Bar No. 457643)
Chief, Civil Division
9 MICHAEL T. PYLE (CSBN 172954)
Assistant United States Attorney
10 150 Almaden Boulevard, Suite 900
11 San Jose, California 95113
Telephone: (408) 535-5087
12 michael.t.pyle@usdoj.gov

13 Attorneys for Plaintiff United States of America
14 (Counsel cont'd on next page)

15 UNITED STATES DISTRICT COURT FOR THE
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 UNITED STATES OF AMERICA and)
19 NORTH COAST UNIFIED AIR)
20 QUALITY MANAGEMENT) No. 3:16-cv-00961-JD
DISTRICT)
21 Plaintiffs,) Case No. _____) **CONSENT DECREE**
22 _____)
23 BLUE LAKE POWER, LLC,) Hon. James Donato
24) CONSENT DECREE
25 Defendant.)
_____)

1 NANCY DIAMOND (CSBN 130963)
District Counsel
2 Law Offices of Nancy Diamond
822 G Street, Suite 3
3 Arcata, CA 95521
Telephone: (707) 826-8540
4 Attorney for Plaintiff North Coast Unified Air
Quality Management District
5

6 JANE E. LUCKHARDT (CSBN 141919)
Day Carter Murphy LLP
7 3620 American River Drive, Suite 205
Sacramento, CA 95864
8 Telephone: (916) 246-7316
Attorney for Defendant Blue Lake Power LLC
9

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1 WHEREAS, Plaintiffs UNITED STATES OF AMERICA, on behalf of the United States
2 Environmental Protection Agency (“EPA”), and the NORTH COAST UNIFIED AIR QUALITY
3 MANAGEMENT DISTRICT (“District”), have filed a Complaint concurrently with this Consent
4 Decree, alleging that Defendant BLUE LAKE POWER, LLC (“Blue Lake”) violated and/or
5 continues to violate the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7401 *et seq.*, including
6 the California State Implementation Plan (“SIP”) authorized by Section 110(a) of the Act, 42
7 U.S.C. § 7410 *et seq.*, through violations of authority to construct (“ATC”) permits, and
8 conditions therein, issued by the District related to Blue Lake’s ownership and operation of a
9 biomass fueled electric generating facility in the City of Blue Lake (the “Facility”);

10 WHEREAS, the Complaint seeks injunctive relief and the assessment of civil penalties
11 for alleged violations of the Clean Air Act and rules promulgated under the California SIP,
12 related to its ownership and operation of the Facility;

13 WHEREAS, EPA issued a notice of violation (“NOV”) to Blue Lake with respect to such
14 allegations on March 3, 2014;

15 WHEREAS, Blue Lake denies the violations alleged in the Complaint and the NOV and
16 does not admit to any liability arising out of the transactions or occurrences alleged in the
17 Complaint or the NOV;

18 WHEREAS, notwithstanding any provisions of this Consent Decree related to the
19 payment of a civil penalty, the United States, the District, and Blue Lake (the “Parties”) agree
20 that Blue Lake has not admitted, and the United States and the District have not proven to the
21 Court, the existence of any of the alleged violations;

22 WHEREAS, the United States reviewed Financial Information and determined Blue Lake
23 has a limited ability to pay a civil penalty in this matter;

24 WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds,
25 that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation
26 among the Parties and that this Consent Decree is reasonable and in the public interest; and
27
28

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

4 **I. JURISDICTION AND VENUE**

5 1. This Court has jurisdiction over the subject matter of this action, pursuant to
6 28 U.S.C. §§ 1331, 1345, 1355, 1367, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and
7 over the Parties. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. §
8 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the
9 Complaint are alleged to have occurred in, and Blue Lake resides in and conducts business in,
10 this judicial district. For purposes of this Decree, or any action to enforce this Decree, Blue Lake
11 consents to the Court's jurisdiction over this Decree and any such action and over Blue Lake and
12 consents to venue in this judicial district.

13 2. For purposes of this Consent Decree, Blue Lake agrees that the Complaint states
14 claims upon which relief may be granted pursuant to Section(s) 113(a)(1)(C) and 113(b)(1) of
15 the Act, 42 U.S.C. §§ 7413(a)(1)(C) and 7413(b)(1).

16 **II. APPLICABILITY**

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

20 4. No transfer of ownership or operation of the Facility, whether in compliance with
21 the procedures of this Paragraph or otherwise, shall relieve Blue Lake of its obligation to ensure
22 that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake the
23 obligations required by Section V of this Decree and to be substituted for Blue Lake as a Party
24 under the Decree and thus be bound by the terms thereof, and (2) the United States and the
25 District consent to relieve Blue Lake of its obligations. The United States and the District may
26 refuse to approve the substitution of the transferee for Blue Lake if Plaintiffs determine that the
27 proposed transferee does not possess the requisite technical abilities or financial means. The
28 decision to refuse to approve the substitution of the transferee for Blue Lake shall not be subject

1 to judicial review. If the United States and the District approve such a substitution, it shall
2 constitute a material change to this Decree within the meaning of Paragraph 97. At least 30 Days
3 prior to such transfer, Blue Lake shall provide a copy of this Consent Decree to the proposed
4 transferee and shall simultaneously provide written notice of the prospective transfer, together
5 with a copy of the proposed written agreement, to EPA Region IX, the United States Attorney
6 for the Northern District of California, the District, and the United States Department of Justice,
7 in accordance with Section XVI of this Decree (Notices). Any attempt to transfer ownership or
8 operation of the Facility without complying with this Paragraph constitutes a violation of this
9 Decree.

10 5. Blue Lake shall provide a copy of this Consent Decree to all officers, employees,
11 and agents whose duties might reasonably include compliance with any provision of this Decree,
12 as well as to the contractor retained to perform the Boiler Engineering Study described in
13 Paragraph 13 of this Consent Decree. Blue Lake shall condition that contract upon performance
14 of the work in conformity with Paragraph 13 of this Consent Decree.

15 6. In any action to enforce this Consent Decree, Blue Lake shall not raise as a
16 defense the failure by any of its officers, directors, employees, agents, or contractors to take any
17 actions necessary to comply with the provisions of this Consent Decree.

18 **III. DEFINITIONS**

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

23 a. “Ammonia Slip” shall mean the amount of unreacted ammonia contained
24 in emissions from the Main Stack when the SNCR system is operating as measured in parts per
25 million. Ammonia Slip shall be calculated by subtracting Baseline Ammonia from Stack
26 Ammonia;

27 b. “Baseline Ammonia” shall mean the average (arithmetic mean) of the
28 ammonia in emissions from the Main Stack, as initially measured pursuant to Paragraph 30 prior

1 to installation of the SNCR when urea is not being injected into the Boiler. After installation of
2 the SNCR, Baseline Ammonia may be reconfirmed or reestablished periodically subject to EPA
3 approval, after consultation with the District;

4 c. “Blue Lake” shall mean Defendant Blue Lake Power, LLC;

5 d. “Boiler” shall mean the Zurn boiler used at the Facility to produce energy;

6 e. “Block Average” shall mean, for purposes of meeting an Emission Rate in
7 pounds per million British Thermal Units (lbs/MMBtu) set forth in this Consent Decree, the rate
8 of emission of CO or NO_x from the Main Stack expressed as lbs/MMBtu, and calculated in
9 accordance with the following procedure: first, sum the total pounds of the Pollutant in question
10 emitted from the Main Stack during the period covered by the Block Average Emission Rate, for
11 instance a 24-hour period, as measured pursuant to Section V; second, sum the total MMBtu
12 burned during the same period. A Block Average shall only be calculated once and will not
13 include any operating hours from the previous Block Average. For purposes of compliance with
14 the 24-hour Block Average Emission Rate set forth in Paragraph 19 during periods of Startup
15 and Shutdown, the Block Average may include periods that do not include Startup and Shutdown
16 as necessary to complete the requisite averaging period. For instance, if a startup only lasts 8
17 hours, then the emissions from the next 16 hours of operation will also be included in the Block
18 Average to complete the 24 hour averaging period;

19 f. “CD Emissions Reductions” shall mean any emissions reductions that
20 result from any projects, controls, or any other actions utilized to comply with this Consent
21 Decree;

22 g. “CEMS” or “Continuous Emission Monitoring System,” shall mean, for
23 obligations involving the monitoring of NO_x and CO under this Consent Decree, the total
24 equipment and software required to sample and condition (if applicable), to analyze, and to
25 provide a record of NO_x and CO Emission Rates, and the raw data necessary to support the
26 reported Emission Rates, and that have been installed and calibrated in accordance with 40
27 C.F.R. § 60.13 and 40 C.F.R. Part 60, Appendix B and Appendix F;

1 h. "CO" shall mean carbon monoxide, measured in accordance with the
2 provisions of this Consent Decree;

3 i. "Complaint" shall mean the complaint filed by the United States and the
4 District in this action;

5 j. "Consent Decree" or "Decree" shall mean this consent decree;

6 k. "Continuously Operate" or "Continuous Operation" means that when a
7 pollution control technology or combustion control is required to be continuously used at a unit
8 pursuant to this Consent Decree, it shall be operated at all times such unit is in operation (except
9 as otherwise provided by Section X (Force Majeure)), consistent with the technological
10 limitations, manufacturers' specifications, good engineering and maintenance practices, and
11 good air pollution control practices for minimizing emissions (as defined in 40 C.F.R. §
12 60.11(d)) for such equipment and the unit.

13 l. "Day" shall mean a calendar day unless expressly stated to be a business
14 day. In computing any period of time under this Consent Decree, where the last day would fall
15 on a Saturday, Sunday, federal, or state holiday, the period shall run until the close of business of
16 the next business day;

17 m. "Demonstration Period" shall mean the twelve (12) month period
18 following twelve (12) months after EPA's approval of the Boiler Engineering Study Report as
19 set forth in Paragraph 20;

20 n. "District" shall mean the North Coast Unified Air Quality Management
21 District;

22 o. "Emission Rate" for a given Pollutant means the number of pounds of that
23 Pollutant emitted per million British thermal units of heat input (lb/MMBtu), measured in
24 accordance with the provisions of this Consent Decree;

25 p. "Effective Date" shall have the definition provided in Section XVII;

26 q. "EPA" shall mean the United States Environmental Protection Agency
27 and any of its successor departments or agencies;

28

1 r. “ESP” shall mean the electrostatic precipitator currently used on the Main
2 Stack to control particulate matter emissions from the Boiler;

3 s. “Facility” shall mean the biomass fueled electric generating facility owned
4 by Blue Lake and located at 200 Taylor Way, Blue Lake, California, together with all that
5 property more particularly described as Parcel 1 and Parcel 2 on that ALTA/ACSM Land Title
6 Survey as depicted in Exhibit 1;

7 t. “Financial Information” shall mean balance sheets, tax returns, financial
8 statements, cash flow statements, projections, and all other financial information whether
9 provided orally or in writing that Blue Lake made available to the United States prior to the Date
10 of Lodging of this Consent Decree;

11 u. “Good Air Pollution Control Practices” shall mean operating practices that
12 comply with the standard set forth in 40 C.F.R. § 60.11(d) and manufacturer specifications and
13 recommendations;

14 ~~u.v.~~ “Main Stack” shall mean the stack on the Boiler at the Facility where
15 gases are released to the atmosphere post combustion of fuel;

16 ~~v.w.~~ “NH₃” shall mean ammonia, as determined in accordance with the
17 provisions of this Consent Decree;

18 ~~w.x.~~ “NO_x” means oxides of nitrogen, measured in accordance with the
19 provisions of this Consent Decree;

20 ~~x.y.~~ “OFA” or “Over-Fire Air” means a gas conveyance system consisting of
21 an induction fan(s), ductwork, injection ports & nozzles, sensors and digital controls used for the
22 purpose of enhancing the combustion of gaseous fuel at a location above the primary combustion
23 zone;

24 ~~y.z.~~ “Operating Hour” shall mean any hour during which any material has
25 been burned in the Boiler;

26 ~~z.aa.~~ “Operating Day” shall mean any day during which any material has been
27 burned in the Boiler;

28

1 aa.bb. “Paragraph” shall mean a portion of this Decree identified by an Arabic
2 numeral;

3 bb.cc. “Parties” shall mean the United States, the District, and Blue Lake;

4 ee.dd. “PM₁₀” shall mean particulates of less than 10 microns in diameter, as
5 measured in accordance with the provisions of this Consent Decree;

6 dd.ee. “Pollutant” shall mean NO_x, CO, NH₃, and PM₁₀;

7 ee.ff. “Rolling Average” shall mean, for purposes of complying with an
8 Emission Rate in pounds per million per BTU (lb/MMBtu) set forth in this Consent Decree, the
9 rate of emission of NO_x, CO, or PM₁₀ from the Main Stack, respectively, expressed as
10 lb/MMBtu, and calculated in accordance with the following procedure: first, sum the total
11 pounds of the Pollutant in question emitted from the Main Stack during the last Operating Hour
12 or Day, depending upon the period of compliance set forth for the applicable Emission Rate, and
13 the previous hours or days of operation to make the full length of the rolling average period (for
14 instance, if it is an 8-hour rolling average, then add the pounds of Pollutant emitted for the last 7
15 Operating Hours to the pounds calculated for the most recent hour); second, sum the total
16 MMBtu burned in the Boiler during the same Operating Hour or Day, depending upon the period
17 of compliance set forth for the applicable Emission Rate, and the previous number of Operating
18 Hours or Operating Days to make the full length of the Rolling Average period; and third, divide
19 the total number of pounds emitted from the Main Stack during the period in question by the
20 total MMBtu burned during the same period. A new Rolling Average Emission Rate shall be
21 calculated for each new Operating Hour or Operating Day;

22 ff.gg. “Section” shall mean a portion of this Decree identified by a roman
23 numeral;

24 gg.hh. “Shutdown” shall mean the period beginning with curtailment of fuel feed
25 and concluding when the recorded Main Stack temperature reaches 150°F and remains so for at
26 least one hour;

1 EPA Cincinnati Finance Office
2 26 Martin Luther King Drive
3 Cincinnati, Ohio 45268.

4 10. Blue Lake shall pay the portion of the civil penalty due to the District by check
5 made out to North Coast Unified Air Quality Management District, with “Blue Lake Power,
6 Consent Decree” in the memorandum line. Payment shall be delivered to Air Pollution Control
7 Officer, North Coast Unified Air Quality Management District, 707 L. St., Eureka, CA 95501.

8 11. Blue Lake shall not deduct any penalties paid under this Decree pursuant to this
9 Section or Section IX (Stipulated Penalties) in calculating its federal, state and local income tax.

10 **V. COMPLIANCE REQUIREMENTS**

11 12. Boiler Engineering Study Protocol. ~~Within fifteen (15) Days following the~~
12 ~~Effective Date of this Consent Decree or in the event the Boiler is not operating following the~~
13 ~~Effective Date, within fifteen (15) Days of recommencing operation of the Boiler, Blue Lake~~
14 ~~shall prepare and submit~~ Blue Lake has submitted to EPA and the District for review and
15 approval pursuant to Paragraph 34 a protocol for the performance of the Boiler Engineering
16 Study required by Paragraph 13.

17 13. Boiler Engineering Study. No later than ninety (90) Days following the later of
18 recommencing operation of the Boiler or EPA’s approval of the protocol described in Paragraph
19 12, Blue Lake shall complete the Boiler Engineering Study in accordance with the approved
20 Boiler Engineering Study Protocol and submit to EPA and the District for review and approval
21 pursuant to Paragraph 34 a report containing the Study’s findings (“Boiler Engineering Study
22 Report”). The Boiler Engineering Study and Report shall include the following information and
23 analysis:

- 24 a. Completion of as-built drawings of the Boiler configuration;
25 b. Recommendations for improvements to the OFA system and the
26 configuration of the SNCR system designed to optimize the reduction of CO and NO_x emissions
27 to achieve the Emission Rates set forth in Paragraphs 18 and 19;
28 c. Assessment of the adequacy of the capacity of the Boiler’s induced draft
fan;

1 d. Testing of injection of air and urea at locations modeled and/or predicted
2 to best control CO and NO_x emissions and at rates up to the maximum achievable levels to
3 enable compliance with the levels identified in Paragraphs 18 and 19;

4 e. Recommendation as to the highest achievable urea injection level for the
5 SNCR, based upon the recommended location of injection ports and the urea injection testing,
6 while consistently maintaining Ammonia Slip at 20 parts per million (“ppm”) or less by volume,
7 corrected to 3% excess oxygen; and

8 f. Prediction of best achievable Emission Rates for CO and NO_x from the
9 Main Stack after installation and Continuous Operation of the optimized and/or improved OFA
10 and SNCR systems.

11 ***Control Technologies and Emission Rates***

12 14. No later than ninety (90) Days following EPA’s approval of the Boiler
13 Engineering Study Report, Blue Lake shall have entered into a contract for the purchase of the
14 new equipment necessary for the installation of the improved OFA and SNCR systems. Within
15 thirty (30) days of entry into such contract, Blue Lake shall submit to EPA and the District the
16 contract and/or documentation evidencing the purchase of such equipment.

17 15. No later than twelve (12) months following EPA’s approval of the Boiler
18 Engineering Study Report, Blue Lake shall install and Continuously Operate the improved OFA
19 and SNCR systems consistent with the parameters set forth in the approved Boiler Engineering
20 Study Report and in a manner that optimizes combustion and minimizes NO_x and CO emissions
21 at all times when the Boiler is in operation.

22 16. ~~ESP Optimization Plan. No later than ninety (90) Days.~~

23 a. Blue Lake may only recommence operation of the Boiler after it has
24 submitted to EPA and the District the following ~~the Effective Date of this Consent Decree:~~

25 i. Certification by a Member that all damaged discharge electrodes and
26 collecting plates in the ESP have been replaced and that the ESP can
27 operate in conformity with Good Air Pollution Control Practices when
28 the Facility is operating at 95% of its permitted operational capacity;

1 ii. Recommended operating parameters for the ESP that ensure PM₁₀
2 emission reductions at all times the Boiler is in operation, including
3 both Start Up and Shut Down and steady state operations. These
4 recommended operating parameters must include the monitoring
5 parameters that are recorded from the transformer/rectifier controller
6 and the rapper control panel; and

7 iii. Confirmation that Blue Lake's employees have been trained in proper
8 operation of the ESP in accordance with the recommended operating
9 parameters.

10 b. Blue Lake shall operate the ESP in accordance with the recommended
11 operating parameters submitted to EPA and the District pursuant to Paragraph 16.a.ii at all times
12 until final approval of the ESP optimization plan referred to in Paragraph 16.d.

13 c. Within fourteen (14) Days of recommencing operation of the Boiler, a
14 consultant qualified in ESP operation shall conduct a full technical evaluation of the Facility's
15 ESP, including testing of rappers, to confirm that the ESP is operating in accordance with Good
16 Air Pollution Control Practices when the Facility is operating at 95% of its permitted operational
17 capacity. The engineer shall provide a full report of the evaluation, including any identified
18 deficiencies and recommended repairs or actions, to Blue Lake, EPA, and the District within
19 thirty (30) Days of the evaluation. Blue Lake shall take all steps recommended by the report
20 within 30 Days of receiving the report, unless otherwise approved by EPA in consultation with
21 the District.

22 a.d. Within sixty (60) Days of recommencing operation of the Boiler, Blue
23 Lake shall submit to EPA and the District for review and approval pursuant to Paragraph 34 an
24 ESP optimization plan, which analyzes and recommends operating parameters for the ESP that
25 ensuresensure PM₁₀ emission reductions at all times, including Start Up and Shut Down,
26 whenthat the Boiler is in operation sufficient to meet the Emission Rates set forth in Paragraphs
27 18 and 19. The ESP optimization plan shall, ~~at a minimum, meet~~ comply with the monitoring
28 requirements contained at 40 C.F.R. § 64.3 (compliance assurance monitoring).

1 ~~16.17.~~ At all times, including periods of Startup and Shutdown, Defendant shall, to the
2 extent practicable, maintain and operate the Boiler, including associated air pollution control
3 equipment, in a manner consistent with ~~good air pollution control practice~~Good Air Pollution
4 Control Practices for minimizing emissions.

5 ~~17.18.~~ No later than twelve (12) months following EPA's approval of the Boiler
6 Engineering Study Report, Blue Lake shall achieve and maintain emissions from the Main Stack,
7 excluding periods of Startup or Shutdown at or below the following Emission Rates:

- 8 a. NO_x emissions of 0.12 lb/MMBtu on a 24-hour Rolling Average basis and
9 0.10 lb/MMBtu on an annual Rolling Average Basis;
10 b. CO emissions of 0.40 lb/MMBtu on a 24-hour Rolling Average basis; and
11 c. PM₁₀ emissions of 0.02 lb/MMBtu on a 3-hour average basis as required
12 to be measured in Paragraph 33.

13 ~~18.19.~~ No later than twelve (12) months following EPA's approval of the Boiler
14 Engineering Study Report, Blue Lake shall achieve and maintain emissions from the Main Stack
15 during periods of Startup or Shutdown at or below the following Emission Rates:

- 16 a. NO_x emissions of 0.15 lb/MMBtu on a 24-hour Block Average basis;
17 b. CO emissions of 0.50 lb/MMBtu on a 24-hour Block Average basis; and
18 c. PM₁₀ emissions of 0.02 lb/MMBtu on a 3-hour average basis as verified
19 by operation in compliance with the approved ESP optimization plan.

20 ~~19.20.~~ Petition for Alternative Emission Rate(s). The twelve (12) month period
21 beginning twelve (12) months after EPA's approval of the Boiler Engineering Study Report shall
22 comprise the Demonstration Period. During the Demonstration Period, and six (6) months
23 thereafter, Blue Lake's failure to achieve and maintain the Emission Rates set forth in
24 Paragraphs 18 and 19 shall not be deemed a violation of this Consent Decree, nor shall Blue
25 Lake be responsible for stipulated penalties pursuant to Section IX (Stipulated Penalties).
26 However, it shall be deemed a violation, and Blue Lake shall be responsible for stipulated
27 penalties, if Blue Lake fails to Continuously Operate the OFA and SNCR systems consistent
28 with the parameters set forth in the approved Boiler Engineering Study Report and in a manner

1 that optimizes combustion and minimizes NO_x, CO, and PM₁₀ emissions. Additionally, if Blue
2 Lake fails to achieve and maintain the PM₁₀ Emission Rates set forth in Paragraphs 18 and 19, it
3 shall also be deemed a violation, and Blue Lake shall be responsible for stipulated penalties, if
4 Blue Lake fails to operate the ESP consistent with the approved ESP optimization plan.

5 20-21. At any time within six (6) months after the Demonstration Period described in
6 Paragraph 20, Blue Lake may submit a petition to EPA and the District for review and approval
7 pursuant to Paragraph 34, for a proposed revision to the NO_x, CO, and/or PM₁₀ Emission Rates
8 set forth in Paragraphs 18 and 19. In such a petition, Blue Lake must demonstrate that it is
9 technically infeasible to achieve one or more of the NO_x, CO, and/or PM₁₀ Emissions Rates in
10 Paragraphs 18 and/or 19, considering the results of the Boiler Engineering Study and all
11 information and data collected during the Demonstration Period. Blue Lake shall propose in such
12 a petition the lowest NO_x, CO and/or PM₁₀ Emission Rate that it can practicably achieve and
13 maintain while maintaining an Ammonia Slip of 20 parts per million (corrected to 3% O₂) or
14 less. With any such petition, Blue Lake shall include all pertinent information, documents, and
15 data that support, or were considered in preparing such alternative Emission Rate, including all
16 data collected during the Demonstration Period. In no event shall the proposed alternative
17 Emission Rate be higher than the following:

- 18 a. During periods that do not include Startup and Shutdown:
 - 19 i. NO_x emissions of 0.15 lb/MMBtu on a 24-hour Rolling Average basis
 - 20 and 0.125 lb/MMBtu on an annual Rolling Average basis;
 - 21 ii. CO emissions of 0.55 lb/MMBtu on a 24-hour Rolling Average Basis;
 - 22 and
 - 23 iii. PM₁₀ emissions of 0.03 lb/MMBtu on a 3-hour Average Basis, as
 - 24 required to be measured in Paragraph 33.
- 25 b. During periods that include Startup and Shutdown
 - 26 i. NO_x emissions of 0.175 lb/MMBtu on a 24-hour Block Average basis;
 - 27 ii. CO emissions of 0.69 lb/MMBtu on a 24-hour Block Average basis;
 - 28 and

- 1 iii. PM₁₀ emissions of 0.03 lb/MMBtu on a 3-hour Average Basis, as
2 verified by operation in compliance with the approved ESP
3 Optimization Plan.

4 21.22. Following receipt of a petition submitted to EPA and the District pursuant to
5 Paragraph 21, EPA, in consultation with the District, may (a) determine that Blue Lake failed to
6 successfully demonstrate that it could not achieve and maintain the applicable Emission Rate, (b)
7 approve the proposed alternative Emission Rate(s), or (c) establish a different Emission Rate
8 than the one specified in this Decree or proposed by Blue Lake in its petition, based upon EPA's
9 review of the information submitted in the petition, as well as other available and relevant
10 information. In no event shall the approved alternative Emission Rate(s) be higher than the
11 applicable Emission Rate(s) listed in Paragraph 21. EPA reserves the right to require Blue Lake
12 to perform additional source testing, RATA testing, or other relevant testing before responding to
13 Blue Lake's petition. If EPA determines that Blue Lake has demonstrated that it could not
14 maintain compliance with the Emission Rate(s) specified in this Decree and approves one or
15 more alternative Emission Rates, such Emission Rate(s) shall be deemed to have replaced the
16 relevant NO_x, CO and/or PM₁₀ Emission Rate(s) in question during (a) the time during which
17 achievement of the Emission Rate(s) was infeasible (including any period of time that occurred
18 prior to submittal of the request) and (b) the pendency of EPA and the District's review of Blue
19 Lake's request.

20 22.23. No later than thirty (30) Days following Blue Lake's receipt of EPA's approval of
21 one or more alternative Emission Rates, Blue Lake shall achieve and maintain the new Emission
22 Rate(s).

23 23.24. In the event that, pursuant to Paragraph 22 above, EPA approves one or more
24 alternative Emission Rates to those set forth in Paragraphs 18 and 19, a Notice shall be lodged
25 with the Court informing it of the new applicable Emission Rate(s).

26 ***Fugitive Dust Controls and Good Combustion Control Practices***

27 24.25. Fuel Management Plan: ~~No later than sixty (60) Days following the Effective~~
28 ~~Date of this Consent Decree, Defendant shall submit~~Blue Lake has submitted to EPA and the

1 District for review and approval pursuant to Paragraph 34 a plan for proper management of
 2 Boiler fuel (“Fuel Management Plan”). The Plan shall establish measures for adequate drying of
 3 the fuel while minimizing fugitive dust from fuel handling sufficient to ensure that no visible
 4 dust leaves the Facility. The Plan shall contain, at a minimum, the following measures: (i)
 5 standards and procedures for ensuring that the fuel is adequately dry prior to burning in the
 6 Boiler, including, as appropriate and warranted, off-site storage, covering of the fuel piles to
 7 shield them from moisture, protecting fuels from moisture seepage from the ground, and limiting
 8 the amount of time that fuel is stored on-site; (ii) identification, purchase (if necessary) and
 9 proper operation of equipment to ensure that fuel is chipped to an optimal size for burning; (iii) a
 10 procedure and schedule for routine cleanup and application of water, tarps, or dust suppressants
 11 to storage piles, processing areas, and other disturbed areas to control fugitive dust to the
 12 maximum extent practicable; (iv) measures to ensure that truck loading and unloading of fuel
 13 materials is conducted in a manner that minimizes spillage and fugitive dust; and (v) measures to
 14 minimize fugitive dust from grinding, chipping, unloading and conveying of fuel, including
 15 consideration of, as appropriate and warranted, shielding of the operations and/or limiting such
 16 operations to avoid periods of high wind.

17 ~~25-26. Fugitive Road Dust Plan. No later than sixty (60) Days following the Effective~~
 18 ~~Date of this Consent Decree, Defendant shall submit~~Blue Lake has submitted to EPA and the
 19 District for review and approval pursuant to Paragraph 34 a plan to control fugitive dust from
 20 roads at the Facility (“Fugitive Road Dust Plan”) sufficient to ensure that no visible dust leaves
 21 the Facility. The Plan shall contain, at a minimum, the following measures: (i) procedures,
 22 application intensity, and schedule for application of water and/or non-aqueous dust suppressant
 23 to all unpaved roads at the Facility; and (ii) procedures and schedule of sweeping and
 24 maintenance of all paved roads at the Facility.

25 ~~26-27. Ash Handling and Disposal Procedures.~~ As of the Effective Date of this Consent
 26 Decree or upon recommencing operation of the Boiler, whichever is earlier, all ash shall be
 27 transported in a wet condition in covered containers or stored in closed containers at all times.
 28

1 Ash that will not be used at the Facility shall be disposed of in accordance with all applicable
2 rules and regulations.

3 ***Continuous Emission Monitoring Systems and Stack Testing***

4 ~~27.28.~~ As of the Effective Date of this Consent Decree, except during periods of
5 breakdowns, repairs, calibration checks, and zero span adjustments, Blue Lake shall maintain
6 and operate the CEMS to collect data on NO_x and CO emissions from the Main Stack at all times
7 the Boiler is in operation in accordance with installation, certification, calibration, and
8 maintenance requirements of 40 C.F.R. Part 60, Subpart A, and Appendices B and F.

9 ~~28.29.~~ The CEMS shall be used to demonstrate compliance with the NO_x and CO
10 Emission Rates set forth in Paragraphs 18 and 19 of this Decree, or as otherwise established
11 pursuant to Paragraph 22, and shall monitor and record the applicable Emission Rates in units of
12 pounds of Pollutant per million BTU.

13 ~~29.30.~~ Baseline Ammonia Stack Tests. Blue Lake shall conduct the following ammonia
14 stack tests on the Main Stack consistent with Test Method BAAQMD ST-1B at conditions
15 representing normal operations:

16 a. Prior to the installation and operation of the SNCR, Blue Lake shall
17 conduct sampling pursuant to section 8 of Test Method BAAQMD ST-1B. If the results indicate
18 any detectable concentrations of ammonia in any of the three test runs, Blue Lake shall conduct
19 sampling on two additional days within 60 Days of the date of the initial test; and

20 b. After installation and during Continuous Operation of the SNCR during
21 months 6 through 9 of the Demonstration Period, when the system is achieving and maintaining
22 the NO_x limit set forth in Paragraph 18.a (alternatively, if the NO_x limit has not been achieved,
23 despite Blue Lake operating the SNCR consistent with the approved Boiler Engineering Study
24 report, then during a period when NO_x emissions reductions have been optimized to the
25 maximum extent possible consistent with the approved Boiler Engineering Study report):

26 i. Blue Lake shall conduct sampling pursuant to section 8 of Test
27 Method BAAQMD ST-1B.

1 ii. If the results of these tests indicate the average concentration of
2 ammonia for the three test runs to be greater than or equal to 15 ppm,
3 correct to 3% O₂, Blue Lake shall conduct sampling pursuant to
4 section 8 of Test Method BAAQMD ST-1B on two additional Days
5 within 60 Days of the date of the first test conducted in accordance
6 with Paragraph 30.b.i;

7 c. Ninety (90) Days prior to each set of stack tests, Blue Lake shall submit a
8 stack test plan to EPA and the District for review and approval pursuant to Paragraph 34. If EPA
9 has not taken action on the test plan within sixty (60) days of submittal, the plan shall be deemed
10 approved pursuant to Paragraph 34. The results of each ammonia stack test shall be submitted to
11 EPA and the District within sixty (60) Days following completion of each test.

12 30.31. Ammonia Slip Calculation. Within thirty (30) Days of completion of the ammonia
13 stack tests required by Paragraph 30.b, Blue Lake shall calculate the Ammonia Slip. If the
14 Ammonia Slip is above 20 ppm corrected to 3% O₂, BLP shall:

15 a. Calculate the mass emission rate of ammonia in excess of 20 ppm
16 corrected to 3% O₂.

17 b. Within sixty (60) Days of completion of ammonia stack tests required by
18 Paragraph 30.b, Blue Lake shall perform stack tests consistent with the procedures set forth in
19 Paragraph 30.b, reducing urea injection by the excess mass emission rate of ammonia (corrected
20 to reflect the mass ratio of urea to ammonia) determined under Paragraph 31.a.

21 c. Within thirty (30) Days of completion of the tests required by Paragraph
22 31.b, Blue Lake shall calculate the Ammonia Slip. If the Ammonia Slip is above 20ppm
23 corrected to 3% O₂ and the NO_x Emission Rate is below the NO_x limit set forth in Paragraph
24 19.a, Blue Lake shall repeat the procedure set forth in Paragraphs 31.a and 31.b.

25 d. Within thirty (30) Days of completion of additional tests required under
26 Paragraph 31.c, Blue Lake shall submit to EPA and the District all test results, the calculated
27 Ammonia Slip, and all calculations done pursuant to Paragraph 31.c.

28 31.32. Annual Ammonia Stack Tests.

1 a. No later than eighteen (18) months following EPA's approval of the
2 Boiler Engineering Study Report, Blue Lake shall conduct a stack test on the Main Stack to
3 determine the Ammonia Slip consistent with Test Method BAAQMD ST-1B, during
4 representative operating conditions. The test shall consist of three separate runs performed under
5 representative operating conditions not including periods of startup, shutdown, or malfunction.
6 Within fifteen (15) months following EPA's approval of the Boiler Engineering Study Report,
7 Blue Lake shall submit a stack test plan consistent with this Paragraph to EPA and the District
8 for review and approval pursuant to Paragraph 34. If EPA has not taken action on the test plan
9 within sixty (60) Days of submittal, the plan shall be deemed approved pursuant to Paragraph 34.
10 The results of the ammonia stack test shall be submitted to EPA and the District within ninety
11 (90) Days following completion of the test.

12 b. On an annual basis, Blue Lake shall conduct ammonia stack testing in
13 accordance with the procedures in Paragraph 32.a, including submission of a stack test plan
14 ninety (90) days prior to the test and submission of the test results within ninety (90) days
15 following completion of the test. Each test shall be performed no later than thirteen (13) months
16 after the previous one.

17 32-33. PM₁₀ Stack Tests.

18 a. No later than forty-five (45) Days following Blue Lake's restart of
19 operation of the Boiler, Blue Lake shall conduct a stack test on the Main Stack to determine
20 compliance with PM₁₀ Emission Rates in its current Title V Permit. Blue Lake shall use EPA
21 Method 5 or EPA Method 201a (filterable portion only), and each test shall consist of three
22 separate runs performed under representative operating conditions not including periods of
23 startup, shutdown, or malfunction. The sampling time for each run shall be at least 60 minutes
24 and the volume of the sample in each run shall be at least 0.85 dry standard cubic meters (30 dry
25 standard cubic feet). Blue Lake shall calculate the PM₁₀ Emission Rate from the stack test results
26 in accordance with 40 C.F.R. § 60.8(f). No later than fifteen (15) Days prior to recommencing
27 operation of the Boiler, Blue Lake shall submit a stack test plan consistent with this Paragraph to
28 EPA and the District for review and approval pursuant to Paragraph 34. If EPA has not taken

1 action on the test plan within fifteen (15) Days of submittal, the plan shall be deemed approved
2 pursuant to Paragraph 34. The results of the PM₁₀ stack test shall be submitted to EPA and the
3 District within sixty (60) Days following completion of the test.

4 a.b. No later than eighteen (18) months following EPA's approval of the
5 Boiler Engineering Study Report, Blue Lake shall conduct a stack test on the Main Stack to
6 determine compliance with PM₁₀ Emission Rates established by this Consent Decree. Blue Lake
7 shall use EPA Method 5 or EPA Method 201a (filterable portion only), and each test shall
8 consist of three separate runs performed under representative operating conditions not including
9 periods of startup, shutdown, or malfunction. The sampling time for each run shall be at least 60
10 minutes and the volume of the sample in each run shall be at least 0.85 dry standard cubic meters
11 (30 dry standard cubic feet). Blue Lake shall calculate the PM₁₀ Emission Rate from the stack
12 test results in accordance with 40 C.F.R. § 60.8(f). Within fifteen (15) months following EPA's
13 approval of the Boiler Engineering Study Report, Blue Lake shall submit a stack test plan
14 consistent with this Paragraph to EPA and the District for review and approval pursuant to
15 Paragraph 34. If EPA has not taken action on the test plan within sixty (60) Days of submittal,
16 the plan shall be deemed approved pursuant to Paragraph 34. The results of the PM₁₀ stack test
17 shall be submitted to EPA and the District within sixty (60) Days following completion of the
18 test.

19 b.c. On an annual basis, Blue Lake shall conduct PM₁₀ stack testing in
20 accordance with the procedures in Paragraph 33.ab, including submission of a stack test plan
21 ninety (90) days prior to the test and submission of the test results within ninety (90) days
22 following completion of the test. Each test shall be performed no later than thirteen (13) months
23 after the previous one.

24
25 ***Approval of Deliverables***

26 33.34. After review of any plan, report, or other item that is required to be submitted
27 pursuant to this Consent Decree, EPA, after consultation with the District, shall in writing: a)
28

1 approve the submission; b) approve the submission upon specified conditions; c) approve part of
2 the submission and disapprove the remainder; or d) disapprove the submission.

3 34.35. If the submission is approved pursuant to Paragraph 34.a, Blue Lake shall take all
4 actions required by the plan, report, or other document, in accordance with the schedules and
5 requirements of the plan, report, or other document, as approved. If the submission is
6 conditionally approved or approved only in part, pursuant to Paragraph 34.b or 34.c, Blue Lake
7 shall, upon written direction from EPA, after consultation with the District, take all actions
8 required by the approved plan, report, or other item that EPA, after consultation with the District,
9 determines are technically severable from any disapproved portions, subject to Blue Lake's right
10 to dispute only the specified conditions or the disapproved portions, under Section XI of this
11 Decree (Dispute Resolution).

12 35.36. If the submission is disapproved in whole or in part pursuant to Paragraph 34.c
13 or 34.d, Blue Lake shall, within 45 Days or such other time as the Parties agree to in writing,
14 correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion
15 thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is
16 approved in whole or in part, Blue Lake shall proceed in accordance with the preceding
17 Paragraph.

18 36.37. Any stipulated penalties applicable to the original submission, as provided in
19 Section IX of this Decree, shall accrue during the 45-Day period or other specified period, but
20 shall not be payable unless the resubmission is untimely or is disapproved in whole or in part;
21 provided that, if the original submission was so deficient as to constitute a material breach of
22 Blue Lake's obligations under this Decree, the stipulated penalties applicable to the original
23 submission shall be due and payable notwithstanding any subsequent resubmission.

24 37.38. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in
25 whole or in part, EPA, after consultation with the District, may again require Blue Lake to
26 correct any deficiencies, in accordance with the preceding Paragraphs, or may themselves correct
27 any deficiencies, subject to Blue Lake's right to invoke Dispute Resolution and the right of EPA
28 and the District to seek stipulated penalties as provided in the preceding Paragraphs.

1 42.43. Blue Lake shall submit the following reports, in addition to those reports already
2 required by permits issued to the Facility or this Consent Decree:

3 a. Within thirty (30) Days after the end of each half calendar-year (i.e., June
4 30, December 31) after the Effective Date of this Consent Decree, until termination of this
5 Decree pursuant to Section XX, Blue Lake shall submit a semi-annual report to EPA and the
6 District for the immediately preceding half calendar year period that shall include the following:

- 7 i. Identify the progress of installation, including any and all dates of
8 completed installation, of each control technology required for the
9 Facility by this Consent Decree and describe any problems
10 encountered or anticipated during such installation, together with
11 implemented or proposed solutions;
- 12 ii. Completion of milestones;
- 13 iii. Problems encountered or anticipated, together with proposed solutions;
- 14 iv. Status of permit applications;
- 15 v. All CEMS data collected for the Main Stack, reduced to 1-hour
16 averages, in accordance with 40 C.F.R. § 60.13(h)(2) and in electronic
17 format that can be manipulated with Microsoft Excel, including an
18 explanation of any periods of CEMS downtime;
- 19 vi. Identification of all periods, reduced to 1-hour periods, of Startup,
20 Shutdown, and Malfunction of the Boiler;
- 21 vii. Identification of each period when the Boiler was operating in excess
22 of one or more Emission Rates;
- 23 viii. Identification of the magnitude of excess emissions during each period
24 of excess emissions as computed in accordance with 40 C.F.R. §
25 60.13(h), including any conversion factors used;
- 26 ix. If applicable and feasible, identification of the nature and cause of the
27 Boiler malfunction during periods of excess emissions, corrective
28 actions taken, or preventative measures adopted; and

1 x. The date and time of each period during which the CEMS was
2 inoperative except for zero and span checks and the nature of the
3 system repairs or adjustments or a statement that there was no such
4 period.

5 b. If Blue Lake violates, or is on notice that it may materially violate, any
6 requirement of this Consent Decree, Blue Lake shall notify the United States and the District of
7 such violation and its likely duration, in writing, within ten business Days of the Day Blue Lake
8 first becomes aware of the violation or prospective violation, with an explanation of the
9 violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize
10 such violation. If the cause of a violation cannot be fully explained at the time the notification is
11 due, Blue Lake shall so state in the notification. Blue Lake shall investigate the cause of the
12 violation and shall then provide a full explanation of the cause of the violation in the next report
13 due pursuant to subparagraph 43.a. Nothing in this Paragraph or the following Paragraph
14 relieves Blue Lake of its obligation to provide the notice required by Section X of this Consent
15 Decree (Force Majeure).

16 ~~43.44.~~ Whenever any violation of this Consent Decree or of any applicable permits or
17 any other event affecting Blue Lake's performance under this Decree, or the performance of the
18 Facility may pose an immediate threat to the public health or welfare or the environment, Blue
19 Lake shall notify EPA and the District orally or by electronic transmission as soon as possible,
20 but no later than 24 hours after Blue Lake first knew of the violation or event. This procedure is
21 in addition to the requirements set forth in the preceding Paragraph.

22 ~~44.45.~~ All reports shall be submitted to the persons designated in Section XVI of this
23 Consent Decree (Notices).

24 ~~45.46.~~ Each report submitted by Blue Lake under this Section shall be signed by an
25 official of Blue Lake and include the following certification:

26 I certify under penalty of law that this document and all attachments were
27 prepared under my direction or supervision in accordance with a system designed
28 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

1 information submitted is, to the best of my knowledge and belief, true, accurate,
2 and complete. I am aware that there are significant penalties for submitting false
3 information, including the possibility of fine and imprisonment for knowing
violations.

4 This certification requirement does not apply to emergency or similar notifications where
5 compliance would be impractical.

6 ~~46-47.~~ The reporting requirements of this Consent Decree do not relieve Blue Lake of
7 any reporting obligations required by the Clean Air Act or implementing regulations, or by any
8 other federal, state, or local law, regulation, permit, or other requirement.

9 ~~47-48.~~ Any information provided pursuant to this Consent Decree may be used by the
10 United States in any proceeding to enforce the provisions of this Consent Decree and as
11 otherwise permitted by law.

12 **IX. STIPULATED PENALTIES**

13 ~~48-49.~~ Blue Lake shall be liable for stipulated penalties to the United States and the
14 District for violations of this Consent Decree as specified below, unless excused under Section X
15 (Force Majeure). A violation includes failing to perform any obligation required by the terms of
16 this Decree, including any work plan or schedule approved under this Decree, according to all
17 applicable requirements of this Decree and within the specified time schedules established by or
18 approved under this Decree.

19 ~~49-50.~~ Late Payment of Civil Penalty. If Blue Lake fails to pay the entirety of the civil
20 penalty required to be paid under Section IV of this Decree (Civil Penalty) to both Plaintiffs
21 when due, Blue Lake shall pay a stipulated penalty of \$100 per Day for each Day that the
22 payment, to either or both Plaintiffs, is late.

23 ~~50-51.~~ Emissions Rates. The following stipulated penalties shall accrue per violation per
24 Day for each violation of the Emission Rates set forth in Paragraphs 18 and 19 or an alternative
25 Emission Rate approved by EPA pursuant to Paragraph 22:

26 Penalty Per Violation Per Day Period of Noncompliance

27
28

1 \$ 250 1st through 14th day
 2 \$ 500 15th through 30th day
 3 \$ 750 31st day and beyond

4 51.52. Compliance Milestones.

5 a. The following stipulated penalties shall accrue per violation per Day for
 6 each violation of the requirements identified in subparagraph 52.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$ 1000	15th through 30th day
\$ 1500	31st day and beyond

9 b. Compliance Milestones:

10 ~~i. Submission of the Boiler Engineering Study protocol in accordance~~
 11 ~~with the timeframe and requirements set forth in Paragraphs and ;~~

12 ii.i. Completion of the Boiler Engineering Study and submission of Report
 13 in accordance with the timeframe and requirements set forth in
 14 Paragraph 13;

15 iii.ii. Contract to purchase equipment necessary to install the improved OFA
 16 and SNCR systems in accordance with the timeframe and
 17 requirements set forth in Paragraph 14;

18 iv.iii. Installation and operation of SNCR and improved OFA system in
 19 accordance with the timeframes and requirements set forth in
 20 Paragraph 15;

21 v. Completion of the requirements in Paragraph 16.a prior to
 22 recommencing operation of the Boiler;

23 vi. Completion of the ESP evaluation and compliance with the ESP
 24 evaluation report required by Paragraph 16.c;

25 vii. Submission of the ESP Optimization Plan in accordance with the
 26 timeframes and requirements set forth in Paragraph 16.d;

27 viii. Operation of the ESP in accordance with the timeframes and
 28 requirements set forth in Paragraph 16;

~~ix. Submission of fuel management plan in accordance with the~~
~~timeframes and requirements set forth in Paragraph ;~~

~~x. Submission of fugitive dust from roads plan in accordance with the~~
~~timeframes and requirements set forth in Paragraph ;~~

viii. Operation of CEMS in accordance with the timeframes and requirements set forth in Paragraph 29.

52.53. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VIII (Reporting Requirements), and for each violation of the deadlines for submissions required by Section V (Compliance Requirements) of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 1000	31st day and beyond

53.54. For any other violation of this Consent Decree, the following stipulated penalties shall accrue per violation per Day for each violation:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 1000	31st day and beyond

54.55. 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.

55.56. Blue Lake shall pay stipulated penalties to the United States and the District within 30 Days of a written demand by either Plaintiff. Blue Lake shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to the District. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

56.57. Either Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

57.58. Stipulated penalties shall continue to accrue as provided in Paragraph 55, during any Dispute Resolution, but need not be paid until the following:

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

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

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

12 ~~58-59.~~ Blue Lake shall pay stipulated penalties owing to the United States in the manner
13 set forth and with the confirmation notice required by Paragraph 9, except that the transmittal
14 letter shall state that the payment is for stipulated penalties and shall state for which violation(s)
15 the penalties are being paid. Blue Lake shall pay stipulated penalties owing to the District in the
16 manner set forth in Paragraph 9.

17 ~~59-60.~~ If Blue Lake fails to pay stipulated penalties according to the terms of this
18 Consent Decree, Blue Lake shall be liable for interest on such penalties, as provided for in
19 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall
20 be construed to limit the United States or the District from seeking any remedy otherwise
21 provided by law for Blue Lake's failure to pay any stipulated penalties.

22 ~~60-61.~~ Subject to the provisions of Section XIV of this Consent Decree (Effect of
23 Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree
24 shall be in addition to any other rights, remedies, or sanctions available to the United States for
25 Blue Lake's violation of this Consent Decree or applicable law. Where a violation of this
26 Consent Decree is also a violation of the Clean Air Act or District regulations, Blue Lake shall
27 be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for
28 such violation.

X. FORCE MAJEURE

1
2 ~~61-62.~~ “Force majeure,” for purposes of this Consent Decree, is defined as any event
3 arising from causes beyond the control of Blue Lake, of any entity controlled by Blue Lake, or of
4 Blue Lake’s contractors that delays or prevents the performance of any obligation under this
5 Consent Decree despite Blue Lake’s best efforts to fulfill the obligation. The requirement that
6 Blue Lake exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate
7 any potential force majeure event and best efforts to address the effects of any such event (a) as it
8 is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the
9 greatest extent possible. “Force majeure” does not include Blue Lake’s financial inability to
10 perform any obligation under this Consent Decree. “Force majeure” does include, but is not
11 limited to, failure to obtain or delays in obtaining any required governmental approvals despite
12 Blue Lake’s best efforts to fulfill the obligation to obtain such approvals, including submitting
13 complete and timely applications for required approvals and providing full and timely responses
14 to requests for additional information and/or data from the entity providing a required approval.

15 ~~62-63.~~ If any event occurs or has occurred that may delay the performance of any
16 obligation under this Consent Decree, whether or not caused by a force majeure event, Blue Lake
17 shall provide notice orally or by electronic or facsimile transmission to Chief, Air and TRI
18 Section, Enforcement Division, U.S. Environmental Protection Agency, Region IX, within 72
19 hours of when Blue Lake first knew that the event might cause a delay. Within seven days
20 thereafter, Blue Lake shall provide in writing to EPA and the District an explanation and
21 description of the reasons for the delay; the anticipated duration of the delay; all actions taken or
22 to be taken to prevent or minimize the delay; a schedule for implementation of any measures to
23 be taken to prevent or mitigate the delay or the effect of the delay; Blue Lake’s rationale for
24 attributing such delay to a force majeure event if it intends to assert such a claim; and a statement
25 as to whether, in the opinion of Blue Lake, such event may cause or contribute to an
26 endangerment to public health, welfare or the environment. Blue Lake shall include with any
27 notice all available documentation supporting the claim that the delay was attributable to a force
28 majeure. Failure to comply with the above requirements shall preclude Blue Lake from asserting

1 any claim of force majeure for that event for the period of time of such failure to comply, and for
2 any additional delay caused by such failure. Blue Lake shall be deemed to know of any
3 circumstance of which Blue Lake, any entity controlled by Blue Lake, or Blue Lake's contractors
4 knew or should have known.

5 ~~63-64.~~ If EPA, after a reasonable opportunity for review and comment by the District,
6 agrees that the delay or anticipated delay is attributable to a force majeure event, the time for
7 performance of the obligations under this Consent Decree that are affected by the force majeure
8 event will be extended by EPA, after a reasonable opportunity for review and comment by the
9 District, for such time as is necessary to complete those obligations. An extension of the time for
10 performance of the obligations affected by the force majeure event shall not, of itself, extend the
11 time for performance of any other obligation. EPA will notify Blue Lake in writing of the length
12 of the extension, if any, for performance of the obligations affected by the force majeure event.

13 ~~64-65.~~ If EPA, after a reasonable opportunity for review and comment by the District,
14 does not agree that the delay or anticipated delay has been or will be caused by a force majeure
15 event, EPA will notify Blue Lake in writing of its decision.

16 ~~65-66.~~ If Blue Lake elects to invoke the dispute resolution procedures set forth in Section
17 XI (Dispute Resolution), it shall do so no later than 30 days after receipt of EPA's notice. In any
18 such proceeding, Blue Lake shall have the burden of demonstrating by a preponderance of the
19 evidence that the delay or anticipated delay has been or will be caused by a force majeure event,
20 that the duration of the delay or the extension sought was or will be warranted under the
21 circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and
22 that Blue Lake complied with the requirements of Paragraphs 62 and 63, above. If Blue Lake
23 carries this burden, the delay at issue shall be deemed not to be a violation by Blue Lake of the
24 affected obligation of this Consent Decree identified to EPA and the Court.

25 **XI. DISPUTE RESOLUTION**

26 ~~66-67.~~ Unless otherwise expressly provided for in this Consent Decree, the dispute
27 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising
28 under or with respect to this Consent Decree. Blue Lake's failure to seek resolution of a dispute

1 under this Section shall preclude Blue Lake from raising any such issue as a defense to an action
2 by the United States or the District to enforce any obligation of Blue Lake arising under this
3 Decree.

4 67.68. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under
5 this Consent Decree shall first be the subject of informal negotiations. The dispute shall be
6 considered to have arisen when Blue Lake sends the United States a written Notice of Dispute.
7 Such Notice of Dispute shall state clearly the matter in dispute. The period of informal
8 negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is
9 modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations,
10 then the position advanced by the United States shall be considered binding unless, within 10
11 Days after the conclusion of the informal negotiation period, Blue Lake invokes formal dispute
12 resolution procedures as set forth below.

13 68.69. Formal Dispute Resolution. Blue Lake shall invoke formal dispute resolution
14 procedures, within the time period provided in the preceding Paragraph, by serving on the United
15 States a written Statement of Position regarding the matter in dispute. The Statement of Position
16 shall include, but need not be limited to, any factual data, analysis, or opinion supporting Blue
17 Lake's position and any supporting documentation relied upon by Blue Lake.

18 69.70. The United States shall serve its Statement of Position within 45 Days of receipt
19 of Blue Lake's Statement of Position. The United States' Statement of Position shall include,
20 but need not be limited to, any factual data, analysis, or opinion supporting that position and any
21 supporting documentation relied upon by it. The United States' Statement of Position shall be
22 binding on Blue Lake, unless Blue Lake files a motion for judicial review of the dispute in
23 accordance with Paragraph 72.

24 70.71. The United States shall maintain the administrative record for any dispute
25 following these procedures. The administrative record shall consist of the Parties' Statements of
26 Position and supporting documentation submitted with the Statements of Position.

27 71.72. Blue Lake may seek judicial review of the dispute by filing with the Court and
28 serving on the United States and the District, in accordance with Section XVI of this Consent

1 Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be
2 filed within 10 Days of receipt of the United States' Statement of Position pursuant to the
3 preceding Paragraph. The motion shall contain a written statement of Blue Lake's position on
4 the matter in dispute, including any supporting factual data, analysis, opinion, or documentation,
5 and shall set forth the relief requested and any schedule within which the dispute must be
6 resolved for orderly implementation of the Consent Decree.

7 ~~72.73.~~ The United States and District shall respond to Blue Lake's motion within the
8 time period allowed by the Local Rules of this Court. Blue Lake may file a reply memorandum,
9 to the extent permitted by the Local Rules.

10 ~~73.74.~~ Standard of Review

11 a. Disputes Concerning Matters Accorded Record Review. Except as
12 otherwise provided in this Consent Decree, in any dispute brought under Paragraph 69 pertaining
13 to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any
14 other items requiring approval by EPA and the District under this Consent Decree, and all other
15 disputes that are accorded review on the administrative record under applicable principles of
16 administrative law, Blue Lake shall have the burden of demonstrating, based on the
17 administrative record, that the position of the United States and District is arbitrary and
18 capricious or otherwise not in accordance with law.

19 b. Other Disputes. Except as otherwise provided in this Consent Decree, in
20 any other dispute brought under Paragraph 69, Blue Lake shall bear the burden of demonstrating
21 that its position complies with this Consent Decree.

22 ~~74.75.~~ The invocation of dispute resolution procedures under this Section shall not, by
23 itself, extend, postpone, or affect in any way any obligation of Blue Lake under this Consent
24 Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with
25 respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but
26 payment shall be stayed pending resolution of the dispute as provided in Paragraph 58. If Blue
27 Lake does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as
28 provided in Section IX (Stipulated Penalties).

XII. PERMITS

1
2 ~~75.76.~~ Where any compliance obligation under Section V (Compliance Requirements)
3 requires Blue Lake to obtain a federal, state, or local permit or approval, Blue Lake shall submit
4 a timely and complete application for such permit or approval and take all other actions
5 necessary to obtain all such permits or approvals. Blue Lake may seek relief under the
6 provisions of Section X of this Consent Decree (Force Majeure) for any delay in the performance
7 of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or
8 approval required to fulfill such obligation, if Blue Lake has submitted timely and complete
9 applications and has taken all other actions necessary to obtain all such permits or approvals.

10 ~~76.77.~~ Notwithstanding the reference to Blue Lake's Title V Permit in this Consent
11 Decree, the enforcement of such permit shall be in accordance with its own terms and the Act.
12 Blue Lake's Title V Permit for the Facility shall not be enforceable under this Consent Decree
13 regardless of whether such term has or will become part of a Title V Permit, subject to the terms
14 of Section XX (Termination) of this Consent Decree.

15 ~~77.78.~~ Within thirty (30) months of EPA's approval of the Boiler Engineering Study
16 Report, Blue Lake shall submit an application to the District to permanently include the
17 requirements and limitations enumerated in this Consent Decree into a federally-enforceable
18 permit (other than a Title V operating permit), such that the requirements and limitations
19 enumerated in this Paragraph become and remain 'applicable requirements' as that term is
20 defined in 40 C.F.R. Part 70.2 and these requirements shall survive the termination of this
21 Consent Decree in accordance with Section XX (Termination) in the form of a federally-
22 enforceable permit (other than a Title V operating permit). The permit shall require compliance
23 with the following: (a) any applicable Emission Rate; (b) all Continuous Operation requirements;
24 (c) any requirements of a plan approved pursuant to this Consent Decree, including the Fuel
25 Management, ESP Optimization, and Fugitive Road Dust Plans; (d) the Ash Handling and
26 Disposal Procedures in Paragraph 27; (e) all monitoring requirements of this Consent Decree; (f)
27 all limitations set forth in Section VI (Prohibition on Netting Credits or Offsets from Required
28 Controls; and (g) all compliance methods imposed by this Consent Decree.

1 ~~78:79.~~ Within ninety (90) Days of obtaining the permit required under Paragraph 78,
2 Blue Lake shall apply for amendment of its Title V Permit to incorporate the requirements and
3 limitations of such permit into the Title V Permit for the Facility.

4 ~~79:80.~~ Blue Lake shall provide the United States with a copy of each application for a
5 federally enforceable permit required by this Section, as well as a copy of any permit proposed
6 as a result of such application, to allow for timely EPA participation in any public comment
7 opportunity.

8 ~~80:81.~~ This Consent Decree shall not terminate before all the requirements and
9 limitations enumerated in this Consent Decree, including, but not limited to, those listed in
10 Paragraph 78, are incorporated into Blue Lake's federally enforceable construction permits and
11 Title V Permit for the Facility.

12 **XIII. INFORMATION COLLECTION AND RETENTION**

13 ~~81:82.~~ The United States, the District, and their representatives, including attorneys,
14 contractors, and consultants, shall have the right of entry into any facility covered by this
15 Consent Decree, at all reasonable times, upon presentation of credentials, to:

- 16 a. monitor the progress of activities required under this Consent Decree;
17 b. verify any data or information submitted to the United States or the
18 District in accordance with the terms of this Consent Decree;
19 c. obtain samples and, upon request, splits of any samples taken by Blue
20 Lake or its representatives, contractors, or consultants;
21 d. obtain documentary evidence, including photographs and similar data; and
22 e. assess Blue Lake's compliance with this Consent Decree.

23 ~~82:83.~~ Until five (5) years after the termination of this Consent Decree, Blue Lake shall
24 retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all
25 documents, records, or other information (including documents, records, or other information in
26 electronic form) in its or its contractors' or agents' possession or control, or that come into its or
27 its contractors' or agents' possession or control, and that relate in any manner to Blue Lake's
28 performance of its obligations under this Consent Decree. This information-retention

1 requirement shall apply regardless of any contrary corporate or institutional policies or
2 procedures. At any time during this information-retention period, upon request by the United
3 States or the District, Blue Lake shall provide copies of any documents, records, or other
4 information required to be maintained under this Paragraph.

5 ~~83~~84. At the conclusion of the information retention period provided in the preceding
6 Paragraph, Blue Lake shall notify the United States and the District at least ninety (90) Days
7 prior to the destruction of any documents, records, or other information subject to the
8 requirements of the preceding Paragraph and, upon request by the United States or the District,
9 Blue Lake shall deliver any such documents, records, or other information to EPA or the District.
10 Blue Lake may assert that certain documents, records, or other information is privileged under
11 the attorney-client privilege or any other privilege recognized by federal law. If Blue Lake
12 asserts such a privilege, it shall provide the following: (1) the title of the document, record, or
13 information; (2) the date of the document, record, or information; (3) the name and title of each
14 author of the document, record, or information; (4) the name and title of each addressee and
15 recipient; (5) a description of the subject of the document, record, or information; and (6) the
16 privilege asserted by Blue Lake. However, no documents, records, or other information created
17 or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of
18 privilege.

19 ~~84~~85. Blue Lake may also assert that information required to be provided under this
20 Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to
21 any information that Blue Lake seeks to protect as CBI, Blue Lake shall follow the procedures
22 set forth in 40 C.F.R. Part 2.

23 ~~85~~86. This Consent Decree in no way limits or affects any right of entry and inspection,
24 or any right to obtain information, held by the United States or the District pursuant to applicable
25 federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of
26 Blue Lake to maintain documents, records, or other information imposed by applicable federal or
27 state laws, regulations, or permits.
28

1 **XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

2 ~~86-87.~~ This Consent Decree resolves the civil claims of the United States and the District
3 against Blue Lake for the violations alleged in the Complaint filed in this action through the date
4 of lodging.

5 ~~87-88.~~ The United States and the District reserve all legal and equitable remedies
6 available to enforce the provisions of this Consent Decree, except as expressly stated in
7 Paragraph 87. This Consent Decree shall not be construed to limit the rights of the United States
8 or the District to obtain penalties or injunctive relief under the Act or implementing regulations,
9 or under other federal or state laws, regulations, or permit conditions, except as expressly
10 specified in Paragraph 87. The United States and the District further reserve all legal and
11 equitable remedies to address any imminent and substantial endangerment to the public health or
12 welfare or the environment arising at, or posed by, Blue Lake's Facility, whether related to the
13 violations addressed in this Consent Decree or otherwise.

14 ~~88-89.~~ In any subsequent administrative or judicial proceeding initiated by the United
15 States or the District for injunctive relief, civil penalties, or other appropriate relief relating to the
16 Facility, Blue Lake shall not assert, and may not maintain, any defense or claim based upon the
17 principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-
18 splitting, or other defenses based upon any contention that the claims raised by the United States
19 or the District in the subsequent proceeding were or should have been brought in the instant case,
20 except with respect to claims that have been specifically resolved pursuant to Paragraph 87 of
21 this Section.

22 ~~89-90.~~ This Consent Decree is not a permit, or a modification of any permit, under any
23 federal, State, or local laws or regulations. Blue Lake is responsible for achieving and
24 maintaining complete compliance with all applicable federal, State, and local laws, regulations,
25 and permits; and Blue Lake's compliance with this Consent Decree shall be no defense to any
26 action commenced pursuant to any such laws, regulations, or permits, except as set forth herein.
27 The United States and the District do not, by their consent to the entry of this Consent Decree,
28 warrant or aver in any manner that Blue Lake's compliance with any aspect of this Consent

1 Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401 *et seq.*, or with any
2 other provisions of federal, State, or local laws, regulations, or permits. This Consent Decree
3 does not limit or affect the rights of the District to incorporate additional and/or more stringent
4 conditions than those established in this Consent Decree in its permits or approvals for the
5 Facility as may be authorized or warranted under federal, state, or local laws or regulations.

6 90-91. This Consent Decree does not limit or affect the rights of Blue Lake or of the
7 United States or the District against any third parties, not party to this Consent Decree, nor does
8 it limit the rights of third parties, not party to this Consent Decree, against Blue Lake, except as
9 otherwise provided by law.

10 91-92. This Consent Decree shall not be construed to create rights in, or grant any cause
11 of action to, any third party not a Party to this Consent Decree.

12 **XV. COSTS**

13 92-93. The Parties shall bear their own costs of this action, including attorneys' fees,
14 except that the United States and the District shall be entitled to collect the costs (including
15 attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any
16 stipulated penalties due by not paid by Blue Lake.

17 **XVI. NOTICES AND SUBMISSIONS**

18 93-94. Unless otherwise specified herein, all approvals, consents, deliverables,
19 modifications, notices, notifications, objections, proposals, reports, requests, submissions, or
20 communications required by this Consent Decree must be in writing. Whenever, under this CD,
21 notice is required to be given, or a report or other document is required to be sent, by one Party
22 to another, it must be directed to the person(s) specified below at the address(es) specified below.
23 Any Party may change the person and/or address applicable to it by providing notice of such
24 change to all Parties. All notices under this Section are effective upon receipt, unless otherwise
25 specified. Except as otherwise provided, notice to a Party by email (if that option is provided
26 below) or by regular mail in accordance with this Section satisfies any notice requirement of the
27 CD regarding such Party.

28 To the United States:

1 EES Case Management Unit
2 U.S. Department of Justice
3 Environment and Natural Resources Division
4 P.O. Box 7611
5 Washington, D.C. 20044-7611
6 Eescdcopy.enrd@usdoj.gov
7 Re: DJ # 90-5-2-1-11038

8 and

9 Brian Riedel
10 U.S. Environmental Protection Agency
11 Region IX
12 75 Hawthorne Street
13 San Francisco, California 94105
14 riedel.brian@epa.gov

15 To EPA:

16 Director, Enforcement Division (ENF-1)
17 U.S. Environmental Protection Agency, Region IX
18 75 Hawthorne Street
19 San Francisco, CA 94105
20 Attn: Mark Sims, ENF-2-1
21 sims.mark@epa.gov

22 To the District:

23 Air Pollution Control Officer
24 North Coast Unified Air Quality Management District
25 707 L. St.
26 Eureka, CA 95501

27 and

28 Nancy Diamond
District Counsel
Law Offices of Nancy Diamond
822 G Street, Suite 3
Arcata, CA 95521

To Blue Lake:

Blue Lake Power, LLC
Attn: Glenn Zane
1615 Continental Street, Suite 100

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Redding, CA 96001
and

David O’Neill
~~President~~
LandGas Technology LLC
5487 N. Milwaukee Avenue
Chicago, IL 60630

and

Jane E. Luckhardt
Day Carter & Murphy LLP
3620 American River Drive, Suite 205
Sacramento, CA 95864

XVII. EFFECTIVE DATE

~~94.95.~~ 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.

XVIII. RETENTION OF JURISDICTION

~~95.96.~~ 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 XI and XIX, or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

~~96.97.~~ 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.

~~97.98.~~ Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 74, the Party seeking the modification bears the burden of

1 demonstrating that it is entitled to the requested modification in accordance with Federal Rule of
2 Civil Procedure 60(b).

3 **XX. TERMINATION**

4 ~~98.99.~~ After Blue Lake has completed the requirements of Section V (Compliance
5 Requirements) of this Decree, has thereafter maintained continuous satisfactory compliance with
6 this Consent Decree for a period of four (4) years, has obtained federally-enforceable permits
7 that comply with the requirements of Section XII (Permits), and has paid the civil penalty and
8 any accrued interest and stipulated penalties as required by this Consent Decree, Blue Lake may
9 serve upon the United States and the District a Request for Termination, stating that Blue Lake
10 has satisfied those requirements, together with all necessary supporting documentation.

11 ~~99.100.~~ In the event that Blue Lake permanently shuts down the Facility prior to
12 satisfying all the requirements in Paragraph 99, it may serve upon the United States and the
13 District a Request for Termination after paying the civil penalty, environmental mitigation, and
14 any outstanding stipulated penalties as required by this Consent Decree, and relinquishing its
15 operating permits and Title V Permits to the District.

16 ~~100.101.~~ Following receipt by the United States and the District of Blue Lake's
17 Request for Termination, the Parties shall confer informally concerning the Request and any
18 disagreement that the Parties may have as to whether Blue Lake has satisfactorily complied with
19 the requirements for termination of this Consent Decree. If the United States, after consultation
20 with the District, agrees that the Decree may be terminated, the Parties shall submit, for the
21 Court's approval, a joint stipulation terminating the Decree.

22 ~~101.102.~~ If the United States, after consultation with the District, does not agree that
23 the Decree may be terminated, Blue Lake may invoke Dispute Resolution under Section XI of
24 this Decree. However, Blue Lake shall not seek Dispute Resolution of any dispute regarding
25 termination, under Paragraph 69 of Section XI, until 60 Days after service of its Request for
26 Termination.

1 **XXI. PUBLIC PARTICIPATION**

2 ~~102.103.~~ This Consent Decree shall be lodged with the Court for a period of not less
3 than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United
4 States reserves the right to withdraw or withhold its consent if the comments regarding the
5 Consent Decree disclose facts or considerations indicating that the Consent Decree is
6 inappropriate, improper, or inadequate. Blue Lake consents to entry of this Consent Decree
7 without further notice and agrees not to withdraw from or oppose entry of this Consent Decree
8 by the Court or to challenge any provision of the Decree, unless the United States has notified
9 Blue Lake in writing that it no longer supports entry of the Decree.

10 **XXII. SIGNATORIES/SERVICE**

11 ~~103.104.~~ Each undersigned representative of Blue Lake, the District, and the
12 Assistant Attorney General for the Environment and Natural Resources Division of the
13 Department of Justice, certifies that he or she is fully authorized to enter into the terms and
14 conditions of this Consent Decree and to execute and legally bind the Party he or she represents
15 to this document.

16 ~~104.105.~~ This Consent Decree may be signed in counterparts, and its validity shall
17 not be challenged on that basis. Blue Lake agrees to accept service of process by mail with
18 respect to all matters arising under or relating to this Consent Decree and to waive the formal
19 service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any
20 applicable Local Rules of this Court including, but not limited to, service of a summons.

21 ~~105.106.~~ The Parties agree that Defendant need not file an answer to the Complaint
22 in this action unless or until the Court expressly declines to enter this Consent Decree.

23 **XXIII. INTEGRATION**

24 ~~106.107.~~ This Consent Decree constitutes the final, complete, and exclusive
25 agreement and understanding among the Parties with respect to the settlement embodied in the
26 Decree and supersedes all prior agreements and understandings, whether oral or written,
27 concerning the settlement embodied herein. Other than deliverables that are subsequently
28 submitted and approved pursuant to this Decree, no other document, nor any representation,

1 inducement, agreement, understanding, or promise, constitutes any part of this Decree or the
2 settlement it represents, nor shall it be used in construing the terms of this Decree.

3 **XXIV. HEADINGS**

4 ~~107.108.~~ Headings to the sections and subsections of this Consent Decree are
5 provided for convenience and do not affect the meaning or interpretation of the provisions of this
6 Consent Decree.

7 **XXV. FINAL JUDGMENT**

8 ~~108.109.~~ Upon approval and entry of this Consent Decree by the Court, this
9 Consent Decree shall constitute a final judgment of the Court as to the United States, the District,
10 and Blue Lake.

11 SO ORDERED.

12
13 Dated and entered this ___ day of _____, _____.

14
15 _____

16 _____ [_____]

17 Hon. James Donato

18 UNITED STATES DISTRICT JUDGE

19 Northern District of California

1 Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

2
3 FOR PLAINTIFF UNITED STATES OF AMERICA:

4
5 _____
DATE:

_____ ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
U.S. Department of Justice

8
9 _____
DATE:

_____ SHEILA McANANEY
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Telephone: (202) 616-6535
Facsimile: (202) 616-2427
sheila.mcananey@usdoj.gov

1 Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

2
3 FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

4
5 BRIAN J. STRETCH
~~Acting~~ United States Attorney
6 Northern District of California

7
8 DATE: _____

9 MICHAEL T. PYLE
10 Assistant United States Attorney
11 Northern District of California
12 150 Almaden Boulevard, Suite 900
13 San Jose, California 95113
14 Telephone: (408) 535-5087
15 michael.t.pyle@usdoj.gov

1 Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

2 FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

3
4 _____
5 DATE:

~~JARED BLUMENFELD~~ALEXIS STRAUSS

Acting Regional Administrator

United States Environmental Protection Agency, Region IX

6
7
8
9 _____
10 DATE:

CYNTHIA GILES

Assistant Administrator for Enforcement
and Compliance Assurance

United States Environmental Protection Agency

11
12
13
14 OF COUNSEL:

15 BRIAN RIEDEL

Assistant Regional Counsel

U.S. Environmental Protection Agency, Region IX

75 Hawthorne Street

San Francisco, California 94105

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Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

FOR PLAINTIFF NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT:

DATE:

BRIAN WILSON
Air Pollution Control Officer
North Coast Unified Air Quality Management District

DATE:

NANCY DIAMOND
District Counsel
North Coast Unified Air Quality Management District
Law Offices of Nancy Diamond
822 G Street, Suite 3
Arcata, CA 95521
Telephone: (707) 826-8540
Email: ndiamond@ndiamondlaw.com

1 Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

2 FOR DEFENDANT BLUE LAKE POWER, LLC:
3

4 _____
5 DATE:

6 **President**

7 Blue Lake Power, LLC
8 1615 Continental Street, Suite 100
9 Redding, CA 96001
10 Telephone: (530) 246-2455
11 Email: gzane@crsinet.com

12 _____
13 DATE:

14 JANE E. LUCKHARDT
15 Day Carter & Murphy LLP
16 3620 American River Drive, Suite 205
17 Sacramento, CA 95864
18 Telephone: (916) 246-7316
19 Email: jluckhardt@daycartermurphy.com
20
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¹ Commenter Anita Huff submitted 2 comments, the text of both comments is identical. The second comment included attachments which were missing in the first. As the entirety of the first comment was included in the second comment, only the second comment is attached here.

From: Hoefner, Dietrich [mailto:DHoefner@lrrc.com]

Sent: Monday, August 08, 2016 11:08 AM

To: McAnaney, Sheila (ENRD) <SMcAnaney@ENRD.USDOJ.GOV>; Friedman, Henry (ENRD) <HFriedman@ENRD.USDOJ.GOV>

Cc: Thomas, Pilar <PThomas@lrrc.com>; DeVoe, Adam <ADeVoe@lrrc.com>

Subject: FW: United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038

Sheila and Henry:

Thanks for taking the time for our call last week. As we discussed, I am forwarding Vice Chair Ramsey's comments (with attachments) to the Proposed Consent Decree with Blue Lake Power here. Please let us know if you have any questions. Thank You.

Best,
Dietrich

Dietrich Hoefner

Associate
303.628.9589 office
303.623.9222 fax
dhoefner@lrrc.com



Lewis Roca Rothgerber Christie LLP
1200 17th Street, Suite 3000
Denver, Colorado 80202-5855

lrrc.com

From: Jana Ganion <jana.ganion@bluelakerancheria-nsn.gov>
Date: Monday, April 4, 2016 at 4:32 PM
To: "pubcomment-ees.enrd@usdoj.gov" <pubcomment-ees.enrd@usdoj.gov>
Cc: David Rapport <drapport@pacbell.net>, Arla Ramsey <ARamsey@bluelakerancheria-nsn.gov>
Subject: United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038

Good Day,

Attached please find comments from the Blue Lake Rancheria, submitted by Vice Chairperson Arla Ramsey, regarding the U.S. Environmental Protection Agency and Department of Justice's Proposed Consent Decree with Blue Lake Power, *USA & NCUAQMD v. Blue Lake Power LLC*, United States District Court for the Northern District of California, Case No. 3:16-cv-00961, D.J. Ref. No. 90-5-2-1-11038; 81 FR 11591, Page 11591-11592, Document #2016-04721.

Also attached are supporting documents referenced in the comments.

If you have any questions, please contact me at your convenience.

Jana

Jana Ganion
Energy Director
Blue Lake Rancheria
jganion@bluelakerancheria-nsn.gov
[707.668.5101 x1044](tel:707.668.5101)
www.bluelakerancheria-nsn.gov

A White House "[Climate Action Champion](#)" 2015-16

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BLUE LAKE RANCHERIA

P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

www.bluelakerancheria-nsn.gov



April 4, 2016

John C. Cruden
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice – ENRD
P.O. Box 7611
Washington, D.C. 20044-7611
By email to: pubcomment-ees.enrd@usdoj.gov

Re: *United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC*, D.J. Ref. No. 90-5-2-1-11038

Dear Assistant Attorney General Cruden,

The Blue Lake Rancheria, California, a federally recognized Native American tribal government (“Tribe”) respectfully submits these comments as approved by the Tribal Council (and in addition to the comments the Tribe directed its attorney David Rapport to submit separately) regarding *United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC*, D.J. Ref. No. 90-5-2-1-11038 (“Complaint”), and the proposed Consent Decree.

The Tribe considers the proposed Consent Decree to be inadequate, improper, and inappropriate, and not in the public interest. Its lenient, ineffective terms will not create deterrence of future regulatory violations by Blue Lake Power, LCC (“Blue Lake Power”) given Blue Lake Power’s repeated and demonstrated inability to operate in compliance to date, and under similar ‘corrective’ agreements and settlements. The proposed Consent Decree does not adequately protect tribal citizens and environment, the Mad River, and all other affected residents and environments, against substantial endangerment to the public health, welfare and the environment arising at – and posed by – the Blue Lake Power facility.

In the public interest, the Tribe urges withdrawal of this proposed Consent Decree, and to proceed with litigation or modify the Consent Decree to include larger penalties and far more stringent compliance activities, with independently verifiable proof of Blue Lake Power’s financial capability to implement, and its technological capability to operate in compliance.

The plant is currently idle, and it is inappropriate that Blue Lake Power is/would be allowed to restart operations at its discretion given the serious nature of the errors in its permitting structure, its inability to operate in compliance throughout the majority of its operating history, and the serious, chronic health and environmental impacts caused by past emissions and the likely potential of future violations. **The Tribe seeks the relevant permitting and enforcement agencies and/or the Courts to require Blue Lake Power to demonstrate its operational and financial ability to comply with all regulations before a restart is allowed under any circumstances.** The Tribe requests Blue Lake Power be required to apply for a new Authority to Construct/Permit to Operate, in compliance with all Prevention of Significant Deterioration framework requirements. This should have been done 5 years ago, but setting that aside,

BLUE LAKE RANCHERIA

P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

www.bluelakerancheria-nsn.gov



even the major modifications sought and compliance activities contained in the proposed Consent Decree compel this process now.

At a minimum, Blue Lake Power should not be allowed to restart until all of the Compliance Requirements of the proposed Consent Decree are implemented and complete, and any operational testing to prove implementation and completion is conducted and verified by a third party.

The Tribe also seeks comprehensive monitoring of all emissions, with a focus on particulate matter, directly measuring quantity and constituency of particulates in real time. The Tribe recommends a joint monitoring station in partnership with the North Coast Unified Air Quality Management District ("District") and the U.S. Environmental Protection Agency ("EPA"), paid for by Blue Lake Power, and which would meet all the requirements of all regulations and processes relating to monitoring (e.g., California Air Resources Board Primary Quality Assurance Organization).

Blue Lake Power's chronic particulate matter, light, noise, ash runoff, and other violations, including but certainly not limited to the March 2014 Finding and Notice of Violation which suggests that the permit in force from 2010-present is not valid, have contributed to its categorization as a "High Priority Violator" by the EPA. Blue Lake Power's multiple, chronic violations may have been avoided, had the proper Authority to Construct and Prevention of Significant Deterioration permits/standards been applied prior to starting the plant in ~2010.

In addition, Blue Lake Power has defaulted on multiple financial obligations – including non-payment of ~\$30,000 in Title V Permit Fees, which should have resulted in immediate forfeiture of their Permit to Operate – and various defaults on lease and utility payments to the City of Blue Lake over the last 7 years, among other defaults and current debts (see Financial Considerations below).

All the while Blue Lake Power has amassed over \$7 million in federal grants/subsidies and other public/grant monies, and has reaped the additional value of unpaid bills that have been negotiated away.

Other Blue Lake Power issues have included uncontrolled biomass fuel fires, which were mitigated with hundreds of thousands of gallons of water from the City of Blue Lake (the bills for which, as the Tribe understands it, were not paid).

Background and History

The ~11MW biomass-fueled power plant currently owned/operated by Blue Lake Power is located in the City of Blue Lake's industrial park, >0.5 miles from the Tribe's trust lands.

Construction on the plant began over 30 years ago. The initial facility was first issued an Authority to Construct permit from the North Coast Unified Air Quality District ("District") on January 12, 1984. Construction of the facility was initially completed in 1986 and operations began in 1987.

The facility ceased operations on April 29, 1999. Between May 1, 1999 and 2008, all equipment at the facility was idle, and there was only one employee working at the facility part time, and minimal or no maintenance was performed during that period on the equipment at the facility, which largely consisted of turning on the conveyers and fans manually. A significant amount of the preventative maintenance (e.g., turning the giant boiler/turbine machinery to

BLUE LAKE RANCHERIA

P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

www.bluelakerancheria-nsn.gov



prevent bowing and structural damage) was not done. The fuel storage area had sapling alder and willows growing on it, indicating lack of use. A representative of the prior owner of the facility made statements indicating that the plant was permanently shuttered and future plans for the facility included dismantling the plant completely and/or shipping the plant out-of-state.

Blue Lake Power purchased the facility on January 17, 2008 and, between 2008 and 2010, Blue Lake Power undertook all-inclusive construction work at the facility, including major modifications and other "reconditioning" work on the boiler island, the electrical substation, the fuel conveying system, turbine, generator, condenser, water treatment, cooling tower, boiler feed pumps, circulating water pumps, roof and wall tubes, propane start system, emissions control devices including "multicyclone" and electrostatic precipitator, ash handling equipment, rotary valves, fuel dryer, "soot blowers", building sprinkler systems, air compressors, "wet scrubber for stack", and other equipment and/or repairs. The cost of this work was over \$6,000,000.

Blue Lake Power did not apply for or obtain a new Authority to Construct permit for the work or for the restart of the facility, but rather claimed an Authority to Construct permit was not necessary.

The District did not disagree and/or impose those requirements, or require Prevention of Significant Deterioration requirements or State Implementation Plan (SIP) process (please see Complaint for a complete discussion of what should have been applied to Blue Lake Power).

Blue Lake Power began testing the facility on December 20, 2009 and restarted operation of the facility on April 20, 2010, almost 11 years after the facility had stopped operating, and after 2.4 years of "major modifications." Blue Lake Power did not obtain a new Permit to Operate before restarting operations or resuming use of the facility, but rather operated under the *prior* facility's original Permit to Operate.

Between April 2010 and May 2011, Blue Lake Power had numerous compliance issues reported. For activity beginning in April 22, 2010 and continuing through May 14, 2010, the District issued twelve (12) Notices of Noncompliance to Blue Lake Power for violating the conditions of its Permit to Operate and/or violations of District, state, and federal laws pertaining primarily to opacity limitations and excess particulate matter emissions.

For activity beginning in April 2010 and continuing through August 2010, the District was aware of at least one hundred and eleven (111) alleged violations by Blue Lake Power in the operation of its facility.

On May 20, 2011, Blue Lake Power entered into a Settlement Agreement with the District for the Notices of Noncompliance described above. That settlement included civil penalties of one million three hundred eighty thousand dollars (\$1,380,000) – and included the requirement in Section 1. A.:

"Blue Lake Power shall immediately refrain from operating any article, machine, equipment or other contrivance in violation of its Permit to Operate NCU 097-12, any successor permit thereto, or in violation of any District, State, or Federal order, rule or regulation prohibiting or limiting the discharge of contaminants into the air."

BLUE LAKE RANCHERIA

P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

www.bluelakerancheria-nsn.gov



The civil penalties and injunctions of that Settlement Agreement are much more stringent than the current proposed Consent Decree, and did not result in Blue Lake Power's compliance. The Tribe has every reason to assume the proposed Consent Decree will have the same result.

Since the May 20, 2011 Settlement Agreement, the District has nevertheless continued to receive numerous complaints from citizens of the Blue Lake area regarding observed violations by Blue Lake Power.

Importantly, field reports by the District indicate that a number of the requirements of the Settlement Agreement were observed to be incomplete as of April 15, 2013 – almost two (2) years later (see District Field Reports - the District can certainly provide these Field Reports upon request). The District, however, has not issued any new notices of noncompliance against Blue Lake Power in these matters.

On March 3, 2014, the EPA issued a Finding and Notice of Violation against Blue Lake Power, asserting numerous violations of the Clean Air Act.

Blue Lake Power has continued to operate the facility at times after the March 3, 2014 EPA action in further violation of the Clean Air Act.

As of this writing, the Tribe understands that the Blue Lake Power biomass plant is currently idle, due to voluntary actions by Blue Lake Power. The Tribe also understands that Blue Lake Power does intend to resume operation of the facility. One explanation could be the owners sold their power purchase agreement back to the issuing utility to purposely go idle – and laying off at least 16 employees in the process (source: *Eureka Times Standard*) – and are waiting for the passage of California Assembly Bill 590 or similar legislation, which could make significant funds available to 'dormant' biomass plants for retrofits.

Tribe Support of Biomass Power

The Tribe has a long history of advocacy for biomass energy technology, including a 1983 letter from the Tribe supporting the initial opening of this same biomass plant (formerly called "Ultrapower").

The Tribe also provided an initial loan to Blue Lake Power, LLC for the 2010 restart of this same biomass power plant, because it believed the claims by Blue Lake Power that emissions were going to be tightly controlled, that jobs would result, and that the plant would create significant revenue for the City of Blue Lake. (None of these claims turned out to be completely valid; please also see financial section below.)

In 2012, in a completely separate project, the Tribe invested in a small, distributed-generation 175kW biomass-fueled power system of its own on the Rancheria.

The Tribe believes in the value of biomass-fueled power, especially as it relates to creating economic uses for hazardous fuels in our overgrown forests that have resulted in catastrophic "megafire" wildfires in recent years. The Tribe also supports biomass power for the jobs and revenue it can provide *if it is operated in compliance with regulations* and has a feasible business plan – which is not the case with Blue Lake Power.



BLUE LAKE RANCHERIA

P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

www.bluelakerancheria-nsn.gov

Tribal and Community Health and Environmental Concerns Related to Blue Lake Power Emissions and Non-compliant Operations

"People exposed to fine particles over a long period of time have more heart and lung problems than people who are not breathing this kind of air pollution. Lowering PM levels would prevent deaths, mostly from heart attacks and heart disease. Studies have shown a 15% decrease in the risk of heart disease deaths with every PM_{2.5} decrease of 10ug/m³ (micrograms per cubic meter)." ... Small particles are the most concerning because they are most likely to cause health problems. Their small size allows these particles to get into the deep part of your lungs. Being exposed to any kind of particulate matter may cause increased emergency department visits and hospital stays for breathing and heart problems, breathing problems, asthma symptoms to get worse, adverse birth outcomes, such as low birth weight, decreased lung growth in children, lung cancer, and early deaths.

Sensitive people, including older adults, people with diseases such as asthma or congestive heart disease, and children, are more likely to be affected by contact with PM_{2.5}."

Source: Centers for Disease Control and Prevention Website
<http://ephtracking.cdc.gov/showAirHIA.action>

Seventy five percent (75%) of the Tribe's membership is comprised of elders and children. The particulate matter emissions from the Blue Lake Power biomass plant are clearly a danger to public health.

Many tribal elders and other Rancheria residents have suffered related health impacts including breathing and heart problems, chronic respiratory illnesses, pneumonia, and asthma. Tribal members and other Rancheria residents have experienced increased emergency department visits and hospital stays for these issues.

For almost 3 decades, the Tribe has endured the impacts – particulate matter, noise, light, lead, arsenic, ammonia, and other types of pollution – caused by this plant which in turn cause and contribute to these chronic health conditions.

Since the plant restarted operations in ~2010, the Blue Lake Rancheria tribal members have registered hundreds of complaints with the Tribe regarding fine, dark-colored/black particulate matter blanketing their houses, cars, vegetation (including mature trees, fruit, and vegetable gardens), and window sills and other exterior and interior surfaces, often with an oily texture that makes it very difficult to remove. And this is just the particulate matter that is *visible*.

Over the last approximately 4 years, these complaints have intensified, and (prior to the plant shutting down in May of 2015) the majority of complaints received by the Tribal Office in the period from 2012-2015 state that the blanketing of dark-colored particulates occurred *nightly*. (It is reasonable to assume that particulate matter emissions would occur at night, when it is dark and there is no way to independently, visibly prove or disprove emissions compliance.)

BLUE LAKE RANCHERIA

P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

www.bluelakerancheria-nsn.gov



Tribal Environmental Programs staff observed black particulates on the surface of the Mad River, a waterway that is already classified as impacted for turbidity and temperature relevant to endangered and threatened species it contains.

Blue Lake Power has been cited with a water quality discharge violation from the California Department of Fish and Wildlife (please see separate attachment). Trees in the vicinity of the plant are coated in this black soot-like material, and some are dying.

Complaint Reporting Blue Lake Power Emission and other Impacts

The Tribe has aggregated complaints regarding Blue Lake Power issues from its members and other residents on tribal lands and forwarded those complaints to the District, California EPA, and U.S. EPA.

The City of Blue Lake has received hundreds of reported complaints from its citizens regarding Blue Lake Power issues, as witnessed by tribal staff at various City Council, City Planning Commission, and other public meetings, and through documentation forwarded to the Tribe by affected citizens.

The District has received thousands of reported complaints regarding Blue Lake Power issues in total.

The Tribe has repeatedly reported emissions complaints and issues to the District and state and federal EPA contacts. Examples include:

- The Tribal Environmental Programs Office email correspondence to California EPA dating back to 2013, most without response from EPA.
- Government-to-government consultation with EPA in September of 2015.
- The Tribe submitted comments regarding its concerns about particulate pollution during the Title V Permit renewal public comment period, hand-delivered by Jacob Pounds, Tribal Environmental Programs Technician, to the District at the public meeting held at the City of Blue Lake's City Council Meeting (there was no meeting with the Tribe initiated by the District) on July 2, 2013 (interestingly close to the 4th of July holiday). To date the Tribe has had no substantive response to this comment letter (see further discussion below).
- The Tribe communicated its concerns to the plant operators through multiple meetings with Glenn Zane, plant owner, Walter Nystrom, plant manager, Arla Ramsey, Vice Chair of the Tribe and Jana Ganion, Energy Director. During the in-person meetings, the Tribe gave Mr. Zane a thorough tour of the property and the severe fly ash fallout that was present.
- The Tribe also presented photos and other evidence and documentation of the issue to all involved parties.

Despite concerted collection of complaints, photos, sampling, other evidence, and repeated requests to Blue Lake Power to solve emissions issues, reports on the same to the District and the state and federal EPA representatives, requests for greater enforcement, more particulate matter monitoring, and more communication around chronic violations by the plant operators, these actions and requests by the Tribe are consistently ignored and/or dismissed as inaccurate.

BLUE LAKE RANCHERIA

P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

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As an example, a member of the tribal staff called the District to report emissions complaints and violations and spoke with the Compliance and Enforcement Manager on 11/4/2013. During that telephone conversation, the District Manager stated that, "he was certain the plant was not the cause" of the emissions in question.

The District's permitting contact's response to the Tribe's letter submitted during the public comment period of Blue Lake Power's Title V Permit renewal was that it 'did not require a response from the District because there was "not anything of substance to respond to." (Please see attached BLR Letter to NCUAQMD 7.2.13 Low Res.)

Further, outreach to Region 9 EPA staff has been unproductive. As an example, Tribal Environmental Programs department staff has sent multiple emails to the Region 9 Air Permitting contacts to request permitting information on Blue Lake Power, beginning in May of 2014. To date – almost 2 years later – they have received no email response.

Financial Considerations

The proposed Consent Decree states the 'limited ability of Blue Lake Power to pay a civil penalty in this matter' (see Consent Decree). In this case the total penalties amount to \$15,000. The 'limited ability to pay was determined by the United States based on Financial Information 'that Blue Lake Power made available.'

Setting aside for now questions regarding the accuracy of the Financial Information provided by Blue Lake Power, there are serious concerns between the proposed Consent Decree's finding of limited ability to pay, and the assumption that Blue Lake Power is - at the same time - somehow magically able to fund the considerable new work to modify the plant, complete new studies and plans, and uphold all the new compliance activities in the proposed Consent Decree, the estimated cost of which is over \$700,0000 (statements by EPA/DOJ in meeting with BLR on March 23, 2016).

As noted above and below, Blue Lake Power has a long, public, and documented history of defaulting on its financial obligations — and defaulting on the resulting settlement agreements that address those original defaults. It also has a history of not upholding the compliance activities required by its settlement agreements.

Blue Lake Power has continuously claimed financial hardships whenever an issue arises. The end result is that Blue Lake Power has been able to exploit their statements of financial precariousness to be able to operate as a willful and egregious polluter.

In fact, with the assistance of the District and the City of Blue Lake through settlements and extensions of payments and compliance activities (and with this latest proposed Consent Decree, if it is approved as is) Blue Lake Power has been successful in avoiding the majority of the regulation that applies to biomass power plants and has operated for far less out-of-pocket expense (once all their debt forgiveness has been factored in) than their competitors. There are two (2) similarly sized biomass plants in our region, and they have been able to operate in compliance relative to Blue Lake Power's operations.

Blue Lake Power's violations have triggered the majority of the sub-components of both "Benefit from Delayed Costs" and "Benefit From Avoided Costs" ("Clean Air Act Stationary Source Civil Penalty Policy"), including:

- Failure to install equipment needed to meet emission control standards. [Multiple instances as demonstrated in Notices of Violation, and Settlement Agreements.]

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- Failure to effect process changes needed to reduce pollution. [See particulate matter pollution, initial fuel management plan(s) and settlement fuel management plans, among others in Notices of Violation and Settlement Agreements.]
- Failure to test where the test still must be performed. [Fly ash runoff into Mad River, see California Fish & Wildlife letter.]
- Failure to install monitoring equipment. [District comments that 'opacity has loose correlation to particulate matter measurements.']
- Disconnecting or failing to operate and maintain existing pollution control equipment (or other equipment if it affects pollution control). [Multiple fires, and other issues with the electrostatic precipitator (ESP) equipment as reported by Blue Lake Power and ESP repair vendors to the Tribe.]
- Failure to employ a sufficient number of adequately trained staff. [During initial restart of the plant in ~2010, major modifications were inadequate to result in compliant operations; unknown whether after current layoffs preventative maintenance is occurring at the time of this writing.]
- Failure to establish or follow precautionary methods required by regulations or permits. [Failure to obtain Authority to Construct and Permit to Operate under Prevention of Significant Deterioration / SIP frameworks.]
- Removal of pollution equipment resulting in process, operational, or maintenance savings. [Lack of fuel storage and fly ash covers; main stack pollution control equipment at various times/combinations removed or not installed to result in compliance.]

Blue Lake Power has certainly had the unfair advantage of avoided direct costs (default on leases, utilities, permit fees), and avoided costs of environmental compliance. Blue Lake Power was fined \$1,380,000 (one million, three hundred eighty thousand dollars) in a prior Settlement Agreement with the District. That penalty did not deter Blue Lake Power from further violations nor did it result in Blue Lake Power's fulfillment of the terms of that settlement – the District found that 2 years later, Blue Lake Power was still not in compliance with many of the terms of the Settlement Agreement.

The trivial \$15,000 total civil penalty in the proposed Consent Decree will have absolutely no effect in accomplishing the intent of civil penalties: deterring Blue Lake Power from non-compliant operations. *Please see the discussion of Deterrence in the comments submitted by the Rapport & Marston, LLC.*

As of this writing, Blue Lake Power is ~9 months in arrears on its lease payments to the City of Blue Lake totaling over \$85,000, and on its water and sewer payments totaling over \$54,000, for a total of over \$140,000 (source: City of Blue Lake City Manager email correspondence March 2016). And Blue Lake Power has defaulted on over \$130,000 of utility bills that it owed to the City, but which the City agreed to settle for ~\$30,000 (see BL Water Settlement attached). The initial funding provided by the Tribe to Blue Lake Power in 2009 allowed Blue Lake Power to settle its then amassed lease and utility debts to the City of Blue Lake, which already totaled \$165,000 even at that time.

Blue Lake Power is also currently ~one (1) year behind on its Title V Permit Fees. According to Blue Lake Power's current Title V Permit, "Failure to pay these fees will result in forfeiture of this Permit to Operate," yet the District chose to enter into yet another settlement agreement to extend the timeline for Blue Lake Power to pay these fees). Further, Blue Lake Power is in default on their Greenhouse Gas Verification Fees. Together the Title V Permit Fees and the Greenhouse Gas Verification Fees total ~\$30,000 in arrears.

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Add all this up – and these are just the debts the Tribe is aware of – and it’s a total of \$270,000 in various required payments that are currently in default. Adding these Blue Lake Power debts to the \$700,000 in estimated costs of achieving compliance, and Blue Lake Power would need ~\$1 million in funding just to uphold its obligations in a few areas – and this figure does *not* include the funding Blue Lake Power needs for routine operations. At a minimum the proposed Consent Decree should be revised to include a bond from Blue Lake Power to cover all costs of compliance activities, (increased) penalties, and routine operations for a reasonable period of ‘proof of performance,’ so that in the event of any default, operational or financial, the public interest would be served with a substantial payment (see also comment letter from the U.S. Department of Interior).

Blue Lake Power’s Impact on Biomass Power Industry

Blue Lake Power’s demonstrated violations – and follow-on inability to uphold terms of its settlement agreements – exacerbated by allowing Blue Lake Power to resolve its current and chronic violations with a minimal penalty and paper compliance as outlined in the proposed Consent Decree, the reasonable and highly likely result will be Blue Lake Power’s continued operation as a bad actor within a fragile industry.

In addition to Blue Lake Power’s willful actions, the failure of the District and all related agencies to conduct reliable permitting, oversight, and enforcement of Blue Lake Power’s violations and willful negligence has jeopardized the biomass power industry locally and nationally. It can reasonably be argued that Blue Lake Power – and its prominence as ‘Exhibit A’ in negative press about the pollution associated with biomass (see *Wall Street Journal* and *CleanTechnica* articles attached) – has directly impacted support for biomass power as “renewable” and resulted in reversal of policy and removal of incentives for biomass power.

It is the Tribe’s position that where biomass power is operating in compliance with the Clean Air Act, individual Title V Permits and all other permits and regulations, biomass power has earned its place in policy definitions as “renewable energy,” and is justified in its eligibility for funding support. This is especially true in the western U.S. where biomass power fits into the hazardous fuel reduction and waste diversion contexts, and particularly so in Humboldt County. However, support for biomass power is eroding due to bad actors such as Blue Lake Power and significant CO₂ and PM emissions, public concerns about decimating forests to feed these plants (which is frankly well-founded in many areas across the U.S. and the globe, though not in the western U.S.), and complicated lifecycle calculations of *net* GHG reductions and environmental benefits.

Degree of Willfulness or Negligence

The penalty in the proposed Consent Decree does not appear to take into account the Degree of Willfulness or Negligence factor within the “Clean Air Act Stationary Source Civil Penalty Policy.”

Blue Lake Power had complete control over the events constituting the violation.

Blue Lake Power certainly could foresee the events constituting the violation (e.g., choosing not to apply for an Authority to Construct).

Blue Lake Power has certainly claimed a level of sophistication within the industry in its ability to deal with compliance issues and the accessibility of appropriate control technologies.

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Blue Lake Power knew the legal requirements of the permitting regime at the time it purchased the plant, and the level of modification / reconstruction needed certainly met "major modification" definition, and compelled the ATC / PSD / SIP processes.

The Tribe views this as business-as-usual polluting without punishment, and the proposed Consent Decree as compliance on paper rather than actual compliance.

Title V Permit

Although a separate process from the Consent Decree, it is germane to the overall inadequate administrative and operational management of this plant by the District, other agencies, and by Blue Lake Power that to date it has taken over four (4) years to renew Blue Lake Power's Title V Permit, and the process is not complete, nor is it expected to be complete anytime soon. It does not seem reasonable (or regulatorily compliant) that this facility has been able to operate in limbo for over 4 years, especially when its initial Title V Permit was allegedly (but with overwhelming evidence) issued incorrectly (see Complaint).

Further, as noted above, it is the Tribe's position and recommendation that Blue Lake Power's Title V Permit should be forfeited, due to non-payment of Permit Fees.

There are other potential violations by Blue Lake Power of its Title V Permit that should be investigated, e.g., exceeding allowable propane quantities.

Other Issues

In addition to the issues detailed above and below, and in the attached documents, the Tribe submits the following as additional considerations:

Particulate matter – see letters "9.8.1989 Ultrapower Letter to Chairperson Daniels"

Lead – see "1996 March 13 Letter to EPA Ultrapower High Lead Emissions" attached.

Ammonia – Ammonia levels are called out specifically in the proposed Consent Decree, specifically the amount of unreacted ammonia contained in emissions from Blue Lake Power's main stack. Ammonia emissions have been an issue that clearly necessitates stricter controls.

Ash Runoff – see letter from California Fish and Wildlife, attached, which address willful water quality violations that have been documented.

Fuel Management Plans – in a 2011 Settlement Agreement (attached) between the District and Blue Lake Power, comprehensive fuel management activities were required. The current Consent Decree calls for similar activities, and the reasonable conclusion is a) Blue Lake Power has not complied with the terms of the 2011 settlement and b) there is zero confidence they will comply with the Consent Decree requirements for fuel management.

Additional Topics:

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- Particulate matter / ash impacts to Endangered and Threatened Species in the Mad River.
- Arsenic, and other toxic emissions
- Thick, dark smoke releases from the power plant stack at random times, day and night
- Foul odors
- Heavy truck traffic that passes the Blue Lake Elementary School on the only route to/from Blue Lake Power
- Noise pollution in exceedence of its City of Blue Lake Conditional Use Permit and other requirements; excessive noises at all hours (including alarms over 1 mile away)
- Lighting pollution in exceedence of Blue Lake Power's permits with the City of Blue Lake.

Documentation on all these issues is available upon request.

Monitoring and Testing

As noted above and in meetings with the District, and EPA, the Tribe seeks comprehensive monitoring of all emissions, with a focus on particulate matter, directly measuring quantity and constituency of particulates in real time -- at the main stack, at the fuel storage area, at any other sources of emissions, at the Blue Lake Power site boundaries, and at multiple sites that address impacted areas at the Rancheria.

In the Tribe's past efforts to work with the District to request more monitoring and determine monitoring protocols and activities, a tribal staff person spoke with the District's permitting contact. When the District representative was asked by the tribal staff member about what types of monitoring occur regarding particulate matter volume and composition, he said 'they have gather data on "opacity" every 6 minutes from a monitor on the Blue Lake Power stack,' and when the tribal staff member asked what opacity tells them about particulate matter he said, "there is a **loose correlation** between opacity and particulates." (Bold emphasis added.) Obviously if opacity is being used to quantify particulate emissions, a "loose correlation" is not an acceptable degree of accuracy or measurement standard, and the Tribe requests best available control technologies (BACTS), and Continuous Emission Monitoring Systems, and any other instrumentation that ensures accurate accounting for particulate matter emissions be installed prior to any restart of Blue Lake Power.

Further, in order for the monitoring and its resulting data to be used as a verified source in reporting, compliance, and enforcement actions, the Tribe recommends this monitoring be implemented as joint monitoring stations in partnership with the District and the EPA, paid for by Blue Lake Power, and which would meet all requirements of all regulations and processes relating to monitoring (e.g., California Air Resources Board Primary Quality Assurance Organization). The Tribe's Environmental Programs Department has been conducting Air Quality Monitoring for over a decade, and has experience in accurate data collection, instrumentation, reporting, etc.

Regarding testing of particulate matter fallout, at various times (please see as examples, Blue Lake Rancheria Particulate Tape Sampling Event, and Particulate Blue Awning Event documents attached) tribal staff have collected samples of particulate matter from various sites on the Tribe's trust land. Though these samples were dutifully and accurately collected, it was not done by an independent objective third party. Further, as noted above, the District has stated to the Tribe it is "certain the plant was not the cause" of the sooty fallout, thus the Tribe was hesitant to rely on the District's oversight and processing of any testing protocols, given this bias.

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Blue Lake, CA 95525

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Fax: (707) 668-4272

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**Undue Burdens of Reporting; Inadequate Permitting, Oversight, Regulation, and Enforcement**

The Blue Lake Rancheria is a small tribe, and the City of Blue Lake is a small town, and the biomass plant currently owned/operated by Blue Lake Power is a large, chronic problem.

The District and the EPA have counseled the Tribe (up to and including the March 23rd meeting) to report any infractions that the Tribe observes regarding Blue Lake Power so that 'they can investigate.' On its face this places an undue burden on the Tribe and local citizens to achieve inspection and enforcement activities. It is not the Tribe's job to inspect Blue Lake Power for CAA or any other violations. It is the job of the regulatory structure and agencies to ensure adequate monitoring and compliance activities in place to result in compliance.

However, the Tribe, tribal staff, tribal members, other Rancheria residents, residents of the City of Blue Lake, county residents affected by Blue Lake Power emissions – hundreds of people have lodged and reported thousands of complaints about Blue Lake Power emissions and other issues to the Tribe, to the City of Blue Lake, to the District, and to the California and federal EPA. Reporting, documenting, and submitting complaints takes valuable time – time ordinary citizens and tribal staff (who are not experts in utility-scale biomass power plant permitting / compliance / enforcement) need to spend on their full-time jobs and family, health, and education obligations.

Further, the Tribe and these hundreds of people have had to spend time fighting a dismissive District and unresponsive regulatory agencies, simply to obtain compliance and enforcement of the legal and regulatory processes that should have been applied and enforced – all while enduring the impacts of a bad actor entity that evidently has mastered how to operate in outright defiance of the permitting and regulatory requirements.

There is an overall environmental justice concern as well, as the Tribe is located between wastewater treatment plant owned by the City of Blue Lake, a defunct landfill with questionable capping and other environmental protections, and this biomass plant.

As detailed above, the Tribe has met and corresponded with the District, California Environmental Protection Agency, U.S. Environmental Protection Agency, and the Department of Justice, among other stakeholders. Either the agencies have not responded, not responded timely, and/or the meetings have been unproductive. Partially this is due to the complex permitting, enforcement, and other divisions of responsibilities across many agencies and personnel, but even given that understanding, the lack of any response, delayed response times, and lack of trust responsibility have been unacceptable. Through correspondence, government-to-government consultation, and other mechanisms, the Tribe considers any administrative remedies to be exhausted.

Everyone is time and resource constrained, but we rely on our regulatory agencies to do their jobs and implement and enforce the laws and regulations.

There is a specific conflict of interest issue with the Consent Decree. Nancy Diamond represents both the City of Blue Lake and the District, and as a result has several conflicting interests. Blue Lake Power owes the City of Blue Lake hundreds of thousands of dollars in lease and utility payments. On the one hand, while the District may seek greater penalties on Blue Lake Power for Clean Air Act violations, the City of Blue Lake has an interest in limiting any penalties to allow Blue Lake Power to pay back debts to the City of Blue Lake. The conflict of interest with Nancy Diamond also

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runs the opposite way. She is representing the District, which had a role and responsibility (and potential liability) in the original inadequate permitting structure, so she would want this Consent Decree to be approved to protect the District. In that sense, it would be advantageous to discourage the City of Blue Lake (and/or its citizens) from opposing the Consent Decree (even though there have been hundreds of complaints from Blue Lake residents) in order to protect the District and this deal. In fact, in a City Council meeting in March, Ms. Diamond was asked what the process was with the consent decree, and she said 'most of the time they are accepted by the Court' which may be true, but when Ms. Diamond, the City Attorney, makes that statement it likely also has the effect of discouraging Blue Lake residents from thinking they can change the outcome with comments or other actions.

The District (and the related agencies) and the City of Blue Lake have repeatedly negotiated and settled with Blue Lake Power on all of their critically serious issues to no net improvement in terms of compliance, and to significant financial loss. This documented track record leads the Tribe to conclude that the District, California EPA, and the U.S. EPA cannot be relied upon to regulate this facility, and as such, urges the proposed Consent Decree to be withdrawn and for the United States to proceed with litigation.

Conclusions

Given the facts listed above, the Tribe fails to see how Blue Lake Power can be considered financially or operationally able to operate in compliance. This plant was constructed 30 years ago, with an 11-year interim period of de facto abandonment. It is the Tribe's position that Blue Lake Power's repeated, chronic failure to achieve compliant operations demonstrates that the plant is simply not (or no longer) able to achieve an compliant operational standard.

Given it's track record with financial default and regulatory violations, the Tribe also fails to see how the United States and EPA could reasonably conclude that Blue Lake Power can fulfill the even the relatively lax terms of the proposed Consent Decree, and the Tribe has zero confidence that Blue Lake Power can achieve *actual* compliance with the Clean Air Act and other regulations.

The Tribe respectfully recommends the following:

- **Withdraw the proposed Consent Decree**
- **Proceed with litigation based on the Complaint.**
- **Require Blue Lake Power to demonstrate its operational and financial ability to comply with all regulations before a restart is allowed under any circumstances.**
- **Require Blue Lake Power to apply for a new Authority to Construct/Permit to Operate, in compliance with all Prevention of Significant Deterioration and State Implementation Plan framework requirements.**
- **Require independently verifiable proof of Blue Lake Power's financial capability to implement, and its technological capability to operate in compliance.**
- **New requirements for comprehensive monitoring of all emissions, with a focus on particulate matter, directly measuring quantity and constituency of particulates in real time.**
 - The Tribe recommends a joint monitoring station in partnership with the District and EPA, paid for by Blue Lake Power, and which would meet all the requirements of all regulations and processes relating to monitoring, data collection, and reporting so that there is complete confidence in the data by all parties and in compliance and enforcement contexts.

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- Any future violation of Blue Lake Power's permits or settlements should be enforced immediately with the maximum penalties.

Or, at a minimum,

- Modify the Consent Decree to include larger penalties and far more stringent compliance activities
- Require Blue Lake Power to demonstrate its operational and financial ability to comply with all penalties, compliance activities, and regulations before a restart is allowed under any circumstances.
- Require a bond from Blue Lake Power for the full value of all compliance activities, penalties, and 3 years of routine operations.

The Tribe has made every attempt to be a good neighbor and support biomass power – both this plant in particular and the biomass power industry in general – to support jobs and relatively green energy production. In the case of Blue Lake Power however, the health and environmental impacts have become untenable.

Thank you for your consideration in this important matter.

Sincerely,

Arla Ramsey
Vice Chairperson

Cc: Blue Lake Rancheria Tribal Council
U.S. Department of Interior
Dave Rapport, Rapport and Marston

Attachments:

- 11.19.1983 BLR Letter to Ultrapower
- 9.8.1989 Ultrapower Letter to Chairperson Daniels
- 2009 Times Standard Article Blue Lake Extends Blue Lake Power Agreement
- 2011 BLP_NCUAQMD Settlement Agreement
- 2011 July 8 CA Fish & Game Letter Blue Lake Power Ash
- BL Power Water Settlement
- BLR Letter to NCUAQMD 7.2.13 Low Res
- Blue Lake Rancheria Particulate Tape Sampling Event Low Res
- Blue Lake Rancheria Particulate Blue Awning Event
- CAA Facilities EPA Watch List 9.2011
- BLR Letter to NCUAQMD 7.2.13 Low Res
- CleanTechnica Blue Lake Power Article
- Wall Street Journal Article 'Green' Wood-fired Power Plants Generate Pollution Violations
- Sample Correspondence notes with North Coast Unified Air Quality Management District



**North Coast Unified Air Quality
Management District
2300 Myrtle Avenue, Eureka, CA 95501
Telephone (707) 443-3093 FAX (707) 443-3099
<http://www.ncuaqmd.org>**

August 10, 2010

Mr. Glenn Zane
Blue Lake Power LLC
P.O. Box 648
Blue Lake, CA. 95525

Re: Recent Violations at Blue Lake Power LLC

Dear Mr. Zane:

On several different occasions in the last few months, staff of the North Coast Unified Air Quality Management District (District) has spoken to several different representatives of Blue Lake Power LLC (BLP) concerning the operation of the power plant located at 200 Taylor Way in Blue Lake, CA. District staff has tried to work cooperatively with BLP personnel during the re-start of this plant after an extensive shut-down period. We have worked to discuss and correct issues of non-compliance with District, State and federal regulations concerning current operating permits issued by the District to BLP.

Although the plant has been shut down for many years, personnel at the plant have assured the District that the plant was being maintained in operational status so that the Title V permit issued to this facility would remain valid. Based on information provided to the District, the District agreed that minimal maintenance activities were being performed on the facility, and the District continued to manage this facility as a Title V source located within the District. The advantage to BLP of maintaining an active, valid permit is that an active permit allows the plant to re-start using the existing equipment and controls, and avoid the need to go through an extensive Prevention of Significant Deterioration review that would be required if the plant ever officially closed. However, maintaining valid, active permits also means that the requirements and expectations are that plant personnel be aware of federal, State and District regulations, the operating conditions contained in the permit, and that the plant be capable of re-starting and operating in a manner which complies with applicable regulations.

The District has a responsibility to insure that equipment operating within the District be operated correctly and efficiently to insure the health and safety of the citizens. The District and BLP are currently negotiating a settlement agreement for many violations of District regulations. Even though BLP is currently negotiating with the District to settle several other violations, and District personnel have made several attempts to insure BLP operates within the parameters of the regulations and their existing Title V permit, BLP continues to operate contrary to allowable conditions contained in the Permit To Operate and District regulations.

Mr. Glenn Zane, Blue Lake Power
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In particular, on August 3, 2010 Mr. Randall Paterson submitted an e-mail to the District on behalf of BLP (attached) stating *"Dear NCUAQMD: Attached a(re) (sic) Breakdown Reports for the following dates and times. We again have fallen short of some of the reporting procedures as noted for the applicable report:"* Mr. Paterson then proceeds to identify three out of seven breakdown/malfunction episodes that were not reported to the District as required in District regulations and the existing operating permit, and six of the seven reports of breakdown cannot be considered by the District as breakdowns because they were caused directly by operator error or faulty procedures. District Rule 101 § 1.40 defines Breakdown or Malfunction:

"Any unforeseeable failure or malfunction of any air pollution control equipment or operating equipment which causes a violation of any emission standard or limitation prescribed by the AQMD, State, or federal rules, regulations, or laws where such failure or malfunction:

- 1.40.1 Is not the result of intent, neglect, or disregard of any air pollution control law, rule or regulation;*
- 1.40.2 Is not the result of improper maintenance;*
- 1.40.3 Does constitute a nuisance;*
- 1.40.4 Is not an excessively recurrent breakdown of the same equipment."*

Because each of these instances occurred after several discussions with BLP representatives by several representatives of the District specifically identifying Breakdown/Malfunction procedures contained in BLP's permit and District regulations, the District considers these violations egregious and willful acts. Specifically, the District finds six of the seven incidents to be direct violations of § 42402.3 (a) of the California Health & Safety Code. Each violation carries a maximum penalty of \$75,000. Therefore, the six violations identified above carry a maximum combined penalty of \$450,000. These violations are different and separate from the violations previously identified by the District which BLP is currently negotiating with the District to resolve.

It is imperative that BLP immediately comply with all conditions listed in the Title V Permit to Operate as well as applicable federal, State and local regulations. BLP shall, as expeditiously as possible, inform all employees of the conditions contained in the Title V Permit to Operate, and instruct employees in the proper procedures to follow when reporting a breakdown or malfunction. The District, as needed, stands ready to assist BLP in understanding the Permit and District regulations. Any future violations identified by the District of a similar nature found within the next 365 days will be treated by the District as a willful and intentional emission of an air contaminant.

The District stands ready to obtain an injunction to require BLP to immediately cease operations, and/or start the process to revoke BLP's operating permit. These are extreme actions that the District has thus far refrained from instituting. The District has tried a more collegial approach with BLP in hopes that BLP would be able to obtain compliance with the permitting conditions expeditiously. However, even though it appears as if BLP has made substantial improvements, the District continues to see violations of several different permit conditions. The District has observed over 60 separate violations of opacity, carbon monoxide, nitrogen oxide or other permit conditions and limitations within the last few months, and the District continues discussions with BLP to resolve these issues as well.

However, to settle the breakdown/malfunction violations identified in this letter alone, BLP shall submit as payment a sum of \$75,000 payable to the North Coast Unified Air Quality Management District, 2300 Myrtle Avenue, Eureka, CA 95501. This total amount of \$75,000 shall be due and payable to the District no later than August 27, 2010. The remaining amount

Mr. Glenn Zane, Blue Lake Power
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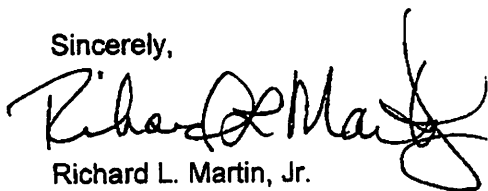
of \$375,000 will be waived if BLP complies with the identified permit conditions and applicable federal, State and local regulations. Additional violations found within 365 days of August 27, 2010 will result in the entire remaining amount of \$375,000 due and payable to the District at the above identified address within 30 days of notification by the District.

BLP must find a way to either operate within the conditions outlined in their permit and the applicable rules and regulations, or BLP must discontinue operations until such a time as they can operate within the conditions of their permit and applicable regulations. Non-compliance with permit conditions and District regulations cannot continue.

The District has spent a considerable amount of time and energy in assisting BLP in bringing a plant that has been non-active for a considerable amount of time up to operating specifications when the plant should have been in compliance from the very first day of start-up in Mid-April 2010. There have been a considerable number of problems in the almost 160 days since re-start for a plant that should have been operating in compliance from day one.

Please contact me at (707) 443-3093 if there are any questions.

Sincerely,



Richard L. Martin, Jr.
Air Pollution Control Officer
North Coast Unified Air Quality Management District

Cc: Nancy Diamond, District Counsel
Al Steer, Compliance and Enforcement Manager

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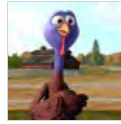
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By JUSTIN SCHECK and IANTHE JEANNE DUGAN

Updated July 23, 2012 11:38 p.m. ET

BLUE LAKE, Calif.—Malodorous brown smoke from a power plant enveloped this logging town on April 29, 2010, and several hundred residents fled until it passed.

Six months later, the plant got \$5.4 million from a federal program to promote environmentally preferable alternatives to fossil fuel.

The plant, Blue Lake Power LLC, burns biomass, which is organic material that can range from construction debris and wood chips to cornstalks and animal waste. It is among biomass plants nationwide that together have received at least \$700 million in federal and state green-energy subsidies since 2009, a calculation by The Wall Street Journal shows.

Yet of 107 U.S. biomass plants that the Journal could confirm were operating at the start of this year, the Journal analysis shows that 85 have been cited by state or federal regulators for violating air-pollution or water-pollution standards at some time during the past five years, including minor infractions.



Enlarge Image

Blue Lake Power is a wood-fired plant in Blue Lake, Calif. Justin Schreck/The Wall Street Journal

Biomass is growing as a source of electricity, its production up about 14% in the past 10 years, according to the Department of Energy. Alternative electricity-production sources as a whole generate about 13% of power in the U.S., and biomass is about 11% of the alternative production.

As federal and state governments promote such sources—largely to cut emissions

believed to affect the climate but also for related goals such as providing cleaner air to breathe, preventing acid-rain harm to lakes and reducing reliance on energy imports—biomass plants generally qualify along with wind and solar.

Although the biomass plants inevitably produce emissions, since they burn things, what they burn replenishes itself, qualifying them as renewable power.

They also count as carbon-neutral, on the notion that the carbon released when they burn a material such as scrap wood eventually would get into the atmosphere anyway, when the wood decays.

The Biomass Power Association says any emissions noncompliance lies with a small number of plants. "The idea that members of my association are out of compliance with environmental restrictions on a regular basis is totally wrong," said Bob Cleaves, president of the group, which represents more than 80 power plants that burn wood, not including Blue Lake.



Enlarge Image

More than two dozen truckloads of wood arrive each day at Blue Lake Power. Justin Scheck/The Wall Street Journal

Mr. Cleaves, who declined to comment on specific plants, said biomass is cleaner than the fossil fuels because it is carbon-neutral, and produces "clean energy" efficiently. Mr. Cleaves said the biomass industry gets a disproportionately small share of public funding in relation to the amount of energy it generates.

Michael Van Brunt, director of sustainability for a division of Covanta Holdings Corp. that owns eight biomass

plants, said such power is a vital piece of the nation's renewable-energy supply and gets less in government support than fossil-fuel sources. Fossil-fuel industries also receive government subsidies, but these generally aren't intended to improve the environment.

Some in the industry say a range of issues, from inconsistent fuel supplies to age, can make compliance with emissions standards challenging at biomass plants. "It's goddamn hard to stay in compliance," said Kevin Leary, co-owner of Blue Lake Power.

Mr. Leary—who blamed its smoke release on low-quality fuel—said a problem some biomass plants face is simply that they are old, tracing back to a Carter-era program to spur alternatives to imported oil, and weren't designed to meet today's more stringent emissions rules.

"Without the ability to change the geometry of the furnace, you've got to pull a rabbit out of a hat" to meet limits on nitrogen-oxides emissions, Mr. Leary said, and use strategies such as large smoke scrubbers and precise monitoring of fuel and oxygen levels.

Blue Lake is 27 years old. It was idle for a decade until Mr. Leary helped restart it in 2010. Since then it has had emissions violations, a machinery fire and an explosion that blew a 6-foot hole in a concrete wall. For a while last year it was on an EPA watch list of plants with compliance issues. Now, Mr. Leary says, it is operating within its permit.

Nearly all U.S. biomass plants receive government support from subsidies, grants or state-approved power contracts. The federal economic-stimulus act of 2009 provided more than \$11 billion for renewable power, of which about \$270 million went to biomass plants, in grants administered by the Treasury Department. Other federal agencies involved in such subsidies include the departments of energy and agriculture.

More than 30 states require utilities to buy a percentage of their power from sources that are renewable, generally letting the utilities pay more for this power than they would for electricity generated by fossil fuels. Blue Lake sells its electricity to a San Diego utility that pays it about twice as much for coal-fired plants' energy.

In Old Town, Maine, a facility called Old Town Fuel and Fiber has received more than



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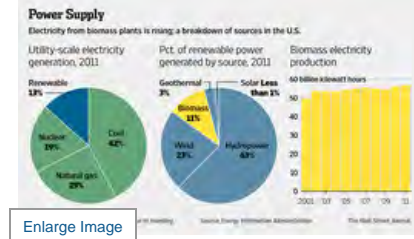
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\$5 million in federal funds to develop renewable fuels since 2007, most recently \$377,000 from the state for equipment.

Old Town also has exceeded state-mandated limits on sulfur or another pollutant in every quarter since the end of 2009, federal records reviewed by the Journal show. Violations continued after the plant paid almost \$300,000 in fines



between 2008 and 2011.

Company president Dick Arnold said the violations should stop once the plant receives a new state permit, which he said will increase its allowable carbon-monoxide emissions. A spokeswoman for the Maine Department of Environmental Protection said such a permit is in the approval process. She said the department and Old Town are in the process of negotiating a "six-figure settlement" in which Old Town will pay fines for prior violations.

Old Town hasn't been required to pay back its grant funding or subsidies. In almost all cases, green-power subsidies aren't linked to environmental compliance.

Mary Booth has studied biomass power for the Environmental Working Group, an organization that calls for stricter regulation, and the Partnership for Policy Integrity, a smaller group that is critical of biomass plants. She says government agencies should withhold grants from plants that violate emissions standards. "Why are we subsidizing and incentivizing something that's dirtier than coal power in certain ways?" she said.

Daniel Kammen, a professor at the University of California at Berkeley who also studies renewable energy, says that in the long term, creating electricity by burning organic waste should help reduce greenhouse gases. But he says much recent government funding has gone to projects that were already online, old ones that are more prone to break down and are "not necessarily the best in terms of local air quality."

Some violations are attributed to regulatory standards that are still being ironed out. Simpson Tacoma Kraft Co. of Tacoma, Wash., which mills lumber, got an \$18 million federal grant in February toward the cost of a new wood-burning boiler that produces electricity and heat. Since it started up in 2009, the boiler has emitted higher levels of nitrogen oxides than its original state-issued permit allowed, according to state regulators and Simpson.

Washington state bases permits on the emissions levels achievable by the best boiler technology. Simpson's permit was based on claims the manufacturer made about what its emissions should be, but the nitrogen-oxide emissions turned out to be higher, said a Simpson spokesman, Dave McEntee. The company has done a study to figure out whether the permit should be changed to allow higher emissions.

Robert Carruthers, a Washington Department of Ecology engineer, said the higher emissions rate is a "nuanced ongoing issue" that may be resolved by increasing the plant's allowable emissions.

Mr. McEntee said the plant currently is in "full compliance" with a temporary limit the state set. He added that EPA calculations show that since the plant started operating it has helped avoid 179,000 metric tons of carbon emissions, versus buying conventionally produced power.

California, with 33 biomass plants, has nearly a third of the nation's total. In the Central Valley, four biomass plants received more than \$10 million in state clean-energy subsidies from 2009 through 2011 while accruing more than \$2 million in fines during the same period.

Crown Disposal runs a biomass plant near Fresno called Madera Power, which the owner's website describes as producing "green renewable electricity." Crown took it



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over in 2004. Since then, state regulators have cited the plant more than two dozen times, fining it several times from 2004 to 2009 for failing to perform emissions tests and emitting excess sulfur and visible smoke.

Madera Power nonetheless qualified under a California program that used a "public goods" surcharge on utility bills to fund a "self-sustaining renewable energy supply for California." From 2009 through 2011, when that program ended, Madera Power received nearly \$6 million in subsidies, state records show.

During that time, it emitted excess sulfur, particulates, carbon monoxide and nitrogen oxides and at one point was found to be burning plastic and rubber, which weren't allowed.

A second Crown Disposal plant nearby received \$3.1 million in state subsidies from 2009 to 2011 and had multiple violations. The San Joaquin Valley Air Pollution Control District fined Los Angeles County-based Crown \$1.875 million in 2010 for the violations.

Since then, regulators have fined the Madera plant for continued excess sulfur and carbon-monoxide emissions, regulatory documents show. The air district fined it for excess visible smoke in December, and this year it has had two citations for excess carbon dioxide.

Crown's owner, Thomas Fry, said the Madera plant hasn't been producing power in recent months. "It's pretty darn hard to stay in compliance with anything any more," he said.

Mr. Fry said that officials from the Air Pollution Control District "just come out, decide they need money, and write a citation."

A district spokeswoman said that before levying a fine, officials hold multiple meetings with plant managers to figure out how they can come into compliance. The plants were fined, she said, because they had a pattern of violations and "were burning literally tons of illegal materials" like plastics.

Two nearby Central Valley power plants, in El Nido and Chowchilla, received more than \$2.5 million in state clean-power subsidies from 2009 to 2011 and violated restrictions on nitrogen, sulfur and carbon monoxide at various times during those same years. The EPA last year fined them \$835,000.

A problem was inconsistent fuel supplies, said a person who had a management role with the plants. They had mainly burned building debris, but the construction slowdown reduced that and forced plants to use more agricultural waste, including orchard trimmings that didn't burn cleanly.

A spokeswoman for the plants' current owner, Akeida Capital Management, said they have been running without violations since it acquired them in December. She added that the plants provide employment for 41 people and use waste that might otherwise go to landfills.

Blue Lake Power, the plant that once sent residents fleeing, was resurrected with the help of federal funds.



[Enlarge Image](#)

Blue Lake co-owner Kevin Leary opens a window to the plant's boiler, where wood chips are burned to heat steam. *Justin Scheck/The Wall Street Journal*

Built in 1985, it closed in 1999. Hoping to get into the growing renewable-power industry, Mr. Leary, a former fiber-optic-cable engineer, decided to buy the plant with several partners.

Mr. Leary's group received a \$2 million grant from the U.S. Forest Service and more than \$16 million in investments to buy and refurbish the plant, knowing a provision of the federal stimulus act would refund 30% of the investment, amounting

to subsidies of over \$5 million.

Mr. Leary lived for months in the plant's dusty offices, making deals with logging companies for wood waste and getting permits in line. The plant fired up on April 29, 2010, and immediately began spewing dark smoke.

Curtis Thompson, who works at the Mad River Brewery across the street, picked up his wife and young daughter and fled, as did several hundred other residents. "We were smoked out," Mr. Thompson says. The people returned over the next couple of days as the air cleared.

The plant went idle. The North Coast Air Quality Management District investigated and found several violations. It reached a settlement with Mr. Leary requiring Blue Lake to pay \$1.4 million but allowed it to spend most of the money buying new pollution-control equipment and developing better operating practices rather than paying the agency.

"It has been painful for us to realize that our performance has not been good at all," Mr. Leary wrote in 2010 to the air board's general manager, Rick Martin.

Blue Lake briefly reopened last year, closing again after a wood-loading conveyor belt caught fire. Last summer the EPA put the plant on its watch list of problematic polluters with unresolved compliance issues. It was removed in October.

The plant restarted again in March 2012 and promptly had a pipe explosion that blew a hole in the boiler and a concrete wall. These have been fixed, and the plant is operating again.

Mr. Martin of the air board says he hopes it can stay in compliance. There are four power plants in his district. Three have been fined for environmental violations over the last two years. They for their electricity.

A fourth plant, Mr. M energy subsidies. "It


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State of California
Department of Fish and Game



Memorandum

Date: July 8, 2011

To: Warden Jackie Krug
Northern Region
Department of Fish and Game
619 Second Street
Eureka, California 95501

A handwritten signature in cursive script that reads "Jane Vorpagel".

From: Jane Vorpagel, Staff Environmental Scientist
Northern Region
Department of Fish and Game
619 Second Street
Eureka, California 95501

Subject: **Blue Lake Power, LLC, Ash Discharge to tributary to Mad River, Blue Lake, Humboldt County**

This memorandum documents the discharge and placement of ash where it entered into a tributary to the Mad River at Blue Lake, Humboldt County. On October 13, 2010, Department of Fish and Game (DFG) Lieutenants Robert Farrell, Rick Banko and Staff Environmental Scientist Jane Arnold visited the locations of the apparent violations by Blue Lake Power, LLC. The DFG site visit was in response to a call reporting ash slurry being deposited where it could enter Waters of the State. Ash slurry was present on the site and in the tributary channel adjacent to the Mad River (see Map 1 and Photographs 1, 2, and 3). Ash samples were collected at the site and from the tributary. During this site visit, the ash slurry was not entering the Mad River. However, Ms. Arnold walked the entire length of the tributary to the Mad River where she observed evidence of previous ash deposits and a culvert connecting the tributary to the Mad River (Jane Arnold, personal communication).

The ash slurry was deposited in the drainage for approximately 100 lineal feet. The slurry was several inches deep and a few feet in width.

The North Coast Regional Water Quality Control Board has issued an Industrial Storm Water General Permit No. 1-12I021571 to Blue Lake Power, LLC. Under this general permit specific industrial activities must use the best technology available to reduce pollutants in their discharges.

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The general permit contains the following prohibitions.

"DISCHARGE PROHIBITIONS:

1. Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.
2. Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

In addition, the facility is required to develop both a Storm Water Pollution Prevention Plan (SWPPP) and a way to monitor their progress. DFG was unable to obtain a copy of either the permit or the SWPPP.

A SWPPP requires best management practices to prevent polluted storm water runoff from leaving the site. It appeared during the site visit that straw wattles were present, but at several locations the wattles appeared to have been removed by equipment (see Photographs 4 and 5). Additionally, a hose was present, which facilitated the flow of ash slurry from the site to the tributary to the Mad River. Any discharge of non-storm water or polluted ash laden water would be a violation of the facilities Industrial Storm Water permit, as well as the SWPPP (See photograph 1). This discharge was not permitted by the Regional Water Quality Control Board. The photographs show that the removal of the straw wattles and presence of a hose allowed ash to flow to a small tributary channel which is directly connected to the Mad River via a culvert through the levee.

Additionally, containers labeled as having chemicals and diesel fuel were onsite, however, they were not stored with appropriate secondary containment for prevention of spills. This lack of containment could lead to additional releases of chemicals to the environment. (Photographs 6 and 7).

This discharge of ash slurry to the tributary or placement where the ash slurry can enter the tributary or the Mad River is a violation of Fish and Game Code Section 5650. Fish and Game Code Section 5650 states in part: (a) Except as provided in subdivision (b), it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this State any of the following:

- (2) Any refuse, liquid or solid, from any refinery, gas house, tannery, distillery, chemical works, mill, or factory of any kind....
- (6) Any substance or material deleterious to fish, plant life, or bird life.

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(b) This section does not apply to a discharge or a release that is expressly authorized pursuant to, and in compliance with, the terms and conditions of a waste discharge requirement pursuant to Section 13263 of the Water Code or a waiver issued pursuant to subdivision (a) of Section 13269 of the Water Code issued by the State Water Resources Control Board.

The Blue Lake Power LLC's general permit and the SWPPP do not allow the discharge of ash slurry to waters of the state, per the above discharge prohibitions.

Following is a discussion of the ecological importance of the Mad River and its aquatic resources and the effects of ash on streams. The ash was comprised of small size particles. Aquatic species and their habitat would be adversely affected by ash discharged into the drainage which is tributary to the Mad River.

Ecological Significance of Project Setting and Beneficial Uses

The Mad River is designated pursuant to the Clean Water Act §303(d) as impaired from elevated water temperatures, turbidity and excess sediment levels. Thus, any additional inputs of the water pollutants of sediment, turbidity or temperature are cumulatively significant impacts. Under 40 CFR 1508.7, "Cumulative impact is the impact on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time" (Council on Environmental Quality 1997).

Categories of beneficial uses of water in the Mad River Hydrologic Area relevant to fish and wildlife resources include Cold Freshwater Habitat; Migration of Aquatic Organisms; Commercial and Sport Fishery; Rare, Threatened, or Endangered; Spawning, Reproduction, and/or Early Development; and Wildlife Habitat. Thus, protection of riparian areas and source control best management practices are necessary to protect the above listed instream beneficial uses, aquatic species and their habitat.

The Mad River watershed has regionally-important fish-bearing streams supporting coho (*Oncorhynchus kitsuch*) and Chinook salmon (*O. tshawytscha*), steelhead trout (*O. mykiss*), and coastal cutthroat trout (*O. clarki clarki*). The Mad River also supports longfin smelt (*Spirinchus thaleichthys*), green sturgeon (*Acipenser medirostris*), eulachon (*Thaleichthys pacificus*), Pacific lamprey (*Lampetra tridentate*), and other fish species. The National Marine Fisheries

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Service listed coho and Chinook salmon, steelhead trout, eulachon, and green sturgeon as "threatened" pursuant to the federal Endangered Species Act. DFG has listed coho salmon and longfin smelt as "threatened" pursuant to the California Endangered Species Act. For Mad River coho salmon, the "Recovery Strategy for California Coho Salmon" lists impacts to recovery of: 1) reduction in habitat diversity by aggradation, 2) high fine sediment loading, and 3) high water temperature (Department of Fish and Game, 2004).

The Mad River supports foothill yellow-legged frog (*Rana boylei*) and western pond turtle (*Actinemys marmorata*), which are both California Species of Special Concern (SSC) and other amphibians and wildlife. The Department designates certain vertebrate species as SSC because declining population levels, limited ranges, and/or continuing threats have made them vulnerable to extinction or extirpation in California.

During the past 40 years, Mad River coho salmon have had an estimated 70% population decline (DFG 2004). Commercial and sport fishing are impacted by the reduced fish stocks. In 2008 and 2009, the Governor of California and the Secretary of Commerce declared fishery disasters for the commercial salmon fishing fleet. Thus, the loss of salmon fisheries has had not only an environmental impact, but also an economic one.

Effects of Ash on Aquatic Species

The ash particles released at the site were very small and would have the same effect as suspended particles in the sand-silt size class. These particles seriously compromise respiratory tissues. The ash would tend to clog the spaces between sensitive gill tissue, impeding water contact and proper gas exchange resulting in asphyxiation (Newcomb 1983).

The filling of water bodies with sediments, ash slurry or other particulate matter amounts to an obvious loss of habitat available to aquatic life, thereby resulting in injury to natural resources. But, fines or ash need not be deposited on or within benthic substrate to be deleterious. Silt and clay-size particulate materials which may not rapidly settle significantly increase the water's cloudiness or turbidity to the detriment of the fish. Salmonids are sight feeders and, as such, are dependent upon water clarity for success in finding food. Anything that decreases visibility can thus seriously affect their ability to survive. Turbid water decreases visibility, thereby adversely affecting foraging success and survival of fish. Ratios for steelhead trout smolt to adult spawner returns indicate that a small change in smolt growth can greatly affect the number of adults returning from the ocean. Reduction in smolt growth as low as 0.4 inches (10 mm) can substantially diminish the number of steelhead trout adult returns. Thus, an increase in turbidity can reduce fishes' ability to feed, diminishing their growth, and thereby reduce the number of returning adult fish to spawn (Dr. William Trush, personal communication). Discharge of ash slurry to the tributary to the Mad River is deleterious to fish and other aquatic life.

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Exposure to suspended particles can also dislodge insects and algal populations sufficiently to inhibit primary and secondary productivity to the detriment of the stream's carrying capacity (Iwamoto, 1978; Gammon, 1970). Aquatic macroinvertebrates including caddisflies, mayflies, and stoneflies are key components of the diet of salmonids. These insects develop on the clean surfaces of stream substrates including small and large gravels and cobbles and depend to a large degree on turbulent water around these rocky surfaces to bring them food. The deposition of ash, silts, or clays around and over streambed substrate reduces both the area upon which aquatic insects may develop as well as impairing the water clarity and turbulence required for effective feeding. Exposure to suspended particles can also sufficiently dislodge insects and algal populations to inhibit primary and secondary productivity to the detriment of the stream's carrying capacity for fish (Gammon 1970, Iwamoto et al. 1978).

Conclusions

The detrimental effect of silt, ash and turbidity on salmonids and other aquatic species is well-documented. Based upon the biology and habitat requirements of the aquatic species listed above, there is compelling evidence that the discharge of ash slurry to the tributary channel has caused and will continue to cause deleterious effects to aquatic species and their habitats. Because the drainage channel is connected via a culvert through the levee, the discharge could have impacted resources in the Mad River, however, additional resource damage assessment would be required to determine the extent of the impacts.

If you have any questions or comments regarding this matter, please contact Staff Environmental Scientist Jane Vorpapel at (530) 225-2124.

cc: Lieutenant Robert Farrell and Lieutenant Rick Banko
Rfarrell@dfg.ca.gov, Rbanko@dfg.ca.gov

Messrs. Curt Babcock and Tony LaBanca
Mss. Donna Cobb, Jane Vorpapel, and Jane Arnold, and Laurie Harnsberger
Department of Fish and Game
cbabcock@dfg.ca.gov, tlabanca@dfg.ca.gov, Dcobb@dfg.ca.gov,
jvorpapel@dfg.ca.gov, jarnold@dfg.ca.gov; lharnsberger@dfg.ca.gov

Attachments

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Photograph 1. Inside of the fence on the site of Blue Lake Power, Inc. photo showing ash slurry deposited where it can enter Waters of the State. A hose used to allow slurry to run off into the tributary is pictured (see arrow). Photos By Jane Arnold, October 13, 2010



Photograph 2. Ash slurry deposited in a tributary to the Mad River. The tributary, on the opposite side of the fence from the site, is connected to the Mad River by a culvert through the levee. This photo shows that ash left the site boundaries and was placed where it could enter into Waters of the State.



Photograph 3. October 13, 2010. Dried ash (arrow) in the tributary downstream of the wet ash slurry. The dried ash appeared to have been deposited from a previous discharge.



Photograph 4. Area cleared (arrow) by equipment for apparent enhancement of storm water runoff into a tributary leading to the Mad River. The area appeared to have previously had straw wattles installed. However, a low area was created with equipment to apparently allow water to flow offsite and into the tributary to the Mad River.



Photograph 5. Equipment tracks (arrow) left from apparent breaching of straw wattles. Straw wattles were intact in other areas of the site, however, at this point, they appeared to have been removed and runoff directed toward the tributary to the Mad River.



Photograph 6. Ash and slurry from the site. Barrels containing chemicals are present without proper secondary containment.



Photograph 7. Diesel fuel onsite without secondary spill containment measures.

COMPROMISE AND SETTLEMENT AGREEMENT CONCERNING WATER RATES

This compromise and Settlement Agreement is made by and between Blue Lake Power, LLC ("BLP") and the City of Blue Lake (the "City") and is effective as of the date of the last party signing below ("Effective Date").

Recitals

1. BLP disputes the water rate charged by the City on grounds that the rate is disproportionate to its actual usage. Beginning March 2011, BLP has paid the City one-half of the invoiced water bill based on BLP's determination of the water rate it believes it should pay.

2. The City disputes that BLP is charged a water rate disproportionate to its usage, and believes that BLP is delinquent in its payment for water services dating to March 2011. On November 30, 2011, the City recorded in the official records of Humboldt County a utility lien against the leasehold interest owned by BLP. As of November 13, 2012, the City believes BLP owes \$136,364.34 for water service.

3. The parties wish to reach a full and final settlement of this dispute and all matters arising therefrom based on the terms set forth herein.

NOW THEREFORE, in consideration of the mutual promises recited herein which are made a material part hereof, the parties agree to the following:

1. Water Rate Study. The City has contracted with a registered professional engineer to complete a water rate study to evaluate water usage and operational costs across all sectors of the City ("Water Rate Study"). In the event the Water Rate Study supports a change in water rate schedule, the City agrees to adopt an appropriate new water rate schedule. BLP shall have at least 30 days to review and comment on the final Water Rate Study prior to City Council adoption of any new water rates.
2. Disputed Past-due Billing Amount, Payment. BLP agrees to make payment of the disputed amount for the past due water account balance existing at the time of the Effective Date of the Agreement as follows:
 - a. Within 5 business days after the Effective Date of this Agreement, BLP shall make a payment to the City of \$30,000 ("Initial Payment").
 - b. BLP shall pay the remaining balance in equal monthly payments made over ten (10) months beginning 30 days after payment of the Initial Payment.

3. Release of Utility Lien. The City shall credit the \$30,000 Initial Payment against BLP's utility lien on the leasehold estate of BLP recorded as instrument number 2011-24665-3, and shall record a release of said lien in the official records of Humboldt County.
4. Payment Pending Adoption of New Rates. Beginning on the Effective Date of this Agreement and until new water rates, if any, based on the Water Rate Study go into effect, the City will continue to bill BLP for water usage at rates currently in effect. The City shall accept payment by BLP of fifty percent (50%) of the current amount charged as satisfactory interim payment and will not post late fees or interest on accounts due, provided said interim payments are made on or before the due date.
5. Payment Adjustment. No later than 120 days after the effective date of new water rates, or the date of final adoption of the Water Rate Study if no change to BLP's water rate is recommended by the Water Rate Study, each party agrees to make the other party whole for any amounts overpaid or underpaid on BLP's water account for the time period beginning on March 15, 2012, based on rates that would have been charged under the water rates supported by the Water Rate Study. For example:
 - a. If the new water rate charged to BLP is equal to or lower than the current water rate, the City shall pay BLP the difference between the amount BLP would have been charged for the time period March 15, 2012 to the effective date of the new water rate, and the amount BLP actually paid for that time period, excluding the Initial Payment paid in accordance with Section 3.
 - b. Conversely, if the new water rate charged to BLP is greater than the current water rate, BLP shall pay the City all amounts past due on BLP's water account.
6. New Rates. Beginning on the effective date for new water rates, or, if no change to water rates is recommended by the Water Rate Study on the first billing cycle after final adoption of the Water Rate Study, BLP agrees to pay without protest the water rates charged by the City that are based on the Water Rate Study.
7. Release.
 - a. BLP hereby releases, acquits and forever discharges the City of Blue Lake, its officers, employees, agents and contractors of and from any and all actions, causes of action, claims, demands, costs, loss of service, expenses, liabilities, attorney's fees and debts whatsoever, in law or in equity, arising out of BLP's allegations that the City's current water rate schedule improperly charges BLP an amount disproportionate to its actual

usage in violation of state law including but not limited to Article XIID of the California Constitution.

- b. The City of Blue Lake hereby releases, acquits and forever discharges BLP, its officers, employees, agents and contractors of and from any and all actions, causes of action, claims, demands, costs, loss of service, expenses, liabilities, attorney's fees and debts whatsoever, in law or in equity, arising from the City's allegations that BLP has not paid its water bill in full up to the effective date of a new water rate, or the date of final adoption of the Water Rate Study by the City Council if no change to water rates is recommended by the Water Rate Study.
- c. Nothing in this Agreement shall be construed as a waiver or release of the right to bring an action to enforce the provisions of this Agreement.

4. Miscellaneous

- a. This Agreement is a compromise of a disputed matter and may not be construed as an admission of any party's liability.
- b. This Agreement was the result of a negotiated settlement and may not be construed as having been prepared by any one party.
- c. In the event any action is instituted to enforce the provisions of this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees.
- d. This Agreement is intended to bind and benefit the parties, their heirs, agents, legal representatives, assigns and successors in interest.
- e. Notice shall be provided by prepaid mail or electronic communication to the following addresses:

For the City:
 John Berchthold, City Manager
 P.O. Box 458
 Blue Lake, CA 95525
 (707) 668-5688
 <citymanager@bluelake.ca.gov>

For Blue Lake Power:
 Glenn Zana
 1615 Commercial St., Suite 100
 Redding CA 96001
 530 246 2455

- f. Time is of the essence in this Agreement.

WHEREOF, the parties have executed this Agreement as of the last date of signature below.

DATED: 1/14/13 Dat.
12/18/13

CITY OF BLUE LAKE

[Signature]
Sherman Schapiro, Mayor

Attested to by:
[Signature]
Adrienne Nelson, City Clerk

Approved as to form:
[Signature]
Nancy Diamond, City Attorney

DATED: 12/31/12

BLUE LAKE POWER, LLC

By [Signature]
Its Chairman of its General Manager

**North Coast Unified Air Quality
Management District**
707 L Street, Eureka, CA 95501
Telephone (707) 443-3093 FAX (707) 443-3099
<http://www.ncuaqmd.org>



December 15, 2015

Mr. Glen Zane
President of the General Manager
Blue Lake Power, LLC
1615 Continental Street, Suite 100
Redding, CA 96001

RE: Extension of Payment Period for Outstanding Fees

Dear Mr. Zane:

The North Coast Unified Air Quality Management District (District) has received your letter dated November 6, 2015 requesting that outstanding fees be paid in the first quarter of 2016. The District will grant your request (under District Rule 400(I)(8.0)) to extend the payment period. The outstanding fees due are calculated as follows:

Invoice #5318	Title V Permit Fees	\$20,687.04
	Delinquent Fee (Rule 400(I)(1.0))	\$ 1,000.00
	Addtl Delinquency Penalty (Rule 400(I)(5.0))	\$ 1,000.00
Invoice #5357	GHG Verification Fees	\$ 4,240.00
		\$26,927.04

The outstanding balance due of \$26,927.04 as outlined above must be paid by May 1, 2016. Please contact me if you have any further questions or concerns.

Sincerely,

Brian Wilson
Executive Director & Air Pollution Control Officer
NCUAQMD

COPY

RULE 400
FEE CALCULATION & ADMINISTRATION

- A. **PURPOSE:** The purpose of this rule is to allow the District to recover reasonable costs incurred directly and indirectly associated with the implementation of air quality programs under its jurisdiction including the issuance of permits, inspection and enforcement, surveillance, planning, research and monitoring, and administration. The authority to establish this rule is provided for in H&SC §41512, §42311, and §42364.
- B. **FEE CALCULATION & FEE SCHEDULES:** District fees are determined by choosing the appropriate fee schedule(s) and then selecting the applicable multiplier(s) from the tables. The actual fee is then calculated by multiplying the "X-Factor Multiplier" obtained by the current value of the "X-Factor".
1. **X-Factor:** District operational costs are annually estimated on a per hour basis which is referred to as the "X" or the "X-Factor".
- a. **Determination of X-Factor Value:** As part of the annual budgetary process for each fiscal year following the Base Year, the APCO shall identify the appropriate value for "X" necessary to achieve a balanced budget. The value of "X" shall be rounded to the nearest whole dollar, and shall be determined upon two components, either:
 - i. The actual program costs for the immediately preceding year; or
 - ii. An adjustment in amount not greater than the change in the Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code.
 - b. **X-Factor Established by Resolution:** The value of "X" shall be assigned by the Governing Board each fiscal year via resolution.
 - c. **Base Year:** Calendar year 2005 is established as the base year with an X-Factor value of \$57.50.
 - d. **X-Factor Multiplier:** The resources necessary to perform services, programs, and activities by the District are represented as an X-Factor "Multiplier". The applicable X-Factor Multiplier is listed in the fee tables associated with the appropriate fee schedule(s).
- C. **Limitation on Fees:** Notwithstanding the fees specified in the District Fee Schedules, if the actual costs of processing an ATC or a PTO application substantially differ from the fees as determined by the applicable fee schedule, the applicant may be assessed the actual costs. The costs, as determined by the APCO, shall include but not be limited to the direct and indirect expenditures incurred by the District to evaluate, inspect, and permit the subject equipment or device.
- D. **Permits Issued by the Hearing Board:** An ATC or a PTO issued by the District Hearing Board is subject to the fees established pursuant to this Regulation.
- E. **Advanced Deposit of Evaluation Costs:** Where the APCO determines that either the ATC application or the PTO application evaluation will require special handling and analyses due to the quantity or quality of emissions, or due to the proximity of sensitive receptor(s), or the applicants history, or, the complexity of the equipment, activity, or operation being permitted, the APCO may require the applicant to pay a deposit toward the actual costs of the evaluation up to 100% of the estimated permit application evaluation actual costs. The APCO shall maintain a record of costs incurred and on written request from the applicant submitted within six months of the evaluation shall refund to the applicant any unused evaluation costs.
- F. **Cancellation or Denial of Applications:** If an application for an ATC or a PTO is canceled, or if an application is denied and such denial becomes final, the application fee required herein shall not be refunded nor applied to any subsequent application.

- G. **Portable Equipment, Multiple Locations:** When permits have been issued to operate movable equipment at two or more locations, only one annual fee shall be due and payable.
- H. **Resolution When Multiple Fee Tables Apply:** In determining the fees to be charged, identical or like equipment within each process unit that requires a permit may be totaled for each schedule. In the event that more than one fee schedule is applicable to an ATC or PTO, the governing schedule shall be that which results in the highest fee.

I. LATE FEES & PENALTIES

1. **Delinquent Fee:** If any fee payment required pursuant to Regulation IV is not submitted within 30 days of the issuance date of a District's billing statement, it shall be considered delinquent, and penalties for the delinquency shall be imposed as set forth below.
2. **Timely Payment of Fees:** For purposes of this Rule, any fee payment shall be considered to be timely if it is postmarked on or before the 30th day following the statement issuance date. If the 30th day falls on a Saturday, Sunday, or holiday, the fee payment may be postmarked on the next business day with the same effect as if it had been postmarked on the 30th day.
3. **Delinquency Penalty:** If no fee payment is submitted within the time prescribed in Section 2 above, a delinquency penalty of 25 percent of the amount of the billed fee, to a maximum of \$1,000, shall be added to the amount of fee due, and the permittee shall thereupon be notified by mail of the increased fee.
4. **Improper Payment of Fees:** If a fee payment is timely paid, but the tendered amount is less than the amount due, the payment shall not be accepted, and the time for proper payment continues to run.
5. **Additional Delinquency Penalties:** If any fee payment is delinquent and the fee plus the delinquency penalty is not received within 30 days of the District notification pursuant to Section 3 above, the delinquency penalty shall be increased to 50 percent of the original amount due, to a maximum of \$1,000, and the permittee shall thereupon be notified by mail of the increased fee.
6. **Permittee Default:** If, in the case of a failure to pay permit fees required pursuant to Rule 405 and Rule 406, the delinquent fee plus penalties assessed pursuant to Section 5 above are not received within 30 days of the date of the District's notification, the permittee shall be considered to be in default of its permit fee obligation and in violation of this Rule. In such case, the District shall immediately notify the applicant that its PTO or ATC has expired and that further operation of the subject equipment without a valid permit is prohibited. Such expiration shall not preclude the applicant from submitting another permit application and beginning the process anew, although the delinquent fee and penalty shall become an obligation owing to the District, which may be recovered along with any permit fee from such new application.
 - a. In the event the person whose permit has expired applies for a new permit, the unpaid annual renewal fee portion of this delinquent fee shall be prorated from the original permit's annual renewal date to the date of billing for the replacement permit and added to the permit fee for the replacement permit.
7. **Delinquent Fees— Permits Issued by Hearing Board:** If, in the case of a failure to pay the permit fee for a permit issued by the District Hearing Board, the delinquent fee plus penalty assessed pursuant to Section 3 of this Rule is not received within 30 days of the date of the District's notification, the delinquency penalty shall be increased to 50 percent of the original amount due, to a maximum of 50 percent of the original amount due, to a maximum of \$1,000, and the permittee shall thereupon be notified by mail of the increased fee.

- a. If the delinquent permit fee plus penalties assessed pursuant to Sections 3 and 7 of this Rule are not submitted within 30 days of the District's notification, the permittee shall be in default of its fee obligation and in violation of this Rule. In such case, the APCO shall petition the District Hearing Board to hold a hearing to determine whether any or all of the facility's permits should be revoked pursuant to California H&SC §42307.
 - b. After the District has initiated a permit revocation action through the filing of an accusation with the District Hearing Board, but before the revocation hearing is held, the permittee may still cure its default by submitting all outstanding fees, plus delinquency penalties and a \$150 revocation initiation fee.
 - c. If any PTO is revoked by the District Hearing Board on account of such default, it may be reinstated or replaced with a new permit, upon written request of the permittee and upon payment of all outstanding fees, penalties, revocation initiation fee, and a reinstatement fee of \$250.
8. **Extension of Payment Period by the APCO:** The 30-day payment period for fee payment required pursuant to Section I of this Rule may be extended by the APCO for extraordinary circumstances and for good cause shown. The adequacy of cause to extend the period shall be decided on a case-by-case basis by the APCO.
9. **Waiver of Penalty by the APCO:** The penalty for fee delinquency may be waived by the APCO for extraordinary circumstances and good cause shown. The adequacy of cause to waive the penalty shall be determined on a case-by-case basis, and may include, but is not necessarily limited to: illness, injury, or accident caused to the responsible party.

BLUE LAKE RANCHERIA

P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

www.bluelakerancheria-nsn.gov



July 2, 2013

North Coast Unified Air Quality Management District
ATTN: Blue Lake Power, LLC. Title V Renewal
2300 Myrtle Avenue
Eureka, CA, 95501

Re: Blue Lake Power's Title V Permit Renewal

To Whom It May Concern:

Based on the public notice issued May 23, 2013, it is my understanding that the North Coast Unified Air Quality Management District (NCUAQMD) is seeking public comment on the renewal of Blue Lake Power's, LLC. (BLP) Title V Permit to Operate (PTO NCU097-12). I understand there is no change in the conditions of the permit, and allowed emissions of Carbon Monoxide, Nitrogen Oxides, Sulfur Oxides, Particulate Matter, and Volatile Organic Carbon will not change. However, because of the proximity of BLP to Blue Lake Rancheria (BLR) and numerous complaints about the operation of BLP from the residents of BLR, I submit this public comment letter on behalf of the Blue Lake Rancheria Tribe.

Since Blue Lake Power came back on in 2010, we have become increasingly concerned about the environmental impacts of their operation. Numerous complaints and violations have been noted by residents of BLR, citizens of Blue Lake and the surrounding area, visitors to the area, and agencies, including NCUAQMD and California Department of Fish and Wildlife (water quality discharge violation, see attached). Local and national press published stories concerning violations (attached). Complaints to BLR's Environmental Program staff have ranged from ash deposits on homes, vehicles, and gardens at BLR to noticeable dark emissions blow offs from the BLP stack and ash film deposits on the surface of Mad River. Blue Lake City Councilperson Lana Manzanita recently came to BLR and saw evidence of severe pollution fallout from BLP.

These impacts created by BLP are unacceptable to the tribal members and residents of BLR. Furthermore, it is not understood whether or not BLP is actually achieving the metrics set forth in their Permit to Operate, and how BLP is being held to the terms of their permit.

BLR has operated and maintained air quality monitoring equipment within the exterior boundaries of the Rancheria since 1998, to understand baseline air quality conditions. Historically, BLR has worked with the NCUAQMD to share collected continuous data on particulate matter (PM10 and PM2.5) and meteorological conditions in the lower Mad River

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valley. We will continue to monitor for these pollutants, but have suffered funding reductions from the EPA and are not at this time able to add monitors for additional pollutants of concern due to BLP's operation. We are writing to document our concerns, and to press the NCUAQMD to take seriously the concerning violations that BLP has had in the past. We urge the NCUAQMD Board to use your authority to ensure good air quality for the residents of the lower Mad River valley, including the Blue Lake Rancheria Tribe.

You are welcome to contact me or my staff to discuss this further.

Sincerely,

A handwritten signature in cursive script that reads "Arla Ramsey".

Arla Ramsey
Tribal Administrator

Blue Lake Rancheria Particulate Tape Sampling Event 11.05.13, at Tribal housing around the Rancheria

Background:

The Blue Lake Rancheria (mentioned as “Tribe” through the rest of the document) has been negatively impacted by fine, oily, dark black particulate ash suspected to originate from a biomass power plant facility less than ½ mile SSE of the Rancheria boundary.

Dark, oily, crystalline-like fine particulates have fallen all around the Rancheria, and specifically impact Tribal Members living in Tribal housing approximately 1500 ft from the stack of the power plant.

The ash has blanketed trees, buildings, patios, outdoor furniture, food gardens, outbuildings, etc.

In speaking with Tribal Members, they have noticed fresh ash fall overnight in most cases, indicating nightly activity responsible for the ash deposits.

What follows is a description of the ash sampling that took place the afternoon of 11.05.13.

Materials used to collect samples are:

6 mil blue nitrile gloves, a fresh pair used for each sample to discourage cross contamination.

5 canning jars and lids, cleaned and sterilized immediately prior to sampling.

Scotch tape, used to pick up ash samples in a grab sample-type fashion.

A camera, to photo document sampling sites and the sampling process.

2:12 pm, Sampling at Bonnie Mobb’s deck and residence.

Background: The deck at Bonnie’s trailer was built less than a month ago. Since that time, a bench, tables, and potted plants have been added. Approximately 8 days ago, she set out a plastic container with a white lid, which subsequently has been covered in fine, dark particulate. She describes the substance as, “Sticky, and impossible to clean up without it smearing all over and creating a larger mess”.

A sample was taken from the white lid of the plastic container using scotch tape to remove particulates and immediately placed them in a clean, lidded canning jar, labeled with the place, date, and time. Included for reference is a photo of a geranium, which did not have any particulate matter on it when she moved into that space a month ago, and now has particulates all over the dendritic veins of the leaves. Photos:





2:31pm Sampling at Mandi Kindred's patio.

Fine ash particulate was noted all around the residence: on a boat parked there, on top of the electrical meter, where 1 sample was taken, and all over the back patio, furniture, etc. where an additional sample was taken at 2:38. Photos:





2:43 Sample at Arla Ramsey's residence.

Sample obtained from an outdoor plastic picnic table. Ash was noted all over the Yurt, deck, motorcycle, an outbuilding, on a tarp, etc. EVERYWHERE. Photos:





3:01 Sample at Art Ramsey's.

Sample obtained at a small windmill. Ash was noticed all around the property, on the deck, top of chicken coop, on apple trees, etc. Art had brought in 2 apples with similar ash on them earlier in the week, and has noticed it on his greenhouse and all over his outdoor food garden throughout the growing season. Photo:



CAA Facilities on the active September 2011 Watch List

The list of facilities below composes OECA's September 2011 Clean Air Act Watch List. Being on the Watch List does not mean that the facility has actually violated the law only that an investigation by EPA or a state or local environmental agency has led those organizations to allege that an unproven violation has in fact occurred. The list is provided to facilitate dialogue between EPA, state and local agencies on enforcement matters relating to high priority violations (HPV). The Watch List does not identify which alleged violations of environmental laws may pose the greatest risk to public health or the environment. It is an automated report based on data from the Air Facility System (AFS), which is used by federal, state and local agencies to track environmental enforcement and compliance information. Agencies input information into AFS, including information about violations that are identified as high priority. Some facilities may appear on the Watch List due to data errors, which typically are identified and addressed during the EPA-state-local dialogue. EPA expects the government agency with jurisdiction over a facility with a HPV to initiate an appropriate enforcement response, in a timely manner, and input the action into AFS. Some facilities on the list are the subject of existing orders, are actively participating in negotiations with regulators, or are the subject of an investigation. While progress is being made toward resolving the violations, further activities may be required to achieve compliance. This list reflects updates from previous Watch Lists due to changes in the enforcement case status (e.g., HPVs addressed or resolved), data corrections made to AFS, or new facilities added. The dynamic nature of the Watch List is a result of its use as a management tool to oversee adherence by EPA, state, and local agencies to enforcement response policies. For detailed information, please see the Watch List Fact Sheet (www.epa-echo.gov/echo/docs/watch_list_fact_sheet.pdf).

Facility_ID	Facility_Name	Facility_Street	Facility_City	Facility_State	Facility_ZIP_Code
4505900077	AARON INDUSTRIES	1874 HWY 72 W	CLINTON	SC	29325
1709700082	ABBOTT LABORATORIES	1401 SHERIDAN RD	NORTH CHICAGO	IL	60048
1709700182	ABBOTT LABORATORIES	200 ABBOTT PARK RD	ABBOTT PARK	IL	60064
5501900050	ABBYLAND FOODS, INC.	502 EAST LINDEN STREET	ABBOTSFORD	WI	54405
3101900095	ABENGOA BIOENERGY OF NEBRASKA	35955 NAVAHO RD	RAVENNA	NE	68869
32003R9299	ACCLAIM AUTOMOTIVE & FLEET REPAIR	5390 SOUTH DECATUR BLVD, STE 1	LAS VEGAS	NV	89118
5406100001	ACID RAIN APS FT MARTIN	FORT MARTIN ROAD	MAIDSVILLE	WV	25641
5403300015	ACID RAIN APS HARRISON	ROUTE 20	HAYWOOD	WV	26366
4213300058	ADHESIVES RESEARCH INC/GLEN ROCK	400 SEAKS RUN RD	GLEN ROCK	PA	17327
2701300006	ADM - MANKATO	2019 3RD AVE	MANKATO	MN	56001
1809500114	ADVANCED MAGNESIUM ALLOYS CORPORATION (A	1820 E. 32ND STREET	ANDERSON	IN	46013
2115700009	AIR PRODUCTS & CHEMICALS	412 N MAIN ST	CALVERT CITY	KY	42029
4820100176	AIR PRODUCTS PASADENA PLANT	1423 PASADENA FWY	PASADENA	TX	77506
2101900027	AK STEEL CORP	40TH ST & WINCHESTER AVE	ASHLAND	KY	41105
3913900007	AK STEEL CORP - MANSFIELD OPERATIONS	913 BOWMAN STREET	MANSFIELD	OH	44901
3901700001	AK STEEL CORPORATION	1801 CRAWFORD STREET	MIDDLETOWN	OH	45043
1814700041	AK STEEL CORPORATION - (COMB)	ROCKPORT WORKS	ROCKPORT	IN	47635
4210101569	AKER PHILADELPHIA SHIPYARD INC	BRIDGE & PORTER AVENUES	PHILADELPHIA	PA	19112
4816100014	AKER PLANT	7.5 MILES EAST FROM STREETMAN,	STREETMAN	TX	75859
3915300128	AKRON THERMAL ENERGY CORPORATION	226 OPPORTUNITY PARKWAY	AKRON	OH	44307
2602300023	ALCHEM ALUMINUM INC	368 W GARFIELD AVE	COLDWATER	MI	49036
2614505219	ALCHEM ALUMINUM, INC.	2600 NODULAR DRIVE	SAGINAW	MI	48601
2103100033	ALERIS RECYCLING INC	805 GARDNER LN	MORGANTOWN	KY	42261
4200500023	ALLEGHENY ENERGY SUPPLY CO/ARMSTRONG POW	108 POWER PLANT RD	ADRIAN	PA	16210
5407300004	ALLEGHENY ENERGY SUPPLY COMPANY, LLC	#2 POWER STATION BOULEVARD	WILLOW ISLAND	WV	26134
1703101187	ALLIED METAL CO	4528 W DIVISION ST	CHICAGO	IL	60651
2209700003	ALON REFINING KROTZ SPRINGS INC	HWY 105 S	KROTZ SPRINGS	LA	70750
1812700085	AMERICAN IRON OXIDE COMPANY (AMROX)	6300 US HIGHWAY ROUTE 12	PORTAGE	IN	46368
4011100002	ANCHOR GLASS CONTAI/HENRYETTA	601 E BOLLINGER RD	HENRYETTA	OK	74437
1813500012	ANCHOR GLASS CONTAINER CORPORATION	603 E NORTH ST	WINCHESTER	IN	47394
3903700075	ANDERSONS MARATHON ETHANOL, LLC (THE)	5728 SEBRING WARNER RD	GREENVILLE	OH	45331
2209300009	ANDINO ENERGY ENTERPRISES LLC - ST JAMES	5354 ST JAMES CO-OP ST	ST JAMES	LA	70086
5407900006	APPALACHIAN POWER COMPANY	ROUTE 35	ST ALBANS	WV	25177
1812700001	ARCELORMITTAL BURNS HARBOR, LLC	250 W US HWY 12250 W US HWY 12	CHESTERTON	IN	46304
4715100002	ARMSTRONG HARDWOOD FLOORING COMPANY	565 HARTCO DRIVE	ONEIDA	TN	37841
4803900009	ASCEND PERFORMANCE MATERIALS CHOCOLATE B	LOCATED ON FM 2917 ~ 8 MI S OF	ALVIN	TX	77512
4813900002	ASH GROVE TEXAS LP	900 GIFCO RD	MIDLOTHIAN	TX	76065
1717900209	AUTOMOTIVE ROBOTICS PROVING LAB	5 ALTORFER LANE	EAST PEORIA	IL	61611
32011N0739	BARRICK GOLDSTRIKE MINES INC	SEC 17, T36, R56E	CARLIN	NV	89821
4824500182	BASF FINA NAFTA REGION OLEFINS COMPLEX	ON SH 366 GATE 99 AT INTXN HWY	PORT ARTHUR	TX	77642
2204700017	BAYOU SORREL COMMINGLING FACILITY	2 MI W OF	BAYOU SORREL	LA	70000
0510900017	BEAN LUMBER - GLENWOOD	229 SOUTH SPUR 8	GLENWOOD	AR	71943
1720100142	BEHR BELOIT	201 WHEELER AVE	SOUTH BELOIT	IL	61080
4810500006	BELVAN MIDWAY LANE GAS PLANT	211 N COLORADO ST	MIDLAND	TX	79701
3915300117	BEMIS COMPANY, INC.	1972 AKRON PENINSULA RD.	AKRON	OH	44313
4838300003	BIG LAKE GAS PLANT	6 MI EAST OF BIG LAKE ON US 67	BIG LAKE	TX	76932
06029S0033	BIG WEST OF CA, LLC	6451 ROSEDALE AREA 1 & 2	BAKERSFIELD	CA	93308
0107300057	BIRMINGHAM HIDE AND TALLOW	JOHNS ROAD	BESSEMER	AL	35023
4400900016	BLOCK ISLAND POWER	100 OCEAN AVE GENERATING STATI	BLOCK ISLAND	RI	02807
0602300011	BLUE LAKE POWER	200 TAYLOR WAY	BLUE LAKE	CA	95525
0218530001	BP EXPLORATION (ALA/ENDICOTT PRODUCTION	PO BOX 196612	ANCHORAGE	AK	99519
4816700001	BP PRODUCTS NORTH AMERICA	2401 5TH AVE S	TEXAS CITY	TX	77590
3909500055	BP-HUSKY REFINING LLC	4001 CEDAR POINT ROAD	OREGON	OH	43697
2512100087	BRADFORD INDUSTRIES	75 ROGERS STREET	LOWELL	MA	01852
1200900069	BREVARD CO BOARD OF COUNTY COMMISSIONERS	2250 ADAMSON ROAD	COCOA	FL	32926
0900900016	BRISTOL-MYERS SQUIBB CO	5 RESEARCH PARKWAY	WALLINGFORD	CT	06492
3300700003	BROWN STREET FURNITURE LLC	87 BROWN ST	WHITEFIELD	NH	03598
1718300010	BUNGE GRAIN MILLING INC	321 E NORTH ST	DANVILLE	IL	61832
1500300105	C&C HONOLULU - WAIMANALO GULCH	92-460 FARRINGTON HIGHWAY	KAPOLEI	HI	99999
0602900009	CA PORTLAND CEMENT CO	OAK CREEK RD 3 MI W MOJAVE	MOJAVE	CA	93501
2201900050	CALCASIEU REFINING CO - LAKE CHARLES CRU	4359 W TANK FARM RD	LAKE CHARLES	LA	70605
2808700063	CALEDONIA ENERGY PARTNERS, CALEDONIA COM	500 FLINT HILL ROAD	CALEDONIA	MS	39740
4711700061	CALSONICKANSEI NORTH AMERICA, INC.	201 GARRETT PKWY	LEWISBURG	TN	37091
2211900010	CALUMET LUBRICANTS CO - COTTON VALLEY RE	1756 OLD HWY 7	COTTON VALLEY	LA	71018
2201500004	CALUMET LUBRICANTS CO LP - PRINCETON REF	10234 HWY 157	PRINCETON	LA	71067

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Biomass Emissions Question Arises Again

April 14th, 2014 by [Sandy Dechert](#)



It's called "urban biomass," and it's ours (spsmw.org).

Hard to imagine a subject that would find *The Wall Street Journal* and *Grist* in line with each other's thinking, but burning wood for energy has achieved it. Neither outlet seems to view the topic positively. Both have cited the scientific work of Dr. Mary S. Booth, a former Environmental Working Group scientist who now works for the Partnership for Policy

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38,000 Tesla Powerwall Reservations In Under A Week (Tesla / Elon Musk Transcript)

Integrity.

The basic arguments about using biomass as a source of energy have been around for some years, since bioenergy began to gain a following as an alternative to traditional fossil fuels and nuclear plants. Flags went up in 2010, for example, when a six-month study by Massachusetts environmental officials found that biomass-fired electricity might cause a [3% greater increase](#) in carbon emissions than equivalent power from coal by 2050. (The issue does not apply to methane or algae energy generation, also biomass-based.)

The controversy surprised the MA Commonwealth officials, who had thought biomass a partial answer to emissions goals. AP picked up the story, which spawned active discussion on the concepts of "carbon debt," "carbon dividends," and "carbon-neutral."

BIOMASS GOOD FOR THE ENVIRONMENT

- Biomass Power is Carbon Neutral
 - When plants and trees grow they absorb carbon, and when they die they release carbon — as part of nature
 - When organic matter is used as a fuel, it is utilizing existing carbon — adding no new carbon to the atmosphere — it is carbon neutral
- Fossil Fuel Power "Creates" New Carbon
 - Fossil fuels (which "contain" carbon) are trapped beneath the ground, inaccessible to the atmosphere
 - Accessed and used fossil fuels release new carbon into the atmosphere

BIOMASS IS CARBON NEUTRAL

The diagram shows a cycle where Biomass C (yellow box) and Atmospheric C (blue circle) are connected by a double-headed arrow, indicating a closed loop. Fossil C (black triangle) is shown below, with an arrow pointing up to Atmospheric C, indicating that fossil fuels add new carbon to the atmosphere.

"Biomass: Good for the Environment," from the Biomass Power Association (usabiomass.org).

Almost two years ago, Justin Schek and Ianthe Jeanne Dugan, who report on energy for *The Wall Street Journal*, argued against biomass because of providers' lax compliance with emissions standards, the subsidies biomass plants receive, and the premiums they charge customers for electricity. Schek and Dugan cited the case of Blue Lake Power in California, "among biomass plants nationwide that together have received at least \$700 million in federal and state green-energy subsidies since 2009" (a drop in the bucket compared to annual fossil subsidies of \$14 to \$52 billion).

The authors quoted Dr. Booth as advising that government agencies should withhold grants from plants that violate the standards: "Why are we subsidizing and incentivizing something that's **dirtier than coal power** in certain ways?"



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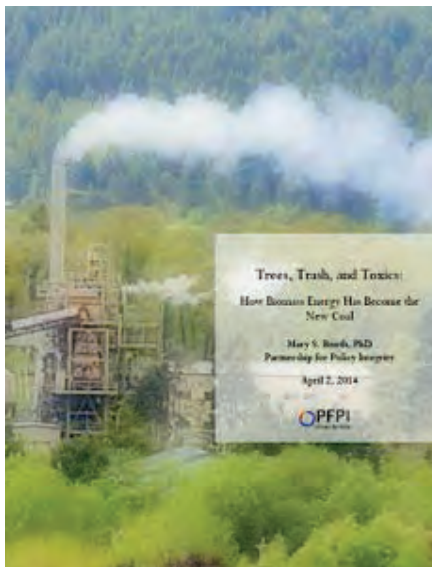
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Debate continued, especially overseas, where the UK government had begun heavily supporting biomass power and major coal power stations had announced plans to switch to biomass fuels. These actions prompted Britain's largest nature conservation organization (the Royal Society for the Protection of Birds) and environmental groups Friends of the Earth and Greenpeace to issue a report in 2012 ("Dirtier than Coal?") stating that that burning whole trees (especially conifers) to generate electricity is worse for the climate than coal burning and results in 49% more emissions.

The subject came up again this month, when environment writers/groups including John Upton of *Grist*, actforclimatejustice.org, the Global Justice Ecology Project, and so on related the publication of Dr. Booth's recent PPI study, "Trees, Trash, and Toxics: How Biomass Energy Has Become the New Coal." *Bloomberg News* also picked up the story.

In her new report, Booth again casts burning wood in power plants as more damaging to air quality and the atmosphere than burning coal.

"What emerges from our analysis is a picture of an industry that despite loudly and continually proclaiming itself clean and green, is in many respects still one of the dirtiest corners of the energy industry, an industry where avoidance of pollution restrictions is tolerated, and even encouraged, by state and federal regulators."



She makes a case we've heard before. This time, however, the research details a close scrutiny of 88 air emissions permits from woodburning power plants. (Reportedly, more than 9,600 facilities are currently operating in the US.) Her report has caused some concern. Booth's calculations back up the earlier indications that for every megawatt-hour of electricity produced, even the cleanest American biomass plants pump out about 50% more carbon dioxide than plants that burn coal. She also found that the biomass plants she studied produce more than twice as much nitrogen oxide, soot, carbon monoxide, and volatile organic matter as coal plants.

The [Biomass Power Association](#) of the US naturally disputes Booth's report, saying "Biomass is a clean, renewable energy source that our nation relies upon to reduce our dependence on fossil fuels." The industry regards "Trees, Trash, and Toxics" as "an 81-page editorial."

It showcases a fundamental misunderstanding of the science surrounding forestry and biomass, and a lack of familiarity with



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the state and federal laws governing energy and the environment. Governing bodies from the State of California to the nation of Denmark rightly look to biomass as a sound, proven solution for generating clean energy while keeping forests healthy, and an essential part of any renewable energy policy. This report [by Dr. Booth] was not peer-reviewed, nor was it joined or supported by any credible national environmental organization.

Carrie Annand, Biomass Power Association external affairs vice president, cites the Plainfield, Connecticut, Renewable Energy Project and the Cabin Creek Biomass Facility in Placer County, California, as examples of biomass facilities gone right.

For regulated pollutants—the same pollutants discussed in the PFPI report—the construction of the Cabin Creek biomass plant, which used the wood waste that traditionally had been open burned, resulted in staggering reductions in emissions—95% to 99%. Similar reductions were confirmed by Placer County in a 2011 published, peer-reviewed report in the Journal of the Air & Waste Management Association—particulate emissions by 98%, NOX emissions by 54%, CO emissions by 97%, and CO2 emission by 17%.

BPA goes on to state: “the report asserts that biomass plants can emit more ‘pollution’ than fossil-fuel fired plants. That is simply incorrect. Facilities that emit less than 250 tons [emphasized in the Booth report] are very minor contributors to overall air quality. The PSD permitting program is designed appropriately to focus on larger emitters given they are the source of the vast majority of emissions in this country.” The organization also rebuts Booth’s statements about biomass and hazardous air pollutants and the equivalence of biomass boilers and waste-burning incinerators.

Several of the assumptions questioned in 2012 bear repeating and applying to the American situation as described in the 2014 report:

- All of a tree is burned for biomass energy.
- Wood is the only source of biomass.
- There is a defined capacity of forestland and we can’t increase or improve it.

“Biomass frequently only uses parts of the trees that have no other commercial use, such as thinnings, smaller branches and off-cuts, which would otherwise be wasted. Higher demand for well-managed forests means helping forests to become more productive and even bringing currently neglected forests back into use. 60% of the UK’s forest land, for example, is currently unmanaged....

“Non-forest sources of biomass [include] energy crops and agricultural by-products.... [Also,] biomass burned for energy is sourced from by-products and residues or is a material, such as non-recyclable waste wood, that has no other economic value and therefore goes to landfill.... Alternative demand for bioenergy, often met by wood that previously had little value, can underpin the investment case for [better forest management](#) and new forest plantation.”



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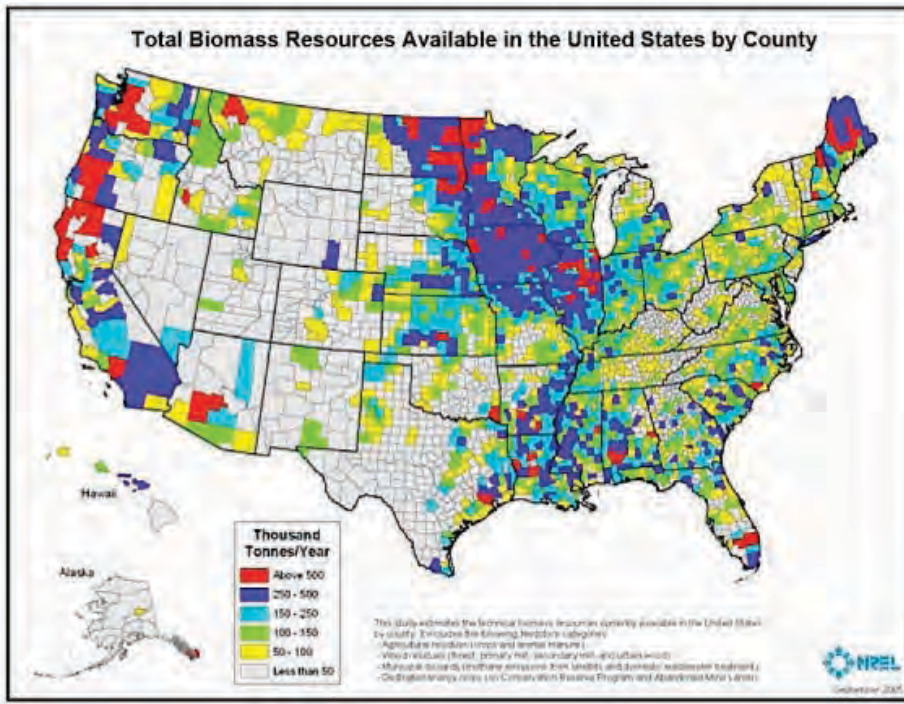
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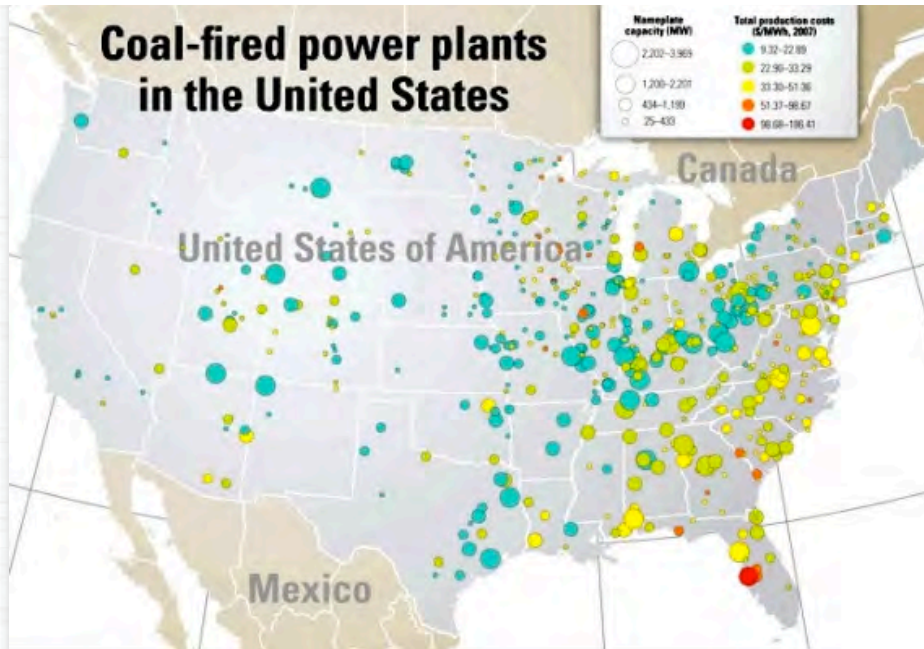
A US-focused perspective on biomass sources, the National Renewable Energy Laboratory estimated in its *“Geographic Perspective”* on the American biomass resource (2005) that less than 40% of American biomass feedstock came from wood. Lumber mills provided 19% of it; forest residues, 13%; and “urban wood,” 7%. Crop residues were the largest single contributor, and Conservation Reserve Program switchgrass came in next, just surpassing wood from lumber mills. The map above shows available resources by county. In 2011, *The Wall Street Journal* reported that renewables constituted about 8% of US energy, with 49% of the total coming from biomass.

Some green theorists and organizations that usually reject carbon capture and storage schemes outright believe that their only possible use could be with biomass plants. In fact, biomass power can probably be useful as a transitional fuel without introducing untried and expensive collateral technology. Cogeneration (CHP), district heating with biomass, and new synfuel technologies appear to offer greater promise.

In rebutting some of the 2012 claims, Paul Thompson, head of policy at the UK’s Renewable Energy Association, got to the real heart of the matter:

“Even when we factor in the biomass supply chain, which includes shipping and processing, its carbon footprint is dwarfed by coal.”





Coal-fired power plants in the US (powermag.com)

Thompson says that the carbon debt argument ignores the importance of good forest management and the types of wood (e.g., species, age, tree parts), the many other crops, the wood waste and forest litter, the manufactured wood pellets and charcoal, even the byproducts of natural disasters like storm and wildfire that can produce viable biomass feedstock. "All biomass used for heat and power [in the UK] saves at least 60% carbon across the entire supply chain when compared to fossil fuels."

It may be prudent to rank biomass along with huge dam projects as [a steppingstone to cleaner technologies](#), as the Chinese have recently proposed:

According to the China Academy of Engineering's Renewable Resources Development Strategy Council Report, China is very rich in biomass energy resources, and biomass energy is an ideal way of effectively using all kinds of organic wastes.... Currently speaking, developing biomass energy is an important strategic measure to substitute fossil energies and guarantee energy safety.

It also dovetails with [forest issues](#) such as sensible, sustainable woodland management, prevention of loss from wildfires and watershed disruption, safety in the rural-urban interface, forest employment potential, wildlife diversity, and other issues.

The Environmental Protection Agency is revisiting restrictions on wood-burning plants this summer. Bo Peterson commented in last Sunday's Charleston, South Carolina, *Post and Courier* that the EPA is in a tight spot: "The biomass industry is taking off and has wide political support. The Partnership for Policy Integrity, which issued the report, is the latest of a number environmental groups that at one point or another have questioned the looser controls on biomass, although many of the groups support biomass power to a degree."

The EPA needs to work hard on the bioenergy conundrum. Having recently implemented the *Burn Wise* program to emphasize the importance of consumers burning the right wood, the right way, in the right wood-burning appliance—and having proposed tough rules for the nation’s nine million inefficient wood stoves and boilers—the time has come for the EPA to apply similarly sensible standards to commercial and industrial biomass burning. Ultimately, the EPA’s regulatory decisionmaking may determine the future of a significant transitional power/heating source and a nascent, fast-growing export commodity.



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About the Author



Sandy Dechert covers environmental, health, renewable and conventional energy, and climate change news. She's worked for groundbreaking environmental consultants and a Fortune 100 health care firm, writes two top-level blogs on Examiner.com, ranked #2 on ONPP's 2011 Top 50 blogs on Women's Health, and attributes her modest success to an "indelible habit of poking around to satisfy my own curiosity."

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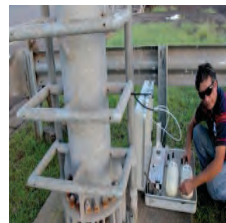
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MSB · a year ago

Our rebuttal of the Biomass Power Association's critique of the PFPI report (in which they compare us, hilariously, to vaccine opponents) is at <http://www.pfpi.net/pfpi-respo...>

We have challenged them to debate the merits of bioenergy publicly, but are still awaiting a response.

Mary Booth, Director
Partnership for Policy Integrity

1 ^ | ▾ · Reply · Share >



Zachary Shahan Top Commenter → MSB · a year ago

Thanks. Appreciate that.

^ | ▾ · Reply · Share >



Bob_Wallace Top Commenter → MSB · a year ago

Mary, it would be interesting were you to post coal comparison numbers along with your biomass emission numbers. If we look at properly controlled biomass and coal plants how do the emissions compare?

Biomass vs. coal. Which releases more mercury?

--

Then, remember, we've a choice to make.

Do we use biomass for electricity production? Or do we burn more coal which bring yet more carbon out of sequestration and add it to the carbon cycle?

I get the feeling that you don't fully understand the choice when you write -

"A no-brainer, indeed! How does accelerating CO2 emissions to the atmosphere help combat climate change? That's what burning wood does, because emissions per megawatt-hour are about 150% those of a coal plant, and 300 – 400% those of a natural gas plant."

Do you grasp the fact that the carbon in the wood-produced CO2 is already above ground and in the cycle while the carbon in the wood-produced CO2 was safely stored below ground before we dug it up and burned it?

Using biomass does accelerate the return of carbon to the atmosphere, but it does not increase the amount of carbon in the system. Once we bring carbon out of storage we have no effective way to put it back.

4 ^ | v · Reply · Share ›



MSB → Bob_Wallace · a year ago

Bob, I think perhaps you should review our work, including the report, before you ask whether I "grasp" the facts. All of our work is available at www.pfpi.net. In addition to the latest report, I'd particularly point you to the report to the SEC on bioenergy greenwashing, which explains in detail why wood-fired bioenergy plants can't ever be "carbon neutral" in a timeframe that we care about for reducing emissions.

Mary Booth

1 ^ | v · Reply · Share ›



Bob_Wallace Top Commenter → MSB · a year ago

I gave your first link a quick read, Mary.

How about you address my issues?

Surely you've compared emissions from properly constructed and operating coal and biomass plants. You should have that data at hand.

And you must have considered what it means to bring more carbon from deep under the surface and adding it to the surface carbon cycle. How do you justify adding that extra carbon to our problem?

3 ^ | v · Reply · Share ›



Marlin Johnson → MSB · a year ago

Mary -

I've looked through your articles and it appears that you assumed that biomass not burned for energy is stored -- more or less permanently. Is that right? I believe the CO2 in most biomass, be it switch grass, whole trees, or just the parts of trees that can't be made into solid wood products, will go back to the atmosphere anyway. Of course not on the

...will go back to the atmosphere any way, or worse, not on the same time schedule. However, it will go; in much of the western U.S. the alternative for leaving it in the woods is either 1) wildfire, 2) prescribed burn it, or 3) leave it to rot. It all goes to CO2 anyway. For the coal, we know what is not used is sequestered pretty permanently.

1 ^ | v · Reply · Share ›



Bob Wallace Top Commenter → Marlin Johnson · a year ago

Much of the biomass used for power (tree trimmings, lumber mill shavings, corn stover, harvested grasses/plants) will decompose in about a year, releasing their carbon back into the atmosphere. Only larger pieces of wood would sequester their carbon for more than a year. And in most cases that is 'short years'.

If Mary did not account for normal carbon cycle decay then just toss out her paper and claims. They're worthless.

2 ^ | v · Reply · Share ›



Matt · a year ago

Sometimes it helps to split apart a question to get a clearer understanding. For example, the impact of cutting virgin tree and using them for fuel is likely different from using wood recover from a demo site, waste scrap from a saw mill, old wood pallets, trees from storm damage, etc. But industrial bio-fuel power plants need to be held to high pollution standards also.

2 ^ | v · Reply · Share ›



go2zero · a year ago

BS. It's natural gas and natural gas funded academics attacking everything that isn't under their umbrella. The Sierra Club had already polluted their credibility getting natural gas sponsorship and academia is full of this anti non-toxic particle nonsense and fuel transitions (to natural gas). Focus on the technologies that lower organic irritant emissions to near zero, and stop the mining greed from infecting common sense policy by writing in their own loop holes. Natural gas is significantly polluting. They have been writing and blackmailing the curriculum and the rules.

2 ^ | v · Reply · Share ›



Bob Wallace Top Commenter → go2zero · a year ago

Yes, we need to get NG to zero (or at least close to zero).

But right now NG is useful in helping us get coal off the grid.

1 ^ | v · Reply · Share ›



Mike Leonard · a year ago

Increasing markets for forest biomass has been great for my business and my landowner clients. A lot has been said about "carbon debts" but nothing about the great "silvicultural debt" that has built up in our forests after 1/2 century of destructive highgrade logging which "takes the best and leaves the rest". In order to practice great forestry, we need low grade timber markets and biomass is the best one we've ever had. For more info see my site at: <http://northquabbinforestry.co...> and my widely acclaimed forestry photo albums: <https://www.facebook.com/MikeL...>

2 ^ | v · Reply · Share ›



Mack · a year ago

PFPI hints at being a "nonprofit" but this group is not registered with the State Of Massachusetts nor are there any filings of the IRS Form 990 on record. Who is funding this group? Are they using grant money from the coal and natural gas

forming this group. Are they using grant money from the coal and natural gas industries?

One group that found this study "useful" was the nonprofit "Center for Biological Diversity" group which makes money by suing the federal government. For instant, in 2009 the Center reported income of \$1,173,517 in "legal settlement."

Does PFPI intend on suing the EPA to make money also?

3 ^ | v · Reply · Share >



Ronald Brakels · a year ago

Just to be clear, when done at all sensibly, biomass is a low emission source of electricity and/or heat. Pollution from burning things is of course a hazard. All else equal, smoke from burning coal will always be more hazardous than smoke from burning plant matter. While coal is mostly former plant matter, there's a lot of dirt mixed up in it which can and does release heavy metals and sulphur, etc. when it's burned. Pollution control technology can result in things not being equal when it comes to the amount and toxicity of pollution released.

1 ^ | v · Reply · Share >



Tom Busch · a year ago

Good point Ron - there is no mercury, lead, etc. in trees. Plus, there are 4 to 5 trees replanted for every one tree cut (besides, most woody biomass, at present, is generated from waste and by-products anyway). And despite an every growing population, there are about as many forested acres today as there were 100 years ago (in other words, we're not "raping and pilaging" the woods).

How is coal being mined currently? - by clearcutting 2000 or more acres and leveling the top of an entire mountain to get at the coal. Where does the spoil go? - into the valleys and hollows, at a stream-head, which acidifies the water supply from that stream.

Here's another absurdity - it's perfectly OK (they get permits) to wallow around in a stream to mine gravel, yet if we were to "wallow" across a stream with a skidder, dragging logs (to build homes, produce furniture, etc.), we'd be put "under the jail".

1 ^ | v · Reply · Share >



Bob_Wallace Top Commenter → Tom Busch · a year ago

" 4 to 5 trees replanted for every one tree cut"

Over-planting to allow for fatalities.

And if they don't die in large enough numbers then someone has to go back and thin.

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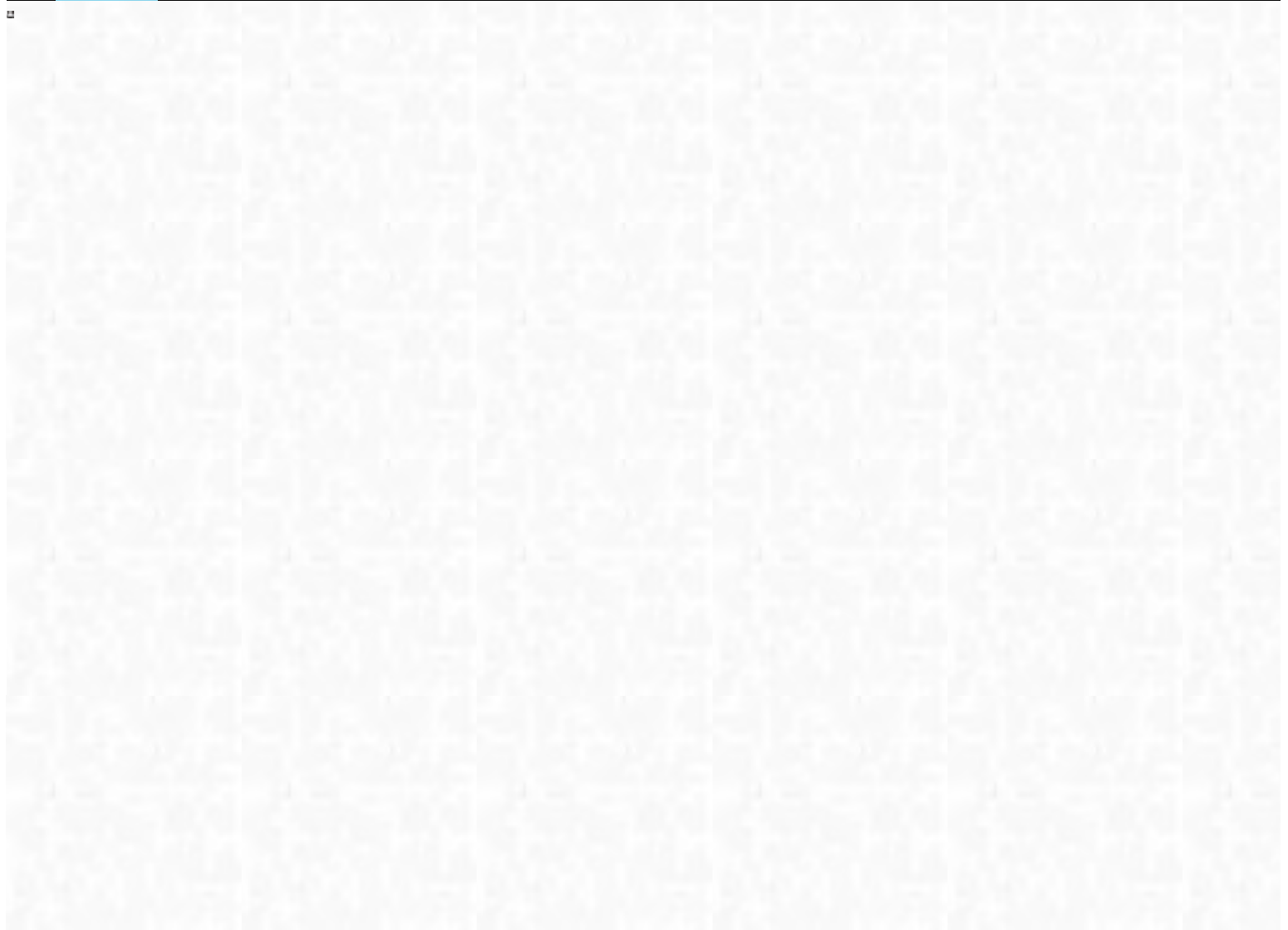


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Elizabeth Tan
Program Assistants

March 13, 1996

Felicia Marcus
Administrator
U.S. Environmental Protection Agency
75 Hawthorn Street
San Francisco, CA 94105

Colleen McKaughan
Chief, Air Compliance Branch
Air & Toxics Division
U.S. Environmental Protection Agency
75 Hawthorn Street
San Francisco, CA 94105

Re: Request for investigation of potential violations of Permit
Conditions by Ultrapower 3 Plant, Blue Lake, CA

Dear Ms. Marcus and Ms. McKaughan:

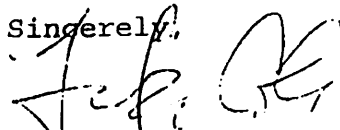
On behalf of the Blue Lake Rancheria, Blue Lake Neighbors Concerned About Toxic Exposure, and Californians for Alternatives to Toxics (CATs), I write to request an immediate investigation into potential permit violations by the Ultrapower 3 Plant in Blue Lake, Humboldt County, California.

According to Ultrapower's current air permit, issued September 24, 1991 by the North Coast Unified Air Quality Management Agency, "Ultrapower 3 shall burn only untreated wood, bark, and propane in the power production facility, unless prior approval is obtained from the District for use of an alternate fuel." (Permit Condition VIII.D) It has come to our attention, through the representations of Ultrapower staff, that the plant have burned treated wood -- including waste wood from construction sites, pesticide-treated wood and painted wood -- at the plant, in violation of the permit. In addition, at a public hearing before the Blue Lake Planning Commission on February 19, 1996, a Dr. Guth, appearing on behalf of Ultrapower, reported both a high level of lead emissions from the plant, and that the plant was burning lead-painted wood. We are unaware of substantial lead concentrations in the permitted fuel of

untreated wood, bark and propane; we are also unaware of any District approval for use of alternate fuel such as treated or painted wood. Because of lead's serious impact on human health, especially on the health of children, the residents of Blue Lake and the Blue Lake Rancheria have significant concerns about these potential permit violations.

I request an immediate investigation into the fuel sources currently and historically used at the Ultrapower 3 plant, and prompt enforcement actions against the plant should permit violations be found. I also request that I and my clients (whose addresses are the first three listed below), be sent any and all findings of such investigations, as well as be put on the mailing list for any future notices concerning the plant. If you have any questions about this request or would like further documentation, please call me at 415/777-2794 x321. I thank you for your time and consideration.

Sincerely,



Luke W. Cole
Attorney at Law

cc:

Arla Ramsey
Tribal Manager
Blue Lake Rancheria
P.O. Box 428
Blue Lake, CA 95525

Rene Oleari/Nancy Woodward
Blue Lake Neighbors Concerned About Toxic Exposure
P.O. Box 541
Blue Lake, CA 95525

Patty Clary
Californians for Alternatives to Toxics
860 1/2 11th Street
Arcata, CA 95521

Blue Lake Planning Commission
P.O. Box 458
Blue Lake, CA 95525

Blue Lake Board of Supervisors
P.O. Box 458
Blue Lake, CA 95525

North Coast Unified Air Quality Management District
2389 Myrtle Avenue
Eureka, CA 95501

Blue Lake extends Blue Lake Power agreement

By Donna Tam/The Times-Standard

Thursday, July 30, 2009

After months of waiting, the city of Blue Lake has decided to give Blue Lake Power another month to get its financial footing.

The City Council voted Tuesday night to extend an agreement to hold the property next to Blue Lake Power until the end of August, despite the company's growing debt to the city. The company has not paid its lease payments on its property or the adjoining property -- which it plans to expand onto -- for more than half a year, according to the city.

Blue Lake Power, a subsidiary of Continental Resources Solutions out of Redding, owes the city more than \$125,000 for the leases and about \$22,000 in water bills.

Mayor Marlene Smith said the council was optimistic about the company's chances of receiving funding soon, and decided to extend the agreement.

"The indication is that they will have all their financial issues resolved," she said. "We're willing to extend it another month until they see their financial situation improve."

The 12-megawatt generator has been idle for nearly a decade and was bought last year by Continental. The company got its permits in place and began stockpiling chips and hog fuel with the hope of starting up by the end of 2008, but Blue Lake Power's progress was stalled with the ailing economy, co-owner Glenn Zane said in March.

The company is hopeful that the plant will be up and running by the end of this year, Zane said Tuesday.

"We are working with a specific lender at this point and we are moving through the process," he said, adding that the plant may be in operation by mid-August. Zane said the company has invested several million dollars into the plant and is committed to getting the plant running and pay off its debt.

The company has had a small crew of several employees on site working full-time since last week, performing maintenance duties to prepare the site for going online.

Smith said the city recognizes that the company is important to Blue Lake's industrial park and economy, especially since the dire economy does not provide for other buyers for that property.

"It would be really beneficial to Blue Lake and the industrial park if they manage to fulfill that agreement," she said.

Donna Tam can be reached at 441-0532 or dtam@times-standard.com.

URL: <http://www.times-standard.com/general-news/20090730/blue-lake-extends-blue-lake-power-agreement>

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North Coast Unified Air Quality
Management District
2300 Myrtle Avenue, Eureka, CA 95501
Telephone (707) 443-3093 FAX (707) 443-3099

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") offer is made by the North Coast Unified Air Quality Management District ("District") and accepted by Blue Lake Power, LLC, a California limited liability company ("Blue Lake Power"), effective on the date of the last party signing below ("Agreement Date"), and is based on the following recitation of facts:

RECITALS

1. Blue Lake Power owns and operates a wood fired steam generation plant located at 200 Taylor Way Industrial Park, Blue Lake, CA, ("Facility") which is located within the jurisdiction of the District, and is operated under District Permit to Operate NCU 097-12 ("PTO").
2. For activity beginning April 22, 2010 and continuing through May 14, 2010, the District issued 12 Notices of Noncompliance ("NONs") to Blue Lake Power for alleged violations of conditions of its PTO and/or alleged violations of District, State or Federal laws pertaining primarily to alleged violations of opacity, continuous operation of electrostatic precipitator (ESP) and excess particulate matter emissions identified by the following numbers:

NON No. 011117, 011118, 011119, 011120, 011122, 011684, 011685, 011686, 011820, 011821, 011822, 011823
3. For activity beginning April 22, 2010 and continuing through August 8, 2010, the District is aware of at least 111 alleged violations by Blue Lake Power in its operation of the Facility in addition to the 12 alleged violations recited above of PTO conditions III.A (particulate matter emissions), III.B (carbon monoxide emissions) and III.C (nitrogen oxides emissions).
4. During the period July 19, 2010 and continuing through August 1, 2010, the District identified six alleged violations of the District Breakdown or Malfunction Rule 101 § 1.40, resulting in alleged air contaminant emissions in violation of the PTO. Notification of said alleged violations was provided to Blue Lake Power by letter from the District's Air Pollution Control Officer ("APCO") dated August 10, 2010, and for which a penalty settlement was offered but not accepted by Blue Lake Power.
5. Blue Lake Power has continued to operate through the Agreement Date. This Agreement also settles and resolves any alleged violations by Blue Lake Power of reporting, breakdown, emissions; permit conditions, air quality laws or regulations or any other action enforceable by the District up through and including the Agreement Date.
6. Recent COMS data reviewed by the District indicate no opacity violations occurred during

the month of September 2010. Such new monitoring data indicate that Blue Lake Power has improved Facility operations and is capable of and expected to continuously operate the Facility within the PTO requirements.

7. The APCO enters into this Settlement Agreement with Blue Lake Power pursuant to its authority under Health and Safety Code § 42400 et seq, District Rule 105 and District Compliance Policy to settle enforcement actions. Pursuant to such authority, civil penalties are considered to be a sanction and meaningful deterrent, and the APCO is empowered to determine the level of monetary sanction appropriate to the case based on a consideration of all relevant circumstances including factors in mitigation as well as factors in aggravation, and the following: 1) the extent of harm caused by the violation; 2) the nature and persistence of the violation; 3) the length of time over which the violation occurs; 4) the record of maintenance, 5) the unproved or innovative nature of control equipment, and 6) corrective action, if any, taken by the facility owner.
8. After a careful consideration of all such relevant circumstances, the APCO hereby extends this offer and the parties enter into this Agreement to settle the violations identified in Recitals 2, 3, 4 and 5, above. A dispute exists between the parties regarding the liability of Blue Lake Power for the alleged violations. However the parties wish to avoid the burden, costs, and uncertainties of litigation, and by and through this Agreement, to fully and finally settle any disputes arising from or related to the violations alleged in Recitals 2, 3 and 4. The parties consider this Settlement Agreement to constitute a reasonable settlement of said alleged violations.

NOW THEREFORE, the parties agree as follows:

I. Civil Penalty and Injunction

- A. Blue Lake Power shall immediately refrain from operating any article, machine, equipment or other contrivance in violation of its Permit to Operate NCU 097-12, any successor permit thereto, or in violation of any District, State or Federal order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air.
- B. For the 123 alleged violations identified in Recitals 2 and 3, the APCO hereby acknowledges the maximum civil penalty allowable pursuant to Health and Safety Code § 42402.1 of \$3,100,000 total, and assesses a reduced penalty at \$1,230,000 based on Blue Lake Power's responsive actions to address the violations and efforts to correct the problems causing emission violations as indicated by September 2010 COMS data.
- C. For the 6 alleged violations identified in Recital 4, above, the APCO hereby imposes the maximum civil penalty allowable pursuant to Health and Safety Code § 42402.3 in the amount of \$25,000 per violation or \$150,000, of which no amount will be reduced for circumstances in mitigation.
- D. The combined penalty of \$1,380,000 shall be paid by Blue Lake Power as follows:
 1. \$ 100,000 shall be paid to the District within 60 days after the Agreement Date.

2. \$ 60,000 shall be paid to the District within six (6) months after the Agreement Date.
3. \$ 100,000 shall be paid to the District within 18 months after the Agreement Date.
4. \$ 16,300 shall be credited as previously received by the District and applied toward the purchase of a mobile air monitoring station presently deployed in the City of Blue Lake.
5. \$ 99,700 shall be credited upon completion of a thorough environmental audit of the Facility conducted by a contractor approved in advance by the APCO. Blue Lake Power shall engage a contractor for such audit within 30 days of the Agreement Date, and shall provide notice to the APCO at the time of contract execution. The audit shall be completed within 45 days after execution of the contract. Said audit shall include recommendations and detailed instructions for compliance with all applicable environmental regulations and air permit conditions. Audit results shall be sent to the APCO at the same time and in the same format as results are presented to Blue Lake Power.
6. \$ 467,000 shall be credited for installation of system-wide operational control enhancements such as localized temperature and pressure monitoring at specific locations to ensure operational efficiency.
7. \$ 10,000 shall be credited for payment of direct monetary assistance to the City of Blue Lake for three annual wet street sweeping activities, to be paid in one lump sum to the City no later than June 30, 2012.
8. \$ 15,000 shall be credited for payment of direct monetary assistance to the District's wood stove change out program, to be paid to the District in two installments: \$7,500 no later than June 30, 2012 and \$7,500 no later than December 31, 2012.
9. \$ 15,000 shall be credited for payment of direct monetary assistance to the District for public outreach programs, to be paid to the District in two installments: \$7,500 no later than June 30, 2012 and \$7,500 no later than December 31, 2012.
10. \$ 154,000 shall be credited for completion of the following specific compliance projects within the specified time frames:
 - (a) Management of fuel stock, in BLP's discretion, to maintain moisture content appropriate for facility operation in compliance with air quality standards.
 - (b) Development of and approval by the APCO of a Dust Mitigation Control Plan to control the release of chip particles and ash from all on site activities, including the installation of adequate covers on conveyor belts where

necessary. The Dust Mitigation Control Plan must be submitted to the District within 60 days after the Agreement Date. If not acceptable to the APCO, revisions must be received within 20 calendar days after notification from the APCO of any deficiencies.

- (c) Full completion of and continued compliance with all items identified in that letter from Blue Lake Power to the District dated May 14, 2010, attached hereto as Exhibit A and incorporated herein. Item 12 of said letter shall be replaced in its entirety by the following:

“12) As to a longer-term solution to moderate the fuel moisture content during the wet months, BLP will, by October 15, 2011, utilize an offsite fuel storage location(s) where unprocessed fuel material will be stored primarily in log form on a gravel, pavement or other non-moisture retaining surface(s). During the months of December through February, BLP will, to maintain reliable operations, process to boiler ready condition and deliver such dryer fuel to BLP fuel yard in Blue Lake at a rate adequate to maintain an inventory of approximately 4,000 BDT of boiler ready fuel at less than 55% moisture content in addition to any other boiler ready fuel that may be in inventory.”

11. \$343,000 will be suspended and cancelled in accordance with Section V upon payment of penalties and completion of the actions described in Section I(D), Items 1-10.

II. Stipulated Penalties

Upon written demand by the APCO identifying specific violations of this Agreement, Blue Lake Power agrees to pay within 30 days of notice stipulated penalties in accordance with the following schedule for each failure to comply, which shall be immediately due and payable.

A. Failure to complete any component of Section I.D other than payment of a penalty:

- | | |
|---------------------------|--|
| 1) 1 to 14 days late: | \$2,500 per day for each day or partial day late |
| 2) 15 to 30 days late: | \$5,000 per day for each day or partial day late |
| 3) 31 and more days late: | \$7,500 per day for each day or partial day late |

B. Failure to make on time payments of any monetary penalty identified in sub-Sections I.D. 1, 2, 3, 8, 9, and 10: Blue Lake Power agrees to pay \$5,000 per day for each day or partial day late.

III. Release

Upon the successful completion of all terms in this Agreement and Agreement termination in accordance with Section V, the District shall release and waive any and all claims of any kind or character against Blue Lake Power, its agents and employees in connection with the violations

expressly listed or identified in Recitals 2, 3, and 4, above.

IV. Extension of Time

The APCO may extend any of the dates specified in this Agreement due to unanticipated circumstances or unavoidable delays. Both parties agree that the decision of the APCO will be the final determination of this condition.

V. Termination

After Blue Lake Power has satisfactorily complied with the requirements of this Agreement, including compliance with all conditions of the Facility's Permit to Operate, and paid all civil and accrued stipulated penalties, Blue Lake Power may serve upon the APCO a Request for Termination, stating that it has satisfied the requirements of this Agreement, together with all necessary supporting documentation. Upon receipt of a Request for Termination, the APCO shall respond in writing to Blue Lake Power stating whether it concurs in Blue Lake Power's request to terminate this Agreement, and if so, the Agreement shall be deemed terminated on the date identified by the APCO, and the suspended penalty amount of \$343,000 will be cancelled. If the APCO does not concur that Blue Lake Power has satisfactorily complied with the requirements of this Agreement, the APCO shall respond to Blue Lake Power with a description of Blue Lake Power's deficiencies, and the Agreement shall remain in effect until said deficiencies are satisfied by Blue Lake Power or waived by the APCO.

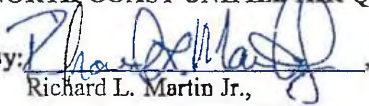
VI. Miscellaneous

1. Blue Lake Power acknowledges and warrants that execution of this Settlement Agreement is free and voluntary and that it has read and understands the terms of this Settlement Agreement.
2. The person or persons executing the Settlement Agreement on behalf of Blue Lake Power each warrants and represents that he/she has the authority to execute this Agreement on behalf of Blue Lake Power, and has authority to bind Blue Lake Power to the performance of its obligations hereunder.
3. In the event of material default under this Agreement by Blue Lake Power, after notice and reasonable opportunity to cure, Blue Lake Power agrees to toll any applicable statute of limitations and to waive any defense or claim under a theory of statute of limitation that may bar court action by the District to enforce the underlying violations alleged Recitals 2, 3, and 4 above.
4. In the event the District is required to enforce any term, condition or provision of this Agreement by law or action, the District shall be entitled to an award of actual attorney's fees, staff time and costs incurred by the District in said action to collect.
5. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

- 6. This Agreement shall be binding on any successors to Blue Lake Power. At least 30 days prior to a transfer of any legal interest in the Facility, Blue Lake Power shall provide written notification to the transferee of the existence of this Agreement, including the terms herein, and shall provide a copy of said notification to the APCO. Failure to comply with this notification shall be considered a material breach of the Agreement. The terms of this Agreement shall be binding on any successor to Blue Lake Power to an interest in the Facility.
- 7. The APCO may, for good cause, extend any time period or deadline specified herein.
- 8. Blue Lake Power denies any liability arising out of the transactions or occurrences alleged herein, and this Agreement may not be construed as an admission by Blue Lake Power of any liability thereto.
- 9. This Agreement may be amended or superceded only by a writing that is signed by a duly authorized representative of each party.
- 10. In the event that any provision of this Agreement is held to be invalid or unenforceable, such finding shall not invalidate any other term or provision of this Agreement and the remaining provision of this Agreement shall continue in full force and effect.

WHEREFORE, the parties have executed this Agreement effective as the date of the last party signing below.

NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT

By:  Date 5/20/11
 Richard L. Martin Jr.,
 Air Pollution Control Officer

Approved as to form:

By:  Date May 20, 2011
 Nancy Diamond, District Counsel

ACCEPTED BY BLUE LAKE POWER:

By:  Date: 5/20/2011
 Glenn Zane, General Manager

By: _____ Date: _____

Print Name:

Its:

Approved as to form:

By:  Date 5/19/2011
 Jane Luckhart,
 Attorney for Blue Lake Power, LLC

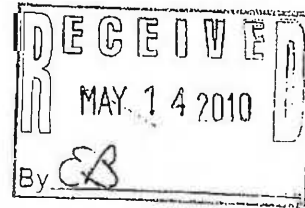
EXHIBIT A

**Letter From Blue Lake Power, LLC To Richard L. Martin, APCO
Dated May 14, 2010**

Blue Lake Power, LLC

1615 Continental Street

Redding, CA 96001



May 14, 2010

Mr. Richard L. Martin, Air Pollution Control Officer
North Coast Unified Air Quality Management District

COPY

Dear Rick:

Thank you for arranging for our group to meet with you and your staff on May 13, 2010. This letter will follow up on that meeting to propose certain actions.

We request that, in light of the following proposal, Blue Lake Power, LLC be allowed to enter into a Stipulated Order of Abatement to proceed in an orderly manner to accomplish the necessary work in continuing the restart of the Blue Lake Power plant over the period from today until July 30, 2010. This letter constitutes our agreement to enter into such an Order subject to all parties being in agreement and subject to our being reasonably able to comply with the terms.

We propose the following schedule of milestones that BLP be held accountable to accomplishing in the allotted time.

- 1) Set the date for source testing by Avogadro as of July 15, 2010;
- 2) Provide a fuel yard management plan by May 20th;
- 3) Install a direct telephone line to the control room and provide you with the number (for you to keep private and use to contact our operators at any time). On Thursday, after we returned from the meeting with you and your staff, we held a specific training session to impress on the operators the need to reduce power output immediately on determining there was a fuel issue that caused reduced heat rather than attempting to increase fuel feed and maintain power. This action should help avoid the opacity excursions. Randy Paterson also gave specific instructions to the operators to call you upon any excursion in excess of permit values;

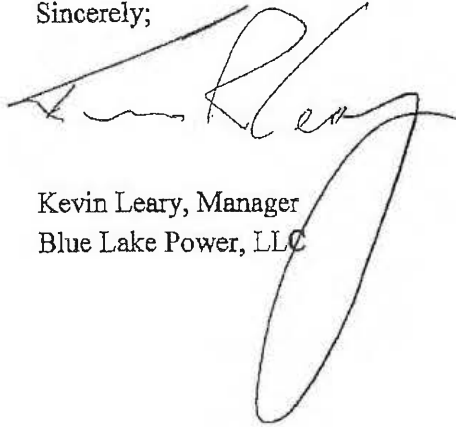
- 4) Complete the install of covers on the two high level conveyors to reduce or eliminate the fine fuel particles that are sometimes pulled off the belts in windy conditions – this to be completed by June 5, 2010;
- 5) Bring the fuel dryer system into full operation by June 15, 2010;
- 6) Install plugged chute detectors in the fuel-metering bin by June 15, 2010.
- 7) Complete the purchase and installation of a new high capacity air compressor to enhance the fuel metering bin air cannons that have been installed and activated with the existing and rental air compressors by June 15, 2010. These devices are effective in reducing the bridging of fuel in the metering bin above the feed screws.
- 8) BLP hired a fuel yard consultant, R. Scott McDonald, who has implemented tested practices in the fuel yard to obtain a more efficient and better handling of the fuel. Mr. McDonald spent the week of May 10 -14, 2010 on the work and has completed a detailed map of our fuel yard which we will employ in item 9 below. We have also arranged to bring him back in mid-June to continue his work and verify that we have completed the specified configuration.
- 9) Clear at least of one acre in which to place fuel and to mix low and higher moisture content fuels and obtain optimum average moisture content. This work is already started and we will continue to move the fuel that is causing the primary excursion issues to a site on the western end of the fuel yard where it can be dealt with as needed. We will complete the clearing of the one-acre area by June 1, 2010.
- 10) Purchase for use in the fuel yard a new instantaneous reading moisture meter for the use of the loader operators. These devices are not suitable for trade, but are only recently available and will prove to be useful in planning fuel intermediate storage.
- 11) At a cost of approximately \$30,000 we will purchase and install a moisture meter on the infeed system to constantly monitor incoming fuel and allow operators to prepare for pockets of fuel with higher moisture content. This will be accomplished by July 1, 2010 or earlier if the device can be obtained more quickly.
- 12) As to a longer-term asset addition that will moderate the fuel moisture content issue, we will, by June 15, 2010, have submitted to the City of Blue Lake for permitting, a planned location and footprint for a covered fuel storage structure to be installed that is of adequate size to hold 3 days of fuel (about 75 truckloads). Upon completion of permitting we will allocate the funds to purchase and install the fuel cover within 120 days.

It is important to know that it has been painful for us to realize that our performance has not been good at all since start up on April 18th. But, it has steadily improved and we have already taken significant steps to bring the plant operation into compliance with all standards. We continue to improve practices as we learn the idiosyncrasies of this fully-refurbished machine.

As you know, we have arranged to make a presentation at a public meeting on May 18th and plan to open the floor for discussion and questions at that time. Our full intent has and will continue to be one of being a business the community can be proud of and one that is focused on benefit to the environment.

We think it is also fair to keep in mind the benefits that accrue to the operation of the Blue Lake facility and the goals we had at the outset. Our intent is to produce power through burning of material that is renewable and is now mostly being allowed to decay or burn in uncontrolled conditions during times of the year when real air quality degradation cannot be repaired. Our goal is to reduce greenhouse gas emissions as we reduce the fire hazard and to enhance forest health through our operation.

Sincerely;

A handwritten signature in black ink, appearing to read "Kevin Leary". The signature is stylized with a large, sweeping loop at the end.

Kevin Leary, Manager
Blue Lake Power, LLC



Merritt and Kristina Perry <



Information Request for Blue Lake Power

Erin Squire <esquire@ncuaqmd.org>

Fri, Oct 25, 2013 at 3:30 PM

To:


Ms. Walker,

Per your request, attached to this email is a copy of the Blue Lake Power Settlement Agreement from May 2011. At this time, the "smoke stack sensor data" is currently being reviewed for possible enforcement action. All investigatory materials are considered confidential until the investigation is completed. Upon conclusion of the investigation, the requested information will be available for public viewing.

Please do not hesitate to contact us if you have further questions or require any additional information.

Erin Squire
Special Projects Coordinator
North Coast Unified Air Quality Management District
(707) 443-3093 ext. 111

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 **Blue Lake Power Settlement Agreement 5-20-11.pdf**
458K



Penny Costa <pcosta@ncuaqmd.org>

Months behind on Permit Fees

Al Steer <asteer@ncuaqmd.org>

Tue, Nov 3, 2015 at 9:20 AM

Reply-To: alsteer@ncuaqmd.org

To: Glen Zane <gzane@crsinet.com>, Gary Gier <ggier@bluelakepower.com>

Cc: Jason Davis <jdavis@ncuaqmd.org>, Penny Costa <pcosta@ncuaqmd.org>

Glen

Our records show that Blue Lake Power (BLP) is almost four months behind in paying permit fees.

I know BLP is working diligently with EPA to keep your facility viable. All is for naught if the permit is allowed to be cancelled due to lack of fee payment.

Please address this issue immediately.

Respectfully,

Al Steer

Compliance & Enforcement Manager

North Coast Unified AQMD

707 L Street

Eureka, CA 95501

(707) 443-3093 Ext 119

alsteer@ncuaqmd.org

<http://www.ncuaqmd.org>

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Please consider our environment before printing this email.



Penny Costa <pcosta@ncuaqmd.org>

Months behind on Permit Fees

Al Steer <asteer@ncuaqmd.org>

Wed, Nov 4, 2015 at 11:16 AM

Reply-To: alsteer@ncuaqmd.org

To: Gary Gier <ggier@bluelakepower.com>

Cc: Penny Costa <pcosta@ncuaqmd.org>, Jason Davis <jdavis@ncuaqmd.org>

Hi Gary

A \$20,687.04, Permit fee was due on August 31, 2015.

A 25% late fee was assessed on September 30, 2015.

A fee of \$4,240.00, for Greenhouse Gas (GHG) Verification, was assessed on August 12, 2015.

A 25% late fee was assessed on September 12, 2015.

Given BLP's financial status and plant shutdown condition, I will waive the penalties if payment is made by November 30, 2015. These payments must be paid to keep the BLP operating permit in force. If the permit is closed due to lack of fee payments, BLP will have to refile for a permit under today's NSPS/PSD requirements.

Please relay this information to Mr. Zane and feel free to call with any questions.

On Wed, Nov 4, 2015 at 10:55 AM, Gary Gier <ggier@bluelakepower.com> wrote:

Hello Al,

I will meet with Glenn today to discuss how we can get caught up. Looking at the cold plant budget set up for BLP the permit fees are about 1000 a month. Is this amount accurate?

Regards

Gary

Gary Gier

Opera. ons and Maintenance Manager

Blue Lake Power LLC

200 Taylor Way

Blue Lake, CA 95525

707-668-5631

From: Al Steer [mailto:asteer@ncuaqmd.org]
Sent: Tuesday, November 03, 2015 9:21 AM
To: Glenn Zane <gzane@CRSINET.COM>; Gary Gier <ggier@bluelakepower.com>
Cc: Jason Davis <jdavis@ncuaqmd.org>; Penny Costa <pcosta@ncuaqmd.org>
Subject: Months behind on Permit Fees

[Quoted text hidden]

—
Respectfully,

Al Steer

Compliance & Enforcement Manager
North Coast Unified AQMD
707 L Street
Eureka, CA 95501
(707) 443-3093 Ext 119

alsteer@ncuaqmd.org
<http://www.ncuaqmd.org>

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Please consider our environment before printing this email.

Blue Lake Power, LLC

1615 Continental Street, Suite 100
Redding, CA 96001
(530) 246-2455
FAX: (530) 246-7008

November 6, 2015

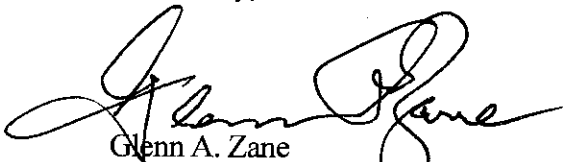
Mr. Al Steer
North Coast Unified AQMD
707 L Street
Eureka, CA 95501

Dear Al:

We received your 11/3/2015 email concerning the payment of the Title V fees. I spoke with our legal counsel Jane Luckhardt yesterday and she indicated there was an option for you folks to agree to accept fees after the due date. We understand there will be a penalty if you do that for us and we request that you provide us with the schedule of fees and penalties. We are expecting to bring all fees up to date and plan to be ready to restart the plant in the first quarter of 2016 or before.

Our goal is to restart and put the crew back to work as soon as possible and I find my time consumed with that effort. Currently, the plant manager, Gary Gier is the only full time staff person on site and you may contact him at any time for current information. His cell phone number is 530-524-5651. I appreciate your understanding and am hopeful you can accommodate our need.

Yours truly,



Glenn A. Zane
President of the General Manager

CC: Jane Luckhardt via email, Gary Gier via email and Brian Morrison via email



Penny Costa <pcosta@ncuaqmd.org>

Months behind on Permit Fees

Glenn Zane <gzane@crsinet.com> Fri, Nov 6, 2015 at 11:51 AM
To: "alsteer@ncuaqmd.org" <alsteer@ncuaqmd.org>, Gary Gier <ggier@bluelakepower.com>
Cc: Jason Davis <jdavis@ncuaqmd.org>, Penny Costa <pcosta@ncuaqmd.org>, Brian Morrison <bam@mklcapital.com>, Jane Luckhardt <jluckhardt@daycartermurphy.com>

AI:

Thank you for your email. We understand the serious nature of our predicament but are unable to pay the fees at present. The attached letter is a formal response to your email with a request for a schedule to allow us to pay at a later date. We look forward to restarting the plant and are presently negotiating a power purchase agreement.


Glenn

Glenn Zane
Continental Resource Solutions Inc.
1615 Continental Street, Suite 100
Redding, CA 96001

530-246-2455 - Office
530-515-7007 - Cell
gzane@crsinet.com

From: Al Steer
Reply-To: "alsteer@ncuaqmd.org"
Date: Tuesday, November 3, 2015 at 9:20 AM
To: Glenn Zane, Gary Gier
Cc: Jason Davis, Penny Costa
Subject: Months behind on Permit Fees

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42K

From: Cooper DeMarse <cooper.demarse@gmail.com>
Sent: Monday, April 04, 2016 4:53 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Cc: Brissa De La Herran; Jana Ganion
Subject: USA & NCUAQMD v. Blue Lake Power LLC, United States District Court for the Northern District of California, Case No. 3:16-cv-00961; D.J. Ref. No. 90-5-2-1-11038
Attachments: Blue Lake Rancheria Comments Blue Lake Power Consent Decree.pdf

Please find the attached:

Comments of the Blue Lake Rancheria on the U.S. Environmental Protection Agency and Department of Justice's Proposed Consent Decree with Blue Lake Power, *USA & NCUAQMD v. Blue Lake Power LLC*, United States District Court for the Northern District of California, Case No. 3:16-cv-00961, D.J. Ref. No. 90-5-2-1-11038; 81 FR 11591, Page 11591-11592, Document #2016-04721

Cooper Monroe DeMarse

Attorney at Law

Rapport & Marston

Office: (707) 462-6846

Cell: (480) 390-0260

cooper.demarse@gmail.com

Law Offices Of

RAPPORT AND MARSTON

An Association of Sole Practitioners

405 W. Perkins Street
Ukiah, California 95482

David J. Rapport
Lester J. Marston
Scott Johnson
Mary Jane Sheppard
Darcy C. Vaughn

Phone (707) 462-6846
Facsimile (707) 462-4235

April 4, 2016

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED
& EMAIL**

John C. Cruden
Assistant Attorney General
U.S. Department of Justice—ENRD
P.O. Box 7611
Washington, DC 20044-7611
Email: pubcomment-ees.enrd@usdoj.gov

RE: Comments of the Blue Lake Rancheria on the U.S. Environmental Protection Agency and Department of Justice’s Proposed Consent Decree with Blue Lake Power, *USA & NCUAQMD v. Blue Lake Power LLC*, United States District Court for the Northern District of California, Case No. 3:16-cv-00961, D.J. Ref. No. 90-5-2-1-11038; 81 FR 11591, Page 11591-11592, Document #2016-04721

Dear Assistant Attorney General Cruden:

Our law office is general counsel to the Blue Lake Rancheria (“Tribe”), a federally recognized Indian tribe, located in Humboldt County, California. The Tribe’s reservation sits immediately adjacent to Blue Lake Power, the defendant in the above-entitled case, which entity has caused significant harm to the healthy environment previously enjoyed by the Tribe. The purpose of this correspondence is to, on behalf of the Tribe, submit comments on the proposed consent decree (“Consent Decree”) lodged with the United States District Court for the Northern District of California in the above-entitled case.

The Environmental Protection Agency (“EPA”) should rescind the Consent Decree, or the district court should refuse to approve it, on the grounds that it is unfair, inadequate, unreasonable, and not in the public interest, because, *inter alia*: (1) the penalties assessed to Blue Lake Power are inadequate, unreasonable, and fail to conform with the EPA’s “Clean Air Act Stationary Source Civil Penalty Policy” and the “Penalty Policy for Violations of Certain Clean Air Act Permit Requirements for the Construction or Modification of Major Stationary Sources

April 4, 2016

Page 2

RE: Comments of the Blue Lake Rancheria on the U.S. Environmental Protection Agency's Proposed Consent Decree with Blue Lake Power, USA & NCUAQMD v. Blue Lake Power LLC, United States District Court for the Northern District of California, Case No. 3:16-cv-00961; 81 FR 11591, Page 11591-11592, Document #2016-04721

of Air Pollution;" (2) the EPA, in negotiating the Consent Decree, has failed to adequately perform its trust responsibilities owed to the Tribe; (3) the protocols for particulate matter testing are inadequate; (4) all of the timelines provided for in the Consent Decree are too lenient; and (5) the Consent Decree should, but does not, provide for enhanced opacity limitations.

1. The Penalties Assessed to Blue Lake Power are Inadequate and Unreasonable and Fail to Conform to EPA Penalty Policies.

The Consent Decree assesses a civil penalty of \$5,000 against Blue Lake Power for its violations of the Clean Air Act, 42 U.S.C. § 7401, *et seq.* This amount is unreasonably low when considering Blue Lake Power's protracted history of Clean Air Act violations and it is far below the minimum settlement figure that results from application of EPA penalty policies.

The EPA's "Penalty Policy for Violations of Certain Clean Air Act Permit Requirements for the Construction or Modification of Major Stationary Sources of Air Pollution" ("Permit Penalty Policy") applies to permit-related violations of the Clean Air Act and provides a "**minimum settlement amount** for such violations." Permit Penalty Policy, p. 1 (emphasis added). The Permit Penalty Policy is to be used in cases, like the present case, related to the construction or modification of major stationary sources under the prevention of significant deterioration program. *Id.* Penalties assessed under the Permit Penalty Policy are to be **added** to any penalties assessed under the "Clean Air Act Stationary Source Civil Penalty Policy" ("General Penalty Policy"). Importantly, the Permit Penalty Policy appears to have been last revised in 1987 and the monetary penalties outlined therein are calculated in 1987-dollars.

Where a major stationary source is alleged to have failed to comply with the authority to construct and prevention of significant deterioration permitting requirements, the gravity component of the penalty is to be calculated pursuant to the Permit Penalty Policy Matrix Minimum Settlement Figures:

PERMIT PENALTY POLICY MATRIX MINIMUM SETTLEMENT FIGURES (per month of violation)		
TOTAL COST OF AIR POLLUTION CONTROL FOR NEW OR MODIFIED SOURCE (\$ THOUSANDS)	PSD SOURCES	
	CONSTRUCTION OR OPERATION WITHOUT A PERMIT OR IN VIOLATION OF A VALID PERMIT	INCREMENT EXCEEDED
less than 50	\$ 2,000	\$ 7,000
50-150	4,000	11,000
150-500	7,000	16,000
500-1,500	11,000	18,000
1,500-5,000	16,000	21,000
5,000-15,000	22,000	25,000
15,000-50,000	29,000	31,000
over 50,000	37,000	39,000

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RE: Comments of the Blue Lake Rancheria on the U.S. Environmental Protection Agency's Proposed Consent Decree with Blue Lake Power, USA & NCUAQMD v. Blue Lake Power LLC, United States District Court for the Northern District of California, Case No. 3:16-cv-00961; 81 FR 11591, Page 11591-11592, Document #2016-04721

Permit Penalty Policy, p. 5.

The matrix also provides for the assessment of an additional penalty for certain specified violations of substantive permit preconditions or requirements. The appropriate dollar value for a violation is dependent upon the estimate of the total cost of air pollution control at facilities of the source for which the permit was required. This value is then multiplied by the number of months during which the source operated in violation. Where there are multiple permit-related violations, a penalty figure is calculated for each violation and the individual penalty figures are added together to produce one minimum settlement figure. The economic benefit component and the gravity component of the penalty are added together to determine the preliminary deterrence amount. This initial amount can then be adjusted using the General Penalty Policy factors, which take into account individual equitable considerations. Significantly, to settle a case for less than the minimum penalty amount prescribed by the matrix because of litigation practicalities, the litigation team must receive special approval of the settlement by the Associate Enforcement Counsel for Air. Permit Penalty Policy, p. 4.

The EPA stated, at a March 23, 2016 meeting with the Tribe, that the total cost of air pollution control, which Blue Lake Power avoided by not acquiring authority to construct and prevention of significant deterioration permits, was approximately \$700,000. Based on the matrix, the minimum settlement figure, therefore, should be calculated at a rate of \$11,000 per month of construction and operation without each permit. Blue Lake Power's major modifications to the plant occurred from January of 2008 until initial operation of the plant in December of 2009, a 24-month period. Blue Lake Power operated the plant from December of 2009 until May of 2015, a 65-month period. Thus, the minimum penalty assessed to Blue Lake Power, based on the matrix, should be \$264,000 for major modification of the plant without an authority to construct permit (24 months \times \$11,000), and \$715,000 for operation of the plant without prevention of significant deterioration permitting (65 months \times \$11,000). The sum of these two figures yields a **minimum** penalty of \$979,000—in 1987-dollars. The \$5,000 penalty the EPA is currently seeking from Blue Lake Power is a mere 0.5% of the minimum penalty generated by application of the Permit Penalty Policy matrix. This is beyond the limits of acceptability or fairness and flies in the face of the agency's adopted penalty policy for determining permitting-related penalties.¹

The Tribe understands that, under certain circumstances, the EPA must adjust penalties in light of a source's inability to pay. The General Penalty Policy, however, states, with specificity, that,

¹ It is worth noting that Nancy Diamond, the attorney representing the District in the federal court litigation, could have a potential conflict of interest in this case, as she also represents the City of Blue Lake, which is owed hundreds of thousands of dollars in lease payments from Blue Lake Power. While the District has an interest in imposition of enhanced penalties on Blue Lake Power for Clean Air Act violations, the City of Blue Lake has an interest in limiting any penalties to allow Blue Lake Power to pay back debts to the City of Blue Lake.

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RE: Comments of the Blue Lake Rancheria on the U.S. Environmental Protection Agency's Proposed Consent Decree with Blue Lake Power, USA & NCUAQMD v. Blue Lake Power LLC, United States District Court for the Northern District of California, Case No. 3:16-cv-00961; 81 FR 11591, Page 11591-11592, Document #2016-04721

while the “EPA should consider the ability to pay a penalty in adjusting the preliminary deterrence amount, ... it is important that the regulated community not see the violation of environmental requirements as a way of aiding a financially-troubled business.” General Penalty Policy, p. 20. In fact, the General Penalty Policy expressly reserves the EPA’s right to seek “a penalty that might contribute to a company going out of business.” *Id.* Alternatively, the EPA has the option to consider a delayed payment schedule, with interest, should the EPA determine that a violator cannot afford the penalty prescribed by the policies. *Id.* at 21.

The EPA’s decision to seek a \$5,000 penalty in this case, justified by an inability to pay, is unreasonable. It does not provide any deterrent effect; it does not truly account for the economic benefit reaped by Blue Lake Power by violating the Clean Air Act; it does not comply with the EPA’s Permit Penalty Policy and General Penalty Policy; and it does not take into account the fact that Blue Lake Power continued operation of the plant during periods in which it knew that it was in violation of the Clean Air Act. What the \$5,000 penalty does do is reward Blue Lake Power for financial irresponsibility and encourage further violations of the Clean Air Act. For these reasons, the EPA should renegotiate a consent decree with an increased penalty against Blue Lake Power or it should, at the very least, increase the penalty with a delayed payment schedule.

2. The EPA, in Negotiating the Consent Decree, Has Failed to Adequately Perform Its Trust Responsibilities Owed to the Tribe.

The United States maintains a trust relationship with all federally recognized Indian tribes. *Seminole Nation v. United States*, 316 U.S. 286, 296-297 (1942). “This principal has long dominated the Government’s dealings with Indians.” *United States v. Mitchell*, 463 U.S. 206, 225 (1983). The existence of a trust responsibility toward Indians exists independent of the express provisions of a treaty, agreement, executive order, or statute. *Navajo Tribe of Indians v. United States*, 624 F.2d 981, 991 (Ct. Cl. 1980). In the exercise of the trust responsibility towards Indian tribes, the federal government’s conduct must be exercised with “great care.” *United States v. Mason*, 412 U.S. 391, 398 (1973).

[T]his Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people Under a humane and self imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, it has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards.

Seminole Nation v. United States, 316 U.S. at 296-297.

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RE: Comments of the Blue Lake Rancheria on the U.S. Environmental Protection Agency's Proposed Consent Decree with Blue Lake Power, USA & NCUAQMD v. Blue Lake Power LLC, United States District Court for the Northern District of California, Case No. 3:16-cv-00961; 81 FR 11591, Page 11591-11592, Document #2016-04721

In carrying out its trust obligations to Indian people, the United States must exercise a common law duty of care similar to that of a private trustee or fiduciary in managing a private trust. *United States v. Jicarilla Apache Nation*, 131 S. Ct. 2313, 2325 (2011).

Under the general trust responsibility, the federal government is required to consult with, and consider, the interests of Indian tribes when engaged in any activity that may affect them. All federal agencies, including the EPA, share in that trust responsibility. Thus, all of the EPA's actions with respect to Blue Lake Power must be viewed through the lens of this trust responsibility.

The EPA "Policy for the Administration of Environmental Programs on Indian Reservations" ("Indian Policy") specifically states that the EPA, "in keeping with the federal trust responsibility, will assure that tribal concerns and interests are considered whenever EPA's actions and/or decisions may affect reservation environments." Indian Policy, p. 3. The Indian Policy goes on to state that, in keeping with the historical relationship between the federal government and Indian tribes, the EPA "will endeavor to protect the environmental interests of Indian Tribes when carrying out its responsibilities that may affect the reservations." *Id.*

Executive Order 12898, 59 Fed. Reg. 7629 (Feb. 16, 1994), moreover, requires that the EPA:

To the greatest extent practicable and permitted by law, ... make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions....

The EPA's "Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples" also states that the EPA must provide:

...early meaningful involvement opportunities for federally recognized tribes, indigenous peoples, and others living in Indian country, at all stages of Agency activity, including the development of public participation activities, the administrative review process, and any analysis conducted to evaluate environmental justice issues.

During the course of negotiations between Blue Lake Power and the EPA that resulted in the proposed Consent Decree, the EPA made no effort to consult with the Tribe to ensure meaningful and timely input by tribal officials. The Tribe and the EPA met in September of 2015 regarding Blue Lake Power and the Tribe provided information to the EPA regarding the plant. No substantive details were provided to the Tribe regarding the negotiations and, despite the

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RE: Comments of the Blue Lake Rancheria on the U.S. Environmental Protection Agency's Proposed Consent Decree with Blue Lake Power, USA & NCUAQMD v. Blue Lake Power LLC, United States District Court for the Northern District of California, Case No. 3:16-cv-00961; 81 FR 11591, Page 11591-11592, Document #2016-04721

Tribe's request for communication, the Tribe has had to initiate all subsequent information gathering. The Tribe is displeased that the EPA apparently did not consider tribal interests at the time when the material terms of the Consent Decree, which directly affect the Tribe's Indian country, were agreed upon. Rather, the EPA met with the Tribe regarding the terms of the Consent Decree only **after** the Consent Decree was finalized and lodged with the district court. This had the effect of preventing the Tribe from pursuing certain legal remedies of its own. At the meeting held between the EPA and the Tribe on March 23, 2016, the EPA stated that the terms of the Consent Decree would not now be amended based on consultation with the Tribe. The only alternative to approval of the Consent Decree would be rescinding the decree in its entirety. This is not the meaningful consideration required by the trust responsibility imposed on the EPA by federal law. And it does not meet the standards set forth in Executive Order 12898. The Tribe must be included in the negotiation of the terms of the Consent Decree because those terms directly affect the Tribe's reservation, its environment, and the health and welfare of the reservation populace.

3. The Protocols for Particulate Matter Testing are Inadequate.

The Consent Decree, as currently formulated, requires Blue Lake Power to conduct a stack test on the main stack to determine compliance with PM₁₀ emission rates established by the Consent Decree no later than 18 months following EPA's approval of the boiler engineering study report. After the initial stack test, the Consent Decree requires that Blue Lake Power perform only one stack test per year. Both the timeline for the initial stack test and the periodicity of later testing are unreasonable as proposed.

The Consent Decree allows Blue Lake Power 15 days to prepare a boiler engineering protocol and 90 days to complete the boiler engineering study report. Thus, under the proposed language in the Consent Decree, Blue Lake Power is permitted to operate the plant for 22 months—nearly two years—before it is required to test the main stack for particulate matter emissions. Even if the EPA were to ignore the numerous PM emissions violations that occurred between 2010 and 2014, allowing operation for almost two years without a single PM stack test is, on its face, unreasonable. Considering the two-year period without a stack test in light of Blue Lake Power's previous violations, it is patently absurd. This timeline must be amended.

With regard to the frequency of stack testing after the initial test, a single test per year is not sufficient to ensure that Blue Lake Power operates in compliance with the emissions limitations imposed by the Consent Decree. Blue Lake Power's previous conduct indicates the great lengths to which it will go to ensure that operation during the stack testing occurs under ideal conditions designed to produce unrealistically low emissions data. More frequent stack testing will restrict Blue Lake Power's ability to create emissions reports that may not accurately reflect emissions during typical operation. Additionally, based on Blue Lake Power's demonstrated inability to

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RE: Comments of the Blue Lake Rancheria on the U.S. Environmental Protection Agency's Proposed Consent Decree with Blue Lake Power, USA & NCUAQMD v. Blue Lake Power LLC, United States District Court for the Northern District of California, Case No. 3:16-cv-00961; 81 FR 11591, Page 11591-11592, Document #2016-04721

comply with its previous—less restrictive—emissions limitations, stack tests must be conducted more frequently than the Consent Decree currently requires.

4. All of the Timelines Provided for in the Consent Decree Are Too Lenient.

The Consent Decree permits Blue Lake Power to resume operation of the plant the day the district court approves the agreement. Yet, none of the studies, reports, and emissions control technologies are required to be in place prior to resuming operations. For example, Blue Lake Power has 12 months, after approval of the boiler engineering study report, to install and continuously operate the improved selective non-catalytic reduction control device and the over-fire air gas conveyance system. Similarly, Blue Lake Power has three months during which to submit to the EPA a plan for the electrostatic precipitator currently in use on the main stack to control particulate matter emissions from the broiler. These and other timelines in the Consent Decree are not sufficient to ensure that, when Blue Lake Power resumes operation, it complies with all emissions limitations. The time periods within which Blue Lake Power has to complete the milestones in the Consent Decree should be shortened to limit operation of the plant in the absence of important enhanced control technologies and reporting requirements.

5. The Consent Decree Should Provide for Enhanced Opacity Limitations.

While the complaint in this case does not address opacity issues, the Consent Decree should nevertheless set forth enhanced opacity regulations to ensure that Blue Lake Power operates in conformity with all applicable opacity limitations. Blue Lake Power has a history of repeated opacity violations of which the North Coast Unified Air Quality Management District and the EPA are aware. The failure to address this issue in the Consent Decree and the complaint should be corrected to require Blue Lake Power to submit to the EPA an opacity optimization plan that analyzes and recommends operating parameters designed to ensure that opacity is optimized at all times, including start-up and shut down.

If you have any questions about this matter, please contact us at the telephone number or address listed on the above letterhead.

Yours Very Truly,

/s/Cooper M. DeMarse
 DAVID J. RAPPORT
 COOPER M. DEMARSE
 Attorneys for the Blue Lake Rancheria

From: Rydzik, John <john.rydzik@bia.gov>
Sent: Monday, April 04, 2016 2:29 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: US and NCUAQMD v. Blue Lake Power LLC
Attachments: BIA comment letter USNCUAQMDvBlueLakePowerLLC.pdf

Please accept the attached comment letter regarding the subject action. thank you

John Rydzik
Chief, Division of Environmental, Cultural Resources Management & Safety
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825
(916) 978-6051



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

APR 4 - 2016

Assistant Attorney General
United States DOJ-ENRD
P.O. Box 7611
Washington, DC 20044-7611

RE: *United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038*

The Bureau of Indian Affairs (BIA), Pacific Regional Office respectfully submits our comments to the Consent Decree named above. Our Agency holds a trust responsibility to protect and preserve tribal lands, assets, and resources in perpetuity for federally-recognized tribal nations. In light of that responsibility, we were concerned to learn of the Blue Lake Rancheria's (the Tribe) nuisance, public health, and environmental concerns with the biomass powerplant currently owned by Blue Lake Power, LLC. Specifically, there appears to be a history of Clean Air Act violations and operational issues that have resulted in high levels of particulate matter and ash deposition on Tribal lands. Impacts to the environment on Tribal lands have apparently been documented by the Tribe and admitted by the operator of the biomass plant in the past. We ask that you consider the Tribe's public health and environmental concerns carefully prior to moving forward with this Consent Decree.

We support the concept of the Consent Decree. We recognize the Consent Decree seeks to 1) preserve a facility that contributes to the value of biomass generated renewable energy and 2) move the facility into full compliance with the Clean Air Act. However, we also recognize the Consent Decree's acknowledgement of the facility's limited ability to pay an appropriate amount in civil penalties. Therefore, we question whether Blue Lake Power has the financial capacity to comply and remain in compliance with the Clean Air Act after restarting the plant. With this in mind, Blue Lake Power, LLC should be required to comply with all regulations and requirements listed in the Consent Decree before restart is allowed. The issuance of a new Authority to Construct/Permit to Operate would be a meaningful approach that fulfills all Prevention of Significant Deterioration framework requirements.

In the alternative, if the plant is allowed to restart before compliance with pollution prevention technologies, a bond should be required in the full amount of the applicable fines for non-

compliance. This requirement allows Blue Lake to move forward with a greater incentive to remain in full compliance.

Finally, the civil penalties and environmental mitigation seem de minimus compared to the public health and environmental consequences of community members living near the Blue Lake Power facility. The Environmental Protection Agency has the ability to levy civil penalties up to \$37,500 per day for violations of the Clean Air Act. The District has the ability to levy civil penalties ranging from \$1,000 to \$75,000 per day per violation. The Consent Decree assesses a mere \$5,000 civil penalty. Presumably a civil penalty is designed both to punish for past violations and deter future violations. Surely a \$5,000 penalty will accomplish neither goal. We would ask that the assessment of the civil penalty be reconsidered. Also, the Consent Decree's sole environmental mitigation measure is a \$10,000 contribution to the District's Wood Stove Incentive Replacement Program. While we're sure this is an effective program to reduce particulate matter pollution generally within the District, we are concerned with the minimal amount of the contribution required. We are also concerned that this mitigation measure does not focus at all on the environmental and health effects that the Tribe alleges have occurred adjacent to the biomass plant on Tribal lands. The Wood Stove Incentive Replacement Program is effective for wood stoves throughout Humboldt, Trinity, and Del Norte Counties. Certainly the replacement of a few wood stoves in places as distant as Crescent City (60 miles north of Blue Lake on the coast) or Weaverville (55 miles east of Blue Lake over the coast range) will have little to no effect to mitigate past or potential future health/environmental effects on Tribal lands and in the immediate Blue Lake area.

We thank you for your time in carefully reviewing this comment letter. Should you have any questions or would like to discuss, please contact John Rydzik, Chief, Division of Environmental, Cultural Resource Management and Safety at (916) 978-6051.

Sincerely,



Regional Director

Acting



PHYSICAL DOCUMENT

ENV_ENFORCEMENT-n2581817-v1

CITIZEN COMMENTS

Author: McAnaney, Sheila

Document Type: LETTER

LSA(s): KBROWN

Co-Counsel:

Counsel LSA(s):

Distribution List: ENRD, EESCCaseManagement (ENRD);Lattin, Sue (ENRD);Rose, Robert (ENRD);Reed, Jason (ENRD);True, Michael (ENRD);McAnaney, Sheila (ENRD);Brown, Ken (ENRD)

Fileroom: EES - 6th Floor

DJ#: 90-5-2-1-11038

Case Name: U.S. AND NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT V. BLUE LAKE POWER, LLC, ET AL.

Court: CA N.D. Cal.; 9th Cir.

Notes:

Double-Sided:

Received Date: 4/5/2016

Urgent:

Oversize:

Bound Document:

McAnaney, Sheila

Assistant Attorney General
United States Department of Justice – ENRD
P.O.Box 7611
Washington, D.C. 200444-7611

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION

16 APR -5 AM 11:41

Re: United States and North Coast Unified Air Quality Management District v. Blue Lake Power, LLC, Civil Action No. 3:16-cv-00961

Dear Attorney General,

My name is Dot Campbell, a resident of Blue Lake that lives and works within 1 mile of the Blue Lake Power, LLC. (BLP) cogeneration biomass power plant. I am disappointed with the outcome of the Department of Justice (DOJ) decision concerning the operations at BLP. Since 2010, BLP has been operating with an inappropriately issued Title V Permit to Operate (TITLE V PTO), and has amassed a number of alleged violations directly related to their operations at the power plant. The recent decision handed down by the DOJ marginalizes public health and safety regarding the operation at BLP and is offensive and prioritizes a business with a losing track record over the public interest. I do not support the current decision.

Throughout the course of reopening BLP, there have been a number of issues that have directly affected the safety and health of me and my family, including:

- thick, dark smoke releases from the power plant stack at random times, day and night
- foul odors
- fugitive ash and dust that impacts homes, cars, fruit and vegetable gardens (see attachments) and general enjoyment of one of the most accessible and popular recreation trails and river bars/swimming holes on Mad River
- heavy truck traffic that must pass by the sole elementary school on the only route to/from BLP
- excessive noises at all hours (including alarm noise that can be heard distinctly over 1 mile away)
- light pollution
- willful and intentional water quality violations that have been documented and prosecuted by the California Department of Fish and Wildlife (see attachment)

For years, BLP has been allowed to flout the laws of the Federal Clean Air Act (CAA), operating without or under an invalid permit, while collecting nearly \$5 million in Federal subsidies, and defaulting on leases and utility bills to the City of Blue Lake on multiple occasions. Currently, BLP is in arrears to the tune of \$140,000 to the City of Blue Lake on past due bills, and is in debt to their direct oversight agency, the North Coast Unified Air Quality Management District (NCUAQMD) to the tune of \$30,000. Enough is enough!

Prior settlement agreements and fines up to \$1.3 million levied against BLP that have been fruitless. BLP claims vague "hardships," which allows them to continue to operate as a willful and egregious polluter without installing additional pollution controls to bring their operation into compliance with the CAA, or pay even a small fraction of the assessed fines. Instead, with the assistance of the NCUAQMD, BLP has attempted to modify the terms of their outdated and invalid permit to allow business-as-usual polluting without punishment.

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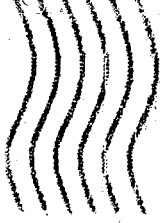
utility bills to the City of Blue Lake on multiple occasions. Currently, BLP is in arrears to the tune of \$140,000 to the City of Blue Lake on past due bills, and is in debt to their direct oversight agency, the North Coast Unified Air Quality Management District (NCUAQMD) to the tune of \$30,000. Enough is enough!

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The history of operation at BLP has been well documented by many sources (see attachments) as having many negative impacts on the health and safety of the Blue Lake community and visitors that come to recreate. Therefore, the only way to protect the public interest in this situation is to shut down the operation at BLP permanently. There are other newer, cleaner methods of producing electricity that can and should be implemented, and time and time again, BLP has proven that their operation is negatively impacting public health and safety. Additionally, with the track record that both the EPA and NCUAQMD have shown in enforcing current regulations, I have no confidence that the provisions outlined in the Consent Decree will be enforced. EPA, NCUAQMD, and BLP have had enough chances, and they all have shown that the operations at BLP operate in opposition to the public interest.

As an avid fisherman, outdoor enthusiast, river swimmer, and recent father, I want a healthy and safe future for my family. The time has come to protect the public interest of Blue Lake - shut down BLP immediately!

Dot Campbell



EUREKA CA 955

X-RAYED

APR 05 2016 11 APR 2016 PM 1 L

DOJ MAILROOM

Handwritten: Attorney General
Department of Justice
Washington DC 20540-7611



From: Heather Equinoss < >
Sent: Monday, April 04, 2016 5:58 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: U.S.and NCUAQMD v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038

To: Assistant Attorney General, Environment and Natural Resources Division

Regarding: *United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC*, D.J. Ref. No. 90-5-2-1-11038
– Consent Decree

Our names are Heather Equinoss and Mathew Isaac and we are one of Blue Lake Power's closest neighbors. We have two young children, ages 2 and 5 and we are very concerned about the health impacts of have Blue Lake Power as a neighbor. Our property is about 900 feet from the power plant and we object to the consent decree between Blue Lake Power and the North Coast Unified Air Quality Management District for the following reasons:

-Blue Lake Power has demonstrated their disregard for the law beginning with the upgrade of the plant without the proper permits.

-BLP has repeatedly demonstrated their disregard for their contractual obligations by refusing to pay their lease payments and water and sewer bills to the City of Blue Lake, only bringing them up to date when they needed something from the city. They currently owe the city more than \$100,000.

-BLP has repeatedly demonstrated their disregard for the citizens of Blue Lake by spewing ash and dirt into our air and by only complying with the zoning ordinances on lighting and noise when forced to by the city attorney, costing the City even more money.

-BLP demonstrated their disregard for their employees when they shut the plant down last year, putting their employees out of work not because they were having business problems but because the owners could profit by ending their supply contract.

We ask that Blue Lake Power be shut down permanently. They have a history of noncompliance with the laws, agreements, and contractual obligations that a legitimate business must respect to function legally in our country. As the Department of Justice, it would be irresponsible to make meaningless judgments or agreements with Blue Lake Power that require compliance.

As citizens, we rely on the Department of Justice and the North Coast Unified Air Quality Management District to enforce the laws that protect our health and safety.

Thank you for your attention to this important matter.

Heather Equinoss & Mathew Isaac

From: Trevor Estlow < >
Sent: Friday, April 01, 2016 2:41 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: Blue Lake Power Consent Decree

Assistant Attorney General
United States Department of Justice – ENRD
PO Box 7611
Washington, D.C. 20044-7611

Re: United States and North Coast Unified Air Quality Management District v. Blue Lake Power, LLC, Civil Action No. 3:16-cv-00961

Dear Attorney General,

My name is Trevor Estlow, a resident of Blue Lake that lives within 1,000 feet of Blue Lake Power, LLC (BLP) cogeneration biomass power plant. I am disappointed with the outcome of the Department of Justice (DOJ) decision concerning the operations at BLP. Since 2010, BLP has been operating with an inappropriately issued Title V Permit to Operate (TITLE V PTO), and has amassed a number of alleged violations directly related to their operations at the power plant. The recent decision handed down by the DOJ marginalizes public health and safety regarding the operation at BLP and is offensive and prioritizes a business with a losing track record over the public interest. I do not support the current decision.

Throughout the course of reopening BLP, there have been a number of issues that have directly affected the safety and health of me and my family, including:

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- heavy truck traffic that must pass by the sole elementary school on the only route to/from BLP
- excessive noises at all hours (including alarm noise that went on for over 24 hours due to no one at the site)
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- willful and intentional water quality violations that have been documented and prosecuted by the California Department of Fish and Wildlife

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Prior settlement agreements and fines up to \$1.3 million levied against BLP that have been fruitless. BLP claims vague “hardships,” which allows them to continue to operate as a willful and egregious polluter without installing additional pollution controls to bring their operation into compliance with the CAA, or pay even a small fraction of the assessed fines. Instead, with the assistance of the NCUAQMD, BLP has attempted to modify the terms of their outdated and invalid permit to allow business-as-usual polluting without punishment.

The history of operation at BLP has been well documented by many sources as having many negative impacts on the health and safety of the Blue Lake community and visitors that come to recreate. Therefore, the only way to protect the public interest in this situation is to shut down the operation at BLP permanently. There are other newer, cleaner methods of producing electricity that can and should be implemented, and time and time again, BLP has proven that their operation is negatively impacting public health and safety. Additionally, with the track record that both the EPA and NCUAQMD have shown in enforcing current regulations, I have no confidence that the provisions outlined in the Consent Decree will be enforced. EPA, NCUAQMD, and BLP have had enough chances, and they all have shown that the operations at BLP operate in opposition to the public interest.

As a Blue Lake resident that regularly walks my young daughter along the levee trail, I want a healthy and safe future for my family. The time has come to protect the public interest of Blue Lake - shut down BLP immediately!

Respectfully,
Trevor Estlow

From: Dave Feral <madriveralliance@suddenlink.net>
Sent: Thursday, March 31, 2016 2:56 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: Re: United States and North Coast Unified Air Quality Management District v. Blue Lake Power, LLC, Civil Action No. 3:16-cv-00961
Attachments: BLPDojMRA.docx

Please see attached letter.

Thank you,
Dave Feral
Executive Director
Mad River Alliance



Assistant Attorney General
United States Department of Justice – ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

Re: United States and North Coast Unified Air Quality Management District v. Blue Lake Power, LLC, Civil Action No. 3:16-cv-00961

Dear Attorney General,

Mad River Alliance (MRA) is a community-driven group working to protect clean local water and the ecological integrity of the Mad River watershed for the benefit of human and natural communities. MRA has an interest in the outcome of the Department of Justice (DOJ) decision concerning the operations at Blue Lake Power, LLC. (BLP). I am disappointed with the outcome of the DOJ decision concerning the operations at BLP. Since 2010, BLP has been operating with an inappropriately issued Title V Permit to Operate (TITLE V PTO), and has amassed a number of alleged violations directly related to their operations at the power plant. The recent decision handed down by the DOJ that marginalizes public health and safety regarding the operation at BLP is offensive and prioritizes a business with a losing track record over the public interest. I do not support the current decision.

Throughout the course of reopening BLP, there have been a number of issues that have directly affected public health and safety, including:

- thick, dark smoke releases from the power plant stack at random times, day and night
- foul odors
- fugitive ash and dust that impacts homes, cars, fruit and vegetable gardens and general enjoyment of one of the most accessible and popular recreation trails and river bars/swimming holes on Mad River

- heavy truck traffic that must pass by the sole elementary school on the only route to/from BLP
- excessive noises at all hours (including alarm noise that can be heard distinctly over 1 mile away)
- light pollution
- willful and intentional water quality violations that have been documented and prosecuted by the California Department of Fish and Wildlife
- Illegal discharge from the chip storage area of tannic waters into the Mad River.

For years, BLP has been allowed to flout the laws of the Federal Clean Air Act (CAA), operating without or under an invalid permit, while collecting nearly \$5 million in Federal subsidies, and defaulting on leases and utility bills to the City of Blue Lake on multiple occasions. Currently, BLP is in arrears to the tune of \$140,000 to the City of Blue Lake on past due bills, and is in debt to their direct oversight agency, the North Coast Unified Air Quality Management District (NCUAQMD) to the tune of \$30,000. Enough is enough!

Prior settlement agreements and fines up to \$1.3 million levied against BLP that have been fruitless. BLP claims vague “hardships,” which allows them to continue to operate as a willful and egregious polluter without installing additional pollution controls to bring their operation into compliance with the CAA, or pay even a small fraction of the assessed fines. Instead, with the assistance of the North Coast Unified Air Quality Management District, BLP has attempted to modify the terms of their outdated and invalid permit to allow business-as-usual polluting without punishment.

The history of operation at BLP has been well documented by many sources as having many negative impacts on the health and safety of the Blue Lake community and visitors that come to recreate. Therefore, the only way to protect the public

interest in this situation is to shut down the operation at BLP permanently. There are other newer, cleaner methods of producing electricity that can and should be implemented, and time and time again, BLP has proven that their operation is negatively impacting public health and safety. Additionally, with the track record that both the EPA and NCUAQMD have shown in enforcing current regulations, I have no confidence that the provisions outlined in the Consent Decree will be enforced. EPA, NCUAQMD, and BLP have had enough chances, and they all have shown that the operations at BLP operate in opposition to the public interest.

Mad River Alliance values a clean and healthy environment as a source of education, recreation, and connection with the many natural communities that surround us. The time has come to protect the public interest of Blue Lake - shut down BLP immediately!

Respectfully,

Dave Feral
Executive Director,
Mad River Alliance
P.O.B. 1252
Blue Lake, CA 95525



Mad River Alliance is a community driven group organized to protect clean water and the ecological integrity of the Mad River watershed for the benefit of human and natural communities.

<http://www.madriveralliance.org/>

<https://www.facebook.com/madriveralliance/>

From: Jana Ganion <jana.ganion@bluelakerancheria-nsn.gov>
Sent: Monday, April 04, 2016 8:41 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Cc: Arla Ramsey
Subject: United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038
Attachments: Months behind on Permit Fees 11.3.15.pdf; Months behind on Permit Fees 11.4.15.pdf; Months behind on Permit Fees 11.6.15 attachment.pdf; Months behind on Permit Fees 11.6.15.pdf; BLP Billing Deferred, 12-15-15.pdf

Dear Assistant Attorney General Cruden,

In my role as the Communications Director for the Blue Lake Rancheria Tribe, I respectfully submit these comments regarding the proposed Consent Decree relating to United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038.

After the Tribe had reviewed and approved their comments submitted earlier today, we received (through a public records request) some additional information that underscores the Tribe's concerns regarding the inappropriate enforcement of Blue Lake Power and the Tribe's ability to rely on the North Coast Unified Air Quality District ("District") for permit, regulation, compliance and enforcement management.

Attached are several documents which demonstrate Blue Lake Power's non-payment of their Title V Permit Fees. Under their Title V Permit, non-payment of these fees results in forfeiture of their permit to operate.

In light of the serious allegations in the Complaint against Blue Lake Power and multiple Notices of Violations, and the District's role in those issues, we have to question why the District did not use their authority to "obtain an injunction to require Blue Lake Power to immediately cease operations, and/or revoke Blue Lake Power's operating permit." The Tribe could understand if this were the first issue Blue Lake Power had with payment or compliance, but Blue Lake Power's financial issues dating back to 2009 are well known to the District, as is its history of violations of the Clean Air Act and other regulations.

The District's extension of the payment timeline in this instance is puzzling as it also includes an additional two months of time that Blue Lake Power did not request: May 1st, 2016 was the extension deadline provided by the District, the 'end of the first quarter of 2016' was the deadline proposed by Blue Lake Power. We can only surmise that the District is also aiding Blue Lake Power to retain its initial Title V Permit, as the timeline requirements for a new permit application when plant has been idle have changed, and with the extended timeline, the District helps ensure Blue Lake Power's permit is not revoked before it plans to restart.

This extension of permit fee payment timeline seems an overreach of the District's authority and flexibility. The emails attached demonstrate District efforts to allow and assist this entity to "stay viable."

This is also another example of agencies, in this case the District, allowing Blue Lake Power to Benefit from Delayed Costs. And this is especially important because this particular non-payment would have resulted in revocation of Blue Lake Power's permit to operate, which the Tribe proposes is in the public interest given the repetition of and combined sum of Blue Lake Power's non-compliant activities over the last 5+ years.

We appreciate your careful consideration of all documentation submitted by the Tribe in this matter.

Sincerely,

Jana

Jana Ganion
Communication Director
Blue Lake Rancheria
jganion@bluelakerancheria-nsn.gov
707.668.5101 x1044

www.bluelakerancheria-nsn.gov

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Penny Costa <pcosta@ncuaqmd.org>

Months behind on Permit Fees

Al Steer <asteer@ncuaqmd.org>

Tue, Nov 3, 2015 at 9:20 AM

Reply-To: alsteer@ncuaqmd.org

To: Glen Zane <gzane@crsinet.com>, Gary Gier <ggier@bluelakepower.com>

Cc: Jason Davis <jdavis@ncuaqmd.org>, Penny Costa <pcosta@ncuaqmd.org>

Glen

Our records show that Blue Lake Power (BLP) is almost four months behind in paying permit fees.

I know BLP is working diligently with EPA to keep your facility viable. All is for naught if the permit is allowed to be cancelled due to lack of fee payment.

Please address this issue immediately.

Respectfully,

Al Steer

Compliance & Enforcement Manager

North Coast Unified AQMD

707 L Street

Eureka, CA 95501

(707) 443-3093 Ext 119

alsteer@ncuaqmd.org

<http://www.ncuaqmd.org>

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Please consider our environment before printing this email.



Penny Costa <pcosta@ncuaqmd.org>

Months behind on Permit Fees

Al Steer <asteer@ncuaqmd.org>

Wed, Nov 4, 2015 at 11:16 AM

Reply-To: alsteer@ncuaqmd.org

To: Gary Gier <ggier@bluelakepower.com>

Cc: Penny Costa <pcosta@ncuaqmd.org>, Jason Davis <jdavis@ncuaqmd.org>

Hi Gary

A \$20,687.04, Permit fee was due on August 31, 2015.

A 25% late fee was assessed on September 30, 2015.

A fee of \$4,240.00, for Greenhouse Gas (GHG) Verification, was assessed on August 12, 2015.

A 25% late fee was assessed on September 12, 2015.

Given BLP's financial status and plant shutdown condition, I will waive the penalties if payment is made by November 30, 2015. These payments must be paid to keep the BLP operating permit in force. If the permit is closed due to lack of fee payments, BLP will have to refile for a permit under today's NSPS/PSD requirements.

Please relay this information to Mr. Zane and feel free to call with any questions.

On Wed, Nov 4, 2015 at 10:55 AM, Gary Gier <ggier@bluelakepower.com> wrote:

Hello Al,

I will meet with Glenn today to discuss how we can get caught up. Looking at the cold plant budget set up for BLP the permit fees are about 1000 a month. Is this amount accurate?

Regards

Gary

Gary Gier

Operations and Maintenance Manager

Blue Lake Power LLC

200 Taylor Way

Blue Lake, CA 95525

707-668-5631

From: Al Steer [mailto:asteer@ncuaqmd.org]
Sent: Tuesday, November 03, 2015 9:21 AM
To: Glenn Zane <gzane@CRSINET.COM>; Gary Gier <ggier@bluelakepower.com>
Cc: Jason Davis <jdavis@ncuaqmd.org>; Penny Costa <pcosta@ncuaqmd.org>
Subject: Months behind on Permit Fees

[Quoted text hidden]

—
Respectfully,

Al Steer

Compliance & Enforcement Manager
North Coast Unified AQMD
707 L Street
Eureka, CA 95501
(707) 443-3093 Ext 119

alsteer@ncuaqmd.org
<http://www.ncuaqmd.org>

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Please consider our environment before printing this email.

Blue Lake Power, LLC

1615 Continental Street, Suite 100
Redding, CA 96001
(530) 246-2455
FAX: (530) 246-7008

November 6, 2015

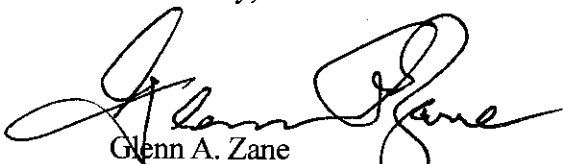
Mr. Al Steer
North Coast Unified AQMD
707 L Street
Eureka, CA 95501

Dear Al:

We received your 11/3/2015 email concerning the payment of the Title V fees. I spoke with our legal counsel Jane Luckhardt yesterday and she indicated there was an option for you folks to agree to accept fees after the due date. We understand there will be a penalty if you do that for us and we request that you provide us with the schedule of fees and penalties. We are expecting to bring all fees up to date and plan to be ready to restart the plant in the first quarter of 2016 or before.

Our goal is to restart and put the crew back to work as soon as possible and I find my time consumed with that effort. Currently, the plant manager, Gary Gier is the only full time staff person on site and you may contact him at any time for current information. His cell phone number is 530-524-5651. I appreciate your understanding and am hopeful you can accommodate our need.

Yours truly,



Glenn A. Zane
President of the General Manager

CC: Jane Luckhardt via email, Gary Gier via email and Brian Morrison via email



Penny Costa <pcosta@ncuaqmd.org>

Months behind on Permit Fees

Glenn Zane <gzane@crsinet.com> Fri, Nov 6, 2015 at 11:51 AM
To: "alsteer@ncuaqmd.org" <alsteer@ncuaqmd.org>, Gary Gier <ggier@bluelakepower.com>
Cc: Jason Davis <jdavis@ncuaqmd.org>, Penny Costa <pcosta@ncuaqmd.org>, Brian Morrison <bam@mklcapital.com>, Jane Luckhardt <jluckhardt@daycartermurphy.com>

AI:

Thank you for your email. We understand the serious nature of our predicament but are unable to pay the fees at present. The attached letter is a formal response to your email with a request for a schedule to allow us to pay at a later date. We look forward to restarting the plant and are presently negotiating a power purchase agreement.


Glenn

Glenn Zane
Continental Resource Solutions Inc.
1615 Continental Street, Suite 100
Redding, CA 96001

530-246-2455 - Office
530-515-7007 - Cell
gzane@crsinet.com

From: Al Steer
Reply-To: "alsteer@ncuaqmd.org"
Date: Tuesday, November 3, 2015 at 9:20 AM
To: Glenn Zane, Gary Gier
Cc: Jason Davis, Penny Costa
Subject: Months behind on Permit Fees

[Quoted text hidden]

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42K

**North Coast Unified Air Quality
Management District**
707 L Street, Eureka, CA 95501
Telephone (707) 443-3093 FAX (707) 443-3099
<http://www.ncuaqmd.org>



December 15, 2015

Mr. Glen Zane
President of the General Manager
Blue Lake Power, LLC
1615 Continental Street, Suite 100
Redding, CA 96001

RE: Extension of Payment Period for Outstanding Fees

Dear Mr. Zane:

The North Coast Unified Air Quality Management District (District) has received your letter dated November 6, 2015 requesting that outstanding fees be paid in the first quarter of 2016. The District will grant your request (under District Rule 400(I)(8.0)) to extend the payment period. The outstanding fees due are calculated as follows:

Invoice #5318	Title V Permit Fees	\$20,687.04
	Delinquent Fee (Rule 400(I)(1.0))	\$ 1,000.00
	Addtl Delinquency Penalty (Rule 400(I)(5.0))	\$ 1,000.00
Invoice #5357	GHG Verification Fees	<u>\$ 4,240.00</u>
		\$26,927.04

The outstanding balance due of \$26,927.04 as outlined above must be paid by May 1, 2016. Please contact me if you have any further questions or concerns.

Sincerely,

Brian Wilson
Executive Director & Air Pollution Control Officer
NCUAQMD

COPY

RULE 400
FEE CALCULATION & ADMINISTRATION

- A. **PURPOSE:** The purpose of this rule is to allow the District to recover reasonable costs incurred directly and indirectly associated with the implementation of air quality programs under its jurisdiction including the issuance of permits, inspection and enforcement, surveillance, planning, research and monitoring, and administration. The authority to establish this rule is provided for in H&SC §41512, §42311, and §42364.
- B. **FEE CALCULATION & FEE SCHEDULES:** District fees are determined by choosing the appropriate fee schedule(s) and then selecting the applicable multiplier(s) from the tables. The actual fee is then calculated by multiplying the "X-Factor Multiplier" obtained by the current value of the "X-Factor".
1. **X-Factor:** District operational costs are annually estimated on a per hour basis which is referred to as the "X" or the "X-Factor".
- a. **Determination of X-Factor Value:** As part of the annual budgetary process for each fiscal year following the Base Year, the APCO shall identify the appropriate value for "X" necessary to achieve a balanced budget. The value of "X" shall be rounded to the nearest whole dollar, and shall be determined upon two components, either:
 - i. The actual program costs for the immediately preceding year; or
 - ii. An adjustment in amount not greater than the change in the Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code.
 - b. **X-Factor Established by Resolution:** The value of "X" shall be assigned by the Governing Board each fiscal year via resolution.
 - c. **Base Year:** Calendar year 2005 is established as the base year with an X-Factor value of \$57.50.
 - d. **X-Factor Multiplier:** The resources necessary to perform services, programs, and activities by the District are represented as an X-Factor "Multiplier". The applicable X-Factor Multiplier is listed in the fee tables associated with the appropriate fee schedule(s).
- C. **Limitation on Fees:** Notwithstanding the fees specified in the District Fee Schedules, if the actual costs of processing an ATC or a PTO application substantially differ from the fees as determined by the applicable fee schedule, the applicant may be assessed the actual costs. The costs, as determined by the APCO, shall include but not be limited to the direct and indirect expenditures incurred by the District to evaluate, inspect, and permit the subject equipment or device.
- D. **Permits Issued by the Hearing Board:** An ATC or a PTO issued by the District Hearing Board is subject to the fees established pursuant to this Regulation.
- E. **Advanced Deposit of Evaluation Costs:** Where the APCO determines that either the ATC application or the PTO application evaluation will require special handling and analyses due to the quantity or quality of emissions, or due to the proximity of sensitive receptor(s), or the applicants history, or, the complexity of the equipment, activity, or operation being permitted, the APCO may require the applicant to pay a deposit toward the actual costs of the evaluation up to 100% of the estimated permit application evaluation actual costs. The APCO shall maintain a record of costs incurred and on written request from the applicant submitted within six months of the evaluation shall refund to the applicant any unused evaluation costs.
- F. **Cancellation or Denial of Applications:** If an application for an ATC or a PTO is canceled, or if an application is denied and such denial becomes final, the application fee required herein shall not be refunded nor applied to any subsequent application.

- G. **Portable Equipment, Multiple Locations:** When permits have been issued to operate movable equipment at two or more locations, only one annual fee shall be due and payable.
- H. **Resolution When Multiple Fee Tables Apply:** In determining the fees to be charged, identical or like equipment within each process unit that requires a permit may be totaled for each schedule. In the event that more than one fee schedule is applicable to an ATC or PTO, the governing schedule shall be that which results in the highest fee.

1. LATE FEES & PENALTIES

1. **Delinquent Fee:** If any fee payment required pursuant to Regulation IV is not submitted within 30 days of the issuance date of a District's billing statement, it shall be considered delinquent, and penalties for the delinquency shall be imposed as set forth below.
2. **Timely Payment of Fees:** For purposes of this Rule, any fee payment shall be considered to be timely if it is postmarked on or before the 30th day following the statement issuance date. If the 30th day falls on a Saturday, Sunday, or holiday, the fee payment may be postmarked on the next business day with the same effect as if it had been postmarked on the 30th day.
3. **Delinquency Penalty:** If no fee payment is submitted within the time prescribed in Section 2 above, a delinquency penalty of 25 percent of the amount of the billed fee, to a maximum of \$1,000, shall be added to the amount of fee due, and the permittee shall thereupon be notified by mail of the increased fee.
4. **Improper Payment of Fees:** If a fee payment is timely paid, but the tendered amount is less than the amount due, the payment shall not be accepted, and the time for proper payment continues to run.
5. **Additional Delinquency Penalties:** If any fee payment is delinquent and the fee plus the delinquency penalty is not received within 30 days of the District notification pursuant to Section 3 above, the delinquency penalty shall be increased to 50 percent of the original amount due, to a maximum of \$1,000, and the permittee shall thereupon be notified by mail of the increased fee.
6. **Permittee Default:** If, in the case of a failure to pay permit fees required pursuant to Rule 405 and Rule 406, the delinquent fee plus penalties assessed pursuant to Section 5 above are not received within 30 days of the date of the District's notification, the permittee shall be considered to be in default of its permit fee obligation and in violation of this Rule. In such case, the District shall immediately notify the applicant that its PTO or ATC has expired and that further operation of the subject equipment without a valid permit is prohibited. Such expiration shall not preclude the applicant from submitting another permit application and beginning the process anew, although the delinquent fee and penalty shall become an obligation owing to the District, which may be recovered along with any permit fee from such new application.
 - a. In the event the person whose permit has expired applies for a new permit, the unpaid annual renewal fee portion of this delinquent fee shall be prorated from the original permit's annual renewal date to the date of billing for the replacement permit and added to the permit fee for the replacement permit.
7. **Delinquent Fees— Permits Issued by Hearing Board:** If, in the case of a failure to pay the permit fee for a permit issued by the District Hearing Board, the delinquent fee plus penalty assessed pursuant to Section 3 of this Rule is not received within 30 days of the date of the District's notification, the delinquency penalty shall be increased to 50 percent of the original amount due, to a maximum of 50 percent of the original amount due, to a maximum of \$1,000, and the permittee shall thereupon be notified by mail of the increased fee.

- a. If the delinquent permit fee plus penalties assessed pursuant to Sections 3 and 7 of this Rule are not submitted within 30 days of the District's notification, the permittee shall be in default of its fee obligation and in violation of this Rule. In such case, the APCO shall petition the District Hearing Board to hold a hearing to determine whether any or all of the facility's permits should be revoked pursuant to California H&SC §42307.
 - b. After the District has initiated a permit revocation action through the filing of an accusation with the District Hearing Board, but before the revocation hearing is held, the permittee may still cure its default by submitting all outstanding fees, plus delinquency penalties and a \$150 revocation initiation fee.
 - c. If any PTO is revoked by the District Hearing Board on account of such default, it may be reinstated or replaced with a new permit, upon written request of the permittee and upon payment of all outstanding fees, penalties, revocation initiation fee, and a reinstatement fee of \$250.
8. **Extension of Payment Period by the APCO:** The 30-day payment period for fee payment required pursuant to Section I of this Rule may be extended by the APCO for extraordinary circumstances and for good cause shown. The adequacy of cause to extend the period shall be decided on a case-by-case basis by the APCO.
9. **Waiver of Penalty by the APCO:** The penalty for fee delinquency may be waived by the APCO for extraordinary circumstances and good cause shown. The adequacy of cause to waive the penalty shall be determined on a case-by-case basis, and may include, but is not necessarily limited to: illness, injury, or accident caused to the responsible party.

From: Lin Glen < >
Sent: Monday, April 04, 2016 2:30 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: U.S.and NCUAQMD v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038

To: Assistant Attorney General, Environment and Natural Resources Division

Regarding: *United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC*,
D.J. Ref. No. 90-5-2-1-11038 – Consent Decree

Our names are Lin and David Glen and we are one of Blue Lake Power's closest neighbors. Our property is about 700 feet from the power plant and we object to the consent decree between Blue Lake Power and the North Coast Unified Air Quality Management District for the following reasons:

-Blue Lake Power has demonstrated their disregard for the law beginning with the upgrade of the plant without the proper permits.

-BLP has repeatedly demonstrated their disregard for their contractual obligations by refusing to pay their lease payments and water and sewer bills to the City of Blue Lake, only bringing them up to date when they needed something from the city. They currently owe the city more than \$100,000.

-BLP has repeatedly demonstrated their disregard for the citizens of Blue Lake by spewing ash and dirt into our air and by only complying with the zoning ordinances on lighting and noise when forced to by the city attorney, costing the City even more money.

-BLP demonstrated their disregard for their employees when they shut the plant down last year, putting their employees out of work not because they were having business problems but because the owners could profit by ending their supply contract.

We ask that Blue Lake Power be shut down permanently. They have a history of noncompliance with the laws, agreements, and contractual obligations that a legitimate business must respect to function legally in our country. As the Department of Justice, it would be irresponsible to make meaningless judgments or agreements with Blue Lake Power that require compliance.

As citizens, we rely on the Department of Justice and the North Coast Unified Air Quality Management District to enforce the laws that protect our health and safety. Thank you.

From: Lyle Huff >
Sent: Thursday, March 31, 2016 6:58 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: Fw: Blue Lake Power LLC Comment
Attachments: sapphire sludge.jpg; close up of sludge.jpg

PLEASE FIND PICTURES ATTACHED AS NOTED BELOW
THANK YOU

On Thursday, March 31, 2016 3:56 PM, Lyle Huff < > wrote:

Dear Sirs,

Your Civil Penalty of \$5,000 against the Defendant named above is a joke. \$5,000,000 would not be enough for the amount of soot/ash/fallout/particulate matter that has been puked out of that plant for the last 40 years of my life. I have lived in/near Blue Lake my entire life. This plant has been a nuisance to the Blue Lake community and Mad River Valley for decades.

From the beginning, it has created an environmental hazard for the people, animals and environment. I can remember as a teenager my mother's rose garden being killed by the sulfuric ash fallout from that plant. Everywhere particulate matter fell on the leaves it created a hole, and around the hole a yellow tinged spot – we were reassured that the particulates were not harmful to humans or animals, but my mother's rose garden and other yard plants soon perished from the consistent fallout. Our family dog, a small poodle, developed red and irritated eye conjunctiva sacs that never went away. My neighbors Palomino horse turned gray with fallout overnight in the 1990's. Our horses were eating the fallout and had several different health problems that could not be explained after the plant went in at the Industrial Park. How can something that caused these issues not be harmful to other living things, namely people, in the same environment? Years back Ultrapower (now Blue Lake Power LLC) would blame the carbon plant in the same Industrial Park for the fallout, however they are no longer operational and cannot be blamed for recent incidents.

I have worked at the Blue Lake Rancheria the last 20 years. I have seen almost daily fallout when this plant is operational. I have attached pictures above for your consideration of the "harmless" fallout from the plant. It would be interesting to do a study on the citizens of Mad River Valley who have had this particulate matter fall on them for decades to gain knowledge of how many people in my community have cancer and other diseases related to respiratory issues caused by this plant. Do you even know what is in the particulates that are falling on the citizens of Mad River Valley?

I say the North Coast Unified Management District ("District") is as much to blame as the Environmental Protection Agency for allowing this HAZARD to continue for decades! The District has received copious amounts of complaints for decades on this plant.

Filing no action at this time against Blue Lake Power LLC is negligent on the United States Department of Justice's behalf.

Sincerely,
Anita Huff





From: Alyssa Hughlett < >
Sent: Monday, April 04, 2016 12:21 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: Blue Lake Power Plant

Dear Attorney General,

My name is Alyssa Hughlett, a resident of Blue Lake. I am disappointed with the outcome of the Department of Justice (DOJ) decision concerning the operations at BLP. Since 2010, BLP has been operating with an inappropriately issued Title V Permit to Operate (TITLE V PTO), and has amassed a number of alleged violations directly related to their operations at the power plant. The recent decision handed down by the DOJ marginalizes public health and safety regarding the operation at BLP and is offensive and prioritizes a business with a losing track record over the public interest. I do not support the current decision.

Throughout the course of reopening BLP, there have been a number of issues that have directly affected the safety and health of me and my family, including:

- thick, dark smoke releases from the power plant stack at random times, day and night
- foul odors
- fugitive ash and dust that impacts homes, cars, fruit and vegetable gardens (see attachments) and general enjoyment of one of the most accessible and popular recreation trails and river bars/swimming holes on Mad River
- heavy truck traffic that must pass by the sole elementary school on the only route to/from BLP
- excessive noises at all hours (including alarm noise that can be heard distinctly over 1 mile away)
- light pollution
- willful and intentional water quality violations that have been documented and prosecuted by the California Department of Fish and Wildlife (see attachment)

For years, BLP has been allowed to flout the laws of the Federal Clean Air Act (CAA), operating without or under an invalid permit, while collecting nearly \$5 million in Federal subsidies, and defaulting on leases and utility bills to the City of Blue Lake on multiple occasions. Currently, BLP is in arrears to the tune of \$140,000 to the City of Blue Lake on past due bills, and is in debt to their direct oversight agency, the North Coast Unified Air Quality Management District (NCUAQMD) to the tune of \$30,000. Enough is enough!

Prior settlement agreements and fines up to \$1.3 million levied against BLP that have been fruitless. BLP claims vague "hardships," which allows them to continue to operate as a willful and egregious polluter without installing additional pollution controls to bring their operation into compliance with the CAA, or pay even a small fraction of the assessed fines. Instead, with the assistance of the NCUAQMD, BLP has attempted to modify the terms of their outdated and invalid permit to allow business-as-usual polluting without punishment.

The history of operation at BLP has been well documented by many sources (see attachments) as having many negative impacts on the health and safety of the Blue Lake community and visitors that come to recreate. Therefore, the only way to protect the public interest in this situation is to shut down the operation at BLP permanently. There are other newer, cleaner methods of producing electricity that can and should be implemented, and time and time again, BLP has proven that their operation is negatively impacting public health and safety. Additionally, with the track record that both the EPA and NCUAQMD have shown in enforcing current regulations, I have no confidence that the provisions outlined in the Consent Decree will be enforced. EPA, NCUAQMD, and BLP have had enough chances, and they all have shown that the operations at BLP operate in opposition to the public interest.

As an expecting mother, outdoor enthusiast, home owner, and board member of the Blue Lake Chamber of Commerce, I hope that you will consider closing the BLP for the reasons stated above.

Thank you,
Alyssa Hughlett

--
Alyssa Hughlett

Dunne, Timothy (ENRD)

From: Andrew Jones < >
Sent: Monday, April 04, 2016 12:29 AM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: D.J. Ref. No. 90-5-2-1-11038 | United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC

Dear Assistant Attorney General,

My name is Andrew C. Jones, a resident of Blue Lake, CA. There is value in generating local energy from biomass and creating local jobs, such as what Blue Lake Power has done in my town. However, these positives are tarnished by their incapacity to be a good neighbor. By operating without a permit, exceeding the emission standards, and not paying their past due bills to the City of Blue Lake, BLP is taking advantage of the public. Our small town cannot support this irresponsible company any longer. We're ready to see Blue Lake Power shut down.

Sincerely,
Andrew C. Jones

From: Sarah Jones <f >
Sent: Friday, April 01, 2016 8:07 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: Blue Lake Power Plant

Dear, Assistant Attorney General, Environment and Natural Resources Division

I am writing in regards to the United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038.

I live in Blue Lake with my spouse and two children for over 10 years, and I have lived in Humboldt County for over 20.

I live within one mile of the Blue Lake Power Plant(Blue Lake Power LLC.)

In the years since Blue Lake Power has operated, they have promised to be a clean neighbor and use downed wood as biomass for their purposes. However, they often have black smoke coming out of the stack and deafening sounds emanating from the plant. In addition, I often see actual fresh logs being chipped and stored in piles in order to be used for fuel in their operations.

Furthermore, the traffic they generate is obscene for our small rural town. Huge tractor trailer trucks must drive past our only elementary school and through the downtown area in order to reach the power plant. These trucks come all hours of the day and night.

Blue Lake Power has promised the community they would mitigate the impact their corporation would have on this community, however the issues persist and minimal to no solutions have been enacted. There is a lack of good faith and a deterioration of trust as the bills to the city are piling up and the citizens are forced to foot the bills for Blue Lake Power LLC. This is outrageous. The company needs to pay their bills and deals with the problems they've created for themselves and our community.

Regards,
Sarah Jones



PHYSICAL DOCUMENT

ENV_ENFORCEMENT-n2582667-v1

CITIZEN COMMENTS

Author: McAnaney, Sheila

Document Type: LETTER

LSA(s): KBROWN

Co-Counsel:

Counsel LSA(s):

Distribution List: ENRD, EESCaseManagement (ENRD);Lattin, Sue (ENRD);Rose, Robert (ENRD);Reed, Jason (ENRD);True, Michael (ENRD);McAnaney, Sheila (ENRD);Brown, Ken (ENRD)

Fileroom: EES - 6th Floor

DJ#: 90-5-2-1-11038

Case Name: U.S. AND NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT V. BLUE LAKE POWER, LLC, ET AL.

Court: CA N.D. Cal.; 9th Cir.

Notes:

Double-Sided:

Received Date: 4/8/2016

Urgent:

Oversize:

Bound Document:

Ms. Ananey, Sheila

16 APR -8 P4:31

DEPT. OF JUSTICE - ENRD
ENVIRONMENTAL DIVISION

Assistant Attorney General
United States Department of Justice - ENRD
P.O.Box 7611
Washington, D.C. 200444-7611

Re: United States and North Coast Unified Air Quality Management District v. Blue Lake Power, LLC, Civil Action No. 3:16-cv-00961

Dear Attorney General,

My name is Mandi Kindred, and I am a citizen with interest in the outcome of the Department of Justice decision concerning the operations at Blue Lake Power, LLC. (BLP). I am disappointed with the outcome of the DOJ decision concerning the operations at BLP. Since 2010, BLP has been operating with an inappropriately issued Title V Permit to Operate (TITLE V PTO), and has amassed a number of alleged violations directly related to their operations at the power plant. The recent decision handed down by the DOJ that marginalizes public health and safety regarding the operation at BLP is offensive and prioritizes a business with a losing track record over the public interest. I do not support the current decision.

Throughout the course of reopening BLP, there have been a number of issues that have directly affected the safety and health of me and my family, including:

- thick, dark smoke releases from the power plant stack at random times, day and night
- foul odors
- fugitive ash and dust that impacts homes, cars, fruit and vegetable gardens and general enjoyment of one of the most accessible and popular recreation trails and river bars/swimming holes on Mad River

corn

- heavy truck traffic that must pass by the sole elementary school on the only route to/from BLP
- excessive noises at all hours (including alarm noise that can be heard distinctly over 1 mile away)
- light pollution
- willful and intentional water quality violations that have been documented and prosecuted by the California Department of Fish and Wildlife

For years, BLP has been allowed to flout the laws of the Federal Clean Air Act (CAA), operating without or under an invalid permit, while collecting nearly \$5 million in Federal subsidies, and defaulting on leases and utility bills to the City of Blue Lake on multiple occasions. Currently, BLP is in arrears to the tune of \$140,000 to the City of Blue Lake on past due bills, and is in debt to their direct oversight agency, the North Coast Unified Air Quality Management District (NCUAQMD) to the tune of \$30,000. Enough is enough!

Prior settlement agreements and fines up to \$1.3 million levied against BLP that have been fruitless. BLP claims vague “hardships,” which allows them to continue to operate as a willful and egregious polluter without installing additional pollution controls to bring their operation into compliance with the CAA, or pay even a small fraction of the assessed fines. Instead, with the assistance of the North Coast Unified Air Quality Management District, BLP has attempted to modify the terms of their outdated and invalid permit to allow business-as-usual polluting without punishment.

The history of operation at BLP has been well documented by many sources as having many negative impacts on the health and safety of the Blue Lake community and visitors that come to recreate. Therefore, the only way to protect the public interest in this situation is to shut down the operation at BLP permanently. There are other newer, cleaner methods of producing electricity that can and should be

implemented, and time and time again, BLP has proven that their operation is negatively impacting public health and safety. Additionally, with the track record that both the EPA and NCUAQMD have shown in enforcing current regulations, I have no confidence that the provisions outlined in the Consent Decree will be enforced. EPA, NCUAQMD, and BLP have had enough chances, and they all have shown that the operations at BLP operate in opposition to the public interest.

The time has come to protect the public interest of Blue Lake - shut down BLP immediately!

A handwritten signature in black ink that reads "M Kindred". The signature is written in a cursive style with a large, sweeping initial "M" and a long, horizontal flourish extending to the right.

Respectfully,
Mandi Kindred

Assistant Attorney General
U. S. Dept. of Justice ENRD
PO BOX 7611
Washington, DC



PUBLIC COMMENTS

EUREKA CA 955

X-RAYED
APR 08 2016
DU MAILROOM

8/11/16
K...
Page 1/8

From: Kit And Rebecca < >
Sent: Monday, April 04, 2016 1:38 AM
To: ENRD, PUBCOMMENT-EES (ENRD); rzkm home
Subject: Public Comment US v. Blue Lake Power
Attachments: Public Comment US v. Blue Lake Power.pdf

Attached please find my comments in US v Blue Lake Power LLC. I trust that these comments will be accepted even though they are submitted very near the deadline, as the deadline falls on a Sunday.

Thank you.

Kit Mann

Blue Lake, CA

----- Original message -----

From: Mary Borevitz < >
Date: 04/04/2016 10:25 PM (GMT-08:00)
To: 'Kit and Rebecca' < >
Subject: Public Comment US v. Blue Lake Power

April 3, 2016

Ellen M. Mahan
Deputy Section Chief
Environment and Natural Resources Division
US Dept. of Justice

RE: US and North Coast Unified Air Quality Management District
v. Blue Lake Power LLC
Ref. No. 90-5-2-1-11038

I am commenting on the proposed Consent Decree with Blue Lake Power. My knowledge about the Blue Lake biomass power plant, Blue Lake Power, and it's current and past owner/operators is extensive. I have lived adjacent to the Blue Lake Industrial Park since before the power plant was constructed in 1983. The house I have occupied for the past three years has been officially identified by the City as the "nearest residential structure" for purposes of measuring compliance with Zoning and Use Permit conditions. I was on the City of Blue Lake Planning Commission during the early years of Ultrapower's operation, was the Executive Director of the Blue Lake Community Development Corporation in the 80's, and am currently Chair of the Blue Lake Public Safety Commission.

In general, the CD is inadequate to address the level and extent of BLP's continuous and ongoing violations of air quality, and amounts to little more than a free pass to continue their current violations. In addition, the Northern California Unified Air Quality Management District (District) has demonstrated a clear preference for enabling BLP to continue to operate while in violation, in conflict with the public's best interest.

In order to place these comments in proper context, it is very important for the DOJ to understand the character of BLP's ownership. BLP's ownership has consistently, continuously and regularly flouted regulations, permits, agreements, contracts, etc. from the very start and at virtually every level. That they failed to obtain appropriate permits or perform adequate upgrades before starting the plant is not indicative of an error - they have demonstrated repeatedly that this is their modus operandi. While it is not in the purview of the Consent Decree to consider, BLP has been in arrears on their lease, water and sewer payments to the City of Blue Lake at various times since opening the plant and currently owes the City approximately \$140,000 in back rent and utility payments. Further, BLP's controlling owner, Glenn Zane, has repeatedly entered into other agreements, contracts, permits, conditions, etc. with the City regarding his closely tied business, Blue Lake Roundstock, that he has subsequently broken. He has on several occasions made assertions and statements at City Council and Planning Commission meetings that have later been shown to be at least misrepresentations if not complete prevarications. There are currently and have been numerous mechanics liens on the plant. Our community has learned the hard way that BLP's ownership does not operate in good faith and cannot be trusted to perform as they say they will. As such, leniency in reliance on good faith efforts, as proposed in this CD,

are at best, inappropriate.

1. The "fine" proposed of \$5000 is an insult to the public, is too miniscule to have any deterrent effect, and is not commensurate with BLP's ongoing and egregious violations. As an internal reference within the CD itself, the Stipulated Penalties in Section 51 at even the lowest level (\$250/day) for the multi year period would have resulted in a fine of nearly \$600,000; using the full stipulated penalty, the fine would be more like \$1.75MM. That the CD would propose this level of fine for the future but only impose a "fine" that could be paid with a credit card for the demonstrated violations of the past is illogical.

A violator's apparent ability to pay should not be a consideration when establishing a fine. I say "apparent ability to pay" because BLP's ownership and Mr. Zane do have the ability to pay. Mr. Zane has a closely related business: Blue Lake Roundstock (BLRS). The finances of the two companies are being conflated in ways to make it appear that BLP has no funds, when in fact Mr. Zane's companies have numerous employees, heavy equipment and major operations currently occurring at the BLP site. For Mr. Zane to contend that there is no money available belies this activity. This is a financial shell game, and neither the DOJ nor the District should be taken in by it.

2. Those of us that live northwest of the plant, including the Blue Lake Rancheria, are regularly blanketed with black fly ash. This gross particulate pollution has been occurring since the plant was originally operated in the 1980's, disappeared while the plant was idle, and has occurred unabated since the plant reopened. It is hard not to conclude that the Electrostatic Precipitator is not designed adequately. It is noteworthy that the worst fallout often occurs at night, leading to the logical conclusion that BLP is careful to perform whatever action is causing the particulate pollution when it is less likely to be noticed by the public. When we have complained to the District, they disingenuously state that they cannot be certain of the source (there is no other possible source), but they have also not undertaken any effort to collect or analyze samples from our location.

Section 33 must be substantially modified to address this serious source of ongoing pollution. Particulate emissions, whether larger or smaller than 10 micrometers, must be monitored and regulated continuously. The PM Stack Test indicated under section 33 is simply astounding - it amounts to no testing at all. This must be corrected.

3. Consequences in the CD are far too weak. In order to protect the public, the consequences of failure to comply should be immediate cessation of operation until the problem is fixed. Stipulated Penalties are proposed, however a penalty is an inadequate deterrent, as demonstrated by BLP's repeated failure to pay fees, penalties, contracted payments, etc. Failure to pay a Stipulated Penalty within 30 days should result in immediate revocation of the Permission to Operate and complete plant shutdown.

4. The CD proposes several ways to weaken the standards to which BLP must comply, even allowing BLP to come up with their own standards (within limits). In addition, the CD allows BLP to fail to comply for long periods of time while they are attempting to bring their systems

into compliance. This is unacceptable. The standards to which BLP must comply should be established at the outset and immutable. There is no prudent reason to allow variance.

It is also extremely important that the rolling average emissions standard should not be changed from the current 3 hour average to a 24 hour average as proposed, as this is yet another loophole allowing BLP to emit more pollution at intervals than would otherwise be allowed.

5. Time frames for compliance are too long and should be shortened in every instance. BLP should have performed this work before the plant opened and having failed that, should have performed it as part of their 2011 Settlement Agreement with the District. There is no reason to grant them significantly more time to do the work that should have been done years ago.

Several performance milestones and reviews are tied to the date of acceptance of the Boiler Engineering Study. In the past, the City has established similar review schedules for both of Mr. Zane's businesses, BLP and BL Roundstock. In these cases, Mr. Zane has consistently postponed full activity until the review period has expired and then begun full operation, or changed the nature of the operation in some way, thereby avoiding the scrutiny that would have occurred during the review period. In the CD, milestones and reviews should be tied to both the date of the Boiler Engineering Study AND actual initiation of the activity being reviewed.

5. The NCUAQMD has clearly displayed a bias for allowing BLP to continue to operate even while out of compliance. As noted in the EPA's March 2014 NOV, "appropriate emissions controls...should have been included in an Authority to Construct ("ATC") and a Permit to Operate ("PTO") issued by the District ". In other words, from the outset, the District failed to perform its duty, allowing BLP to construct and operate under the original 1983 permit. Then, having later found BLP to have violated air quality standards nearly continuously since startup, they levied a fine that was subsequently mitigated into insignificance by allowing BLP to receive credit against the fine for performing the work that they were supposed to have performed before being allowed to operate. At the time of this letter, the District has refused to answer direct requests from the public asking what portions of their 2011 Settlement Agreement have been completed and which have not. In addition, the District has refused to respond to FOIA requests, and positively denied the existence of the EPA NOV when members of the public already knew of its existence. Further, Nancy Diamond is attorney for both the City of Blue Lake - which receives a significant portion of their revenue from the ground lease with BLP (at least when BLP pays their rent) - and the District, creating a clear conflict of interest. Those of us negatively impacted by BLP have no confidence in the District, and request that all determinations of compliance or non-compliance be subject to significant and ongoing federal oversight.

This CD is essentially giving BLP a third opportunity (after initial start-up and subsequent Settlement Agreement) to comply. Meanwhile, the public has borne the negative impacts of their failure to comply for six years, and if the CD is approved as written, will allow them to continue to pollute for another 30 months.

Finally, there is currently intense political pressure in Humboldt County to open all three county biomass power plants, and the District is clearly being influenced by this pressure.

6. The City of Blue Lake and Blue Rancheria are both profoundly affected by operations at BLP. They should both receive all reports required by the CD. Further, the District should be explicitly required to provide all reports to any member of the public upon request.

Thank you.

Kit Mann

From: Merritt Perry < >
Sent: Monday, April 04, 2016 5:03 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: Comments on Consent Decree of United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038
Attachments: Comments on Blue Lake Power Consent Decree_MPerry_Reduced.pdf

Comments on Consent Decree of United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038

Assistant Attorney General, Environment and Natural Resources Division
U.S. DOJ
P.O. Box 7611
Washington, DC 20044-7611

SUBMITTED VIA EMAIL TO: pubcomment-ees.enrd@usdoj.gov

Subject: Comments on Consent Decree of United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038

Dear Mr. Cruden,

I offer the following comments on the proposed consent decree regarding the United States and North Coast Unified Air Quality Management District v. Blue Lake Power published to the federal register on February 26, 2016. I hope that you take these comments seriously and do everything you can to make this a more meaningful consent decree. Blue Lake Power has operated in violation of the clean air act for over five years since it re-started in 2010. This is after being dormant for over 10 years and despite past action from the NCUAQMD, including fines and identified steps for compliance.

Most objectionable is the fact that the Consent Decree allows Blue Lake Power to deny the violations documented in the 2014 Notice of Violation, and the EPA forgoes the opportunity prove them. The public deserves to have the violations formalized and for proper fines and measures taken to ensure compliance with the clean air act prior to re-starting of the power plant. Not doing so violates the public's trust in the government and enables continued emissions in excess of permit and clean air act requirements.

The proposed consent decree falls for short of a meaningful deterrent and will allow Blue Lake Power to resume operation in violation of its operating permit with lower emission limits. The NCUAQMD's counsel has clear conflict of interest and should not have been allowed to participate in the development of the consent decree and therefore it should be thrown out and a new consent decree developed without a biased author. If not thrown out entirely, the consent decree should be significantly strengthened and the proposed fine increased. As stated by Glenn Zane, the long-time manager of Blue Lake Power, "the plant operates on a very low margin" and therefore, it is unrealistic to think that it will change their track record and comply with the requirements in the consent decree.

Blue Lake Power was previously bound by a settlement agreement in 2011 that would require compliance with all emission limits, but no improvement has been made nor required by the NCUAQMD. Blue Lake Power should be required to take the steps necessary to bring the plant up to current standards so that it can meet emission limits before resuming operation. It is unfair to its neighbors to expect them to tolerate the pollution any longer than the five years we have had to already. Only throwing out the consent decree altogether, or strengthening to require immediate compliance will demonstrate the resolve of the government stop the pollution of the environment and the impacts to its neighbors.

1. The District Counsel for the NCUAQMD has a Clear and Apparent Conflict of Interest and Should Not have Participated in Development of Consent Decree

Nancy Diamond who represents the NCUAQMD as District Counsel, and is named as the counsel for the plaintiff in the Complaint and Consent Decree, has a clear conflict of interest and should not have been, nor should be permitted to take part in development of the subject Complaint and Consent Decree. By acting as District Counsel for the NCUAQMD and as the City Attorney for the City of Blue Lake, Ms. Diamond is effectively regulating Blue Lake Power and representing one of the primary beneficiaries of its operation, as the City of Blue Lake is the landlord and water provider for Blue Lake Power, and depends on Blue Lake Power's Operations for a significant portion of the City's revenue.

Nancy Diamond has been the City of Blue Lake contract city attorney for many years and understands the City's dire need for the revenue from Blue Lake Power. The City of Blue Lake is highly dependent on Blue Lake Power for revenue, as it owns the property that Blue Lake Power is situated on and collects approximately \$113,000 per year for rent, more than 13% of the City's General Fund revenue of \$856,805 for FY 15/16 (Attachment A). Blue Lake Power also pays water fees that comprise a significant amount of the City's water fee revenue as its largest customer. Ms. Diamond routinely represents the City of Blue Lake on permitting issues for Blue Lake Power, including providing legal opinions on permitting decisions within the permitting authority of the City of Blue Lake and on lease related issues with Blue Lake power. Typically add decisions made are favorable toward continued operation of Blue Lake Power. Attachment B includes city council minutes from 2013 with documenting a legal opinion from Ms. Diamond, regarding Blue Lake Power, and a letter from Ms. Diamond to Blue Lake Power on Behalf of the City of Blue Lake from August 2015 taking action for past due lease payments.

In her role as the counsel for the plaintiff, Ms. Diamond effectively act as the regulator for Blue Lake Power. According to Brian Wilson, Deputy Air Pollution Control Officer, and NCUAQMD records, Ms. Diamond has been involved with the regulation of Blue Lake Power for some time, including from its current start up in 2010, during the development of the Settlement Agreement in 2011 (Attachment C) that resulted from violations, when the EPA issued the Notice of Violation in 2014, and she signed the subject Consent Decree and associated complaint in 2016.

Under the counsel of Ms. Diamond working for the NCUAQMD, Blue Lake Power was allowed to start up in violation of the Clean Air Act PSD Standards and NCUAQMD Program Guidelines and without a permit to construct as detailed in the 2014 Notice of Violation issued by the EPA in 2014 (referenced in the Consent Decree). Authored a settlement agreement in 2011 (Attachment C) as a result of emission limitations, which was ultimately not enforced, and the terms of which have yet to be completed and the agreement released by the District, with no

regulatory mandate for Blue Lake to stop operation despite being in conflict with the Clean Air Act.

It is impossible for Ms. Diamond to both act as a regulator on behalf of the NCUAQMD and a beneficiary for the City of Blue Lake in a non-conflicted manner. In decisions for both entities she has continually makes decisions that allow Blue Lake Power to continue its operations despite well documented violations and agreements to comply. In light of this apparent conflict, I ask that the EPA find the subject Consent Decree invalid and develop a new consent decree without the involvement of Ms. Diamond or any beneficiaries of the operation of Lake Power.

2. Fines Should be Increased To Provide a Meaningful Deterrent, and Consistent with Fines for Similar Violations

The consent decree proposes a \$5,000 fine. A fine of \$5,000 is much too low and is not a suitable penalty for knowingly violating the clean air act for several years, including blatant operation in violation of the Clean Air Act following a Notice of Violation issued in 2014.

As stated in the Consent Decree, the financial capacity of Blue Lake Power was considered when determining the fine. It seems that if Blue Lake Power is in such financial dire straits that a \$5,000 fine is all that the EPA thinks they have the ability pay, then this should be an indication that they do not have adequate funds to be able to responsibly manage the power plant and make the needed improvements to comply with air quality standard at a cost that will be significantly more than the proposed \$5,000 fine.

The financial standing of Glenn Zane, who has represented Blue Lake Power since it restart after 10 years of dormancy, and through multiple ownership scenarios, has maintained management control and has continually represented and benefited from his ownership interest Blue Lake Power. The finances of Mr. Zane, and others that have maintained an ownership interest Blue Lake Power, should be considered when it comes to ability to pay. An intentional polluter should not be given a break or reduced penalties just because they maintain a low balance sheet in their business enterprise and take the profits out.

Please increase the penalties to a level of at least the lower limit of the potential fines so that they represent a real deterrent. According to the complaint, Blue Lake Power is subject to fines of between \$1,000 and \$75,000 per day per violation. Blue Lake Power has been operating in violation with the clean air act since re-starting operation in April 2010 until May of 2015, approximately 5 years. Assuming they operated for only four of the five years of operation this would equate to 1440 days in violation and a fine of \$1,440,000. This should be the minimum civil penalty, considering they operated in violation for more than one standard (particulate matter emissions, carbon monoxide and nitrogen oxide emissions) for the entire time they were in operation in excess of 1440 days.

The fine to be levied should also be consistent with fines for similar violations by other biomass plants in California. In 2011, the EPA fined the Ampersand Chowchilla Biomass Plant and

Merced Power \$328,000 and \$492,000 respectively for excess emissions of nitrogen oxides, carbon monoxide and fine particulates, the same constituents Blue Lake Power has consistently exceeded the limits for.

Many of the residents that live near the Blue Lake Power have suffered much more than \$5,000 in loss of property, health, and happiness as a result of Blue Lake Power's Operations and together have expended several hundred hours trying get the NCUAQMD to force Blue Lake Power to stop polluting. We have lodged complaints with the NCUAQMD and the City of Blue Lake, and those have only resulted in ineffective enforcement of emissions limits and other requirements. It is not fair for those of us that live near Blue Lake Power have our property values reduced due pollution, to have to clean particulate from homes, and suffer from poor air quality at our homes recreating on the Mad River directly adjacent to the power plant with no meaningful penalty. The absentee owners of this plant have been able to pollute the air around our homes with no significant penalty and far away from any impacts.

Please increase the penalties to a level of at least the lower limit of the potential fines so that they represent a real deterrent.

3. The 2011 Settlement Agreement Between NCUAQMD Should be Satisfied Prior to Issuance of a Consent Decree that Duplicates the Previously Agreed Performance Measures

In 2011, Blue Lake Power and NCUAQMD agreed to a settlement agreement that required fines, compliance projects, and compliance audits, with the stated goal of compliance with all environmental standards (Attachment C).

The settlement agreement included penalties and the following specific items found in Section 1, paragraph D of the agreement:

5. *A credit toward fines for "...completion of a thorough environmental audit of the facility conducted by a contractor approved in advance by the APCO. Blue Lake Power shall engage a contractor for such audit within 30 days of the Agreement Date, and shall provide notice to the APCO at the time of contract execution. The audit shall be completed within 45 days after execution of the contract. Said audit shall include recommendations and detailed instructions for compliance with all applicable environmental regulations and air permit conditions. Audit results shall be sent to the APCO at the same time and the same format as results are presented to Blue Lake Power"*
6. *A credit toward fines for "...installation of system-wide operation control enhancements such as localized temperature and pressure monitoring at specific locations to ensure operational efficiency"*

10. A credit toward fines for "...specific compliance projects within the specified time frames:

- a. Management of fuel stock, in BLPs discretion, to maintain moisture content appropriate for facility operation in compliance with air quality standards.
- b. Development and approval by the APCO of a Dust Mitigation Control Plan to control the release of chip particles and ash from all on-site activities, including in the installation of adequate covers on conveyor belts where necessary
- c. Full completion and continued compliance with all items identified in that letter from BLP to the District dated May 14, 2010....and replaced in its entirety by the following:

12. As to a longer-term solution to moderate the fuel moisture content during the wet months, BLUP will by October 15, 2011, utilize an offsite fuel storage location where unprocessed fuel material will be stored primarily in log form....adequate to maintain an inventory approximately 4,000 BDT of boiler ready fuel at 55% moisture content in addition to any other boiler ready fuel that may be in inventory"

The 2011 Settlement Agreement also stated that a release would be issued upon the successful completion of all terms in the agreement. To date no release has been issued (personal communication with Brian Wilson, Deputy APCO, 3/25/2016). The NCUAMD refused to provide any details regarding the specific items that Blue Lake Power completed in accordance with the settlement agreement (Voicemail from Brian Wilson, Deputy APCO 3/28/2016), even though a detailed resolution of the items in the settlement agreement was requested.

Based on the findings in 2014 Notice of Violation, it is apparent that Blue Lake Power did not bring operations into compliance with their air quality limits, or refrain from operating, as required by the 2011 Settlement Agreement, as emission limits did not meet permit requirements. It is also quite clear that no effective dust mitigation plan has been implemented, no measures to control fuel moisture have been implemented and I believe it is unlikely that the fines specified were paid, given the low balance sheet of the Blue Lake Power. If these compliance measures were completed, then it would not be necessary to include many redundant items in the Consent Decree such as the following:

- Fuel Management Plan
- Fugitive Dust Plan
- Compliance with All Environmental Permit Requirements

I am dumbfounded that the NCUAQMD continues to let Blue Lake Power operate four additional years without satisfying the requirements in the 2011 settlement agreement. It is also clear that the NCUAQMD and Blue Lake Power were satisfied with non-compliance with the agreement, as it took action by the EPA to initiate any new compliance measures. Perhaps the potential conflict of interest of Ms. Diamond, and the interests of the City of Blue Lake, influenced the decisions that have led to that situation.

The consent decree now proposed duplicates many required compliance projects that should have already been completed as a part of the 2011 Settlement Agreement. **Approving the Consent Decree will allow the 2011 Settlement Agreement compliance measures to remain unfinished, as they have been since 2011. Including them in the Consent Decree, will relieve Blue Lake Power from complying with the terms of the 2011 Settlement Agreement as they will be superseded by the Consent Decree. It is not appropriate or in the public interest to allow the civil judicial action that resulted in the 2011 Settlement Agreement to be cured by this Consent Decree.**

4. DO NOT ALLOW CONSENT DECREE TO LOOSEN REGULATIONS BY INCREASING AVERAGING TIMES FOR CO AND NOX

The purpose of a consent decree is to find a settlement between two parties for the purpose of adhering to regulatory laws, not to reduce the protections of the laws. Paragraph 18 of the consent decree includes emission rates for NO_x and CO on a 24-hour rolling average. This is a relaxation of the emission limitations for NO_x and CO in the Permit to Operate issued by NCUAQMD NCU 097-12 (Attachment D) in Section III paragraphs B and C which require NO_x and CO emission limits to be determined on a 3-hour average basis. By including this provision, the Consent Decree effectively allows for a loosening of the regulations of the permit to operate and higher intermittent emission rates, which are typical for Blue Power. It also makes it possible for Blue Lake Power to average emissions from when they are burning propane, or not operating, to bring down the 24 hour average and still emit above the emission limits.

Blue Lake Power has made this request in the past and it was rejected because the PSD conditions have not been incorporated into the Title V permit including BACT determinations and operating conditions (Attachment E). It was determined inappropriate to change the averaging times then as PSD and BACT had not been implemented and therefore it is inappropriate now, as PSD and BACT requirements have not been incorporated into the Title V Permit to Operate.

The subject Consent Decree should be revised to keep the current emissions limitations and require NO_x and CO emission limitations to be averaged on a 3-hour basis and not the 24-hour basis included in the Consent Decree in order to prevent a relaxation of the current emission limits. It is inappropriate to change the emissions limits outside of the normal permit process, and without public input.

5. REQUIRE BLUE LAKE POWER TO COMPLY WITH PSD REQUIREMENTS AND INSTALL BACT PRIOR TO RESUMING OPERATION AS SHOULD HAVE BEEN REQUIRED PRIOR TO RESTARTING AND DO NOT ALLOW A 12 –MONTH DEMONSTRATION PERIOD

It is well documented in the 2014 Notice of Violations that Blue Lake Power's facility was subject to the Districts Authority to Construct (ATC) prior to starting construction, modification, operation or use of any stationary or indirect source that may cause, potentially cause, reduce, control, or eliminate the emission of air contaminants ((NCUAQMD Rule 220(b)(2)). Blue Lake Power nor the NCUAQMD ignored this requirement despite District and federal rules. Was this done and not ignored by Blue Lake Power and the NCUAQMD, Blue Lake Power would have been required to comply with Prevention of Significant Deterioration (PSD) requirements and implementing Best Available Control Technologies (BACT) prior to re-starting the facility after significant modifications to the facility, which changed its classification to a new source. This was in clear violation of the NCUAQMD rules which require the owner or operator of a new or modified major stationary source apply BACT (NCUAQMD Rule 220(b)(1)) and conduct air quality analysis and monitoring (NCUAQMD Rule 220(b)(2)) and analyze the impact on PSD increments and the source's own net emission increases (NCUAQMD Rule 220(b)(2)).

The Consent Decree will allow Blue Lake Power to operate for another year without implementing the BACT. Paragraph 12 of the Consent Decree allows 15 days from resuming operation to develop the Boiler Engineering Study protocol. Paragraph 13 the Consent Decree allows 90 days to complete the Boiler Engineering Study, paragraph 15 and 18 of the Consent Decree allows Blue Lake Power Operate the Boiler for 12 Months prior to the operations being optimized and the proposed emission rates being met and finally paragraph 20 allows another six months to achieve and maintain the Emission Rates if they are not met in the first 12 month demonstration period. **Therefore, Blue Lake Power will be allowed to operate for another 24 months, or 2 years without complying with the proposed emission standards, if these timelines are upheld.**

Blue Lake Power has operated in violation of the Clean Air Act and District guidelines since they constructed the plant without ATC in 2010. They have operated from April 2010 to May of 2015 in clear violation without district rules, without adding BACT to the plant prior to commencing operation. They operated for over a year after the Notice of Violation from the EPA in 2014. **It is unfair to ask the public to endure the operation of Blue Lake Power for another two years until BACT can be implemented and emission limits met. I would formally request that no demonstration period be allowed and the BACT be required to be implemented prior to the commencement of operation or that at a minimum only a 3-6 month demonstration period be allowed.**

6. ADD A PROVISION TO THE CONSENT DECREE TO LIMIT THE NUMBER OF ALLOWED BREAKDOWNS, IMPOSE MANDATORY FINES FOR EXCESSIVE BREAKDOWNS AND REQUIRE EMISSIONS REPORTING DURING BREAKDOWNS

Blue Lake Power experienced frequent breakdowns prior to closing in 1999 and has continued to have frequent breakdowns prior to the re-start of the plant from 2010 to 2015. Based upon a review of the breakdown reports, a large number of the breakdowns that have occurred have is a result of improper maintenance, negligent operation or are abnormally recurrent. There are 46 breakdowns or shutdowns in a 17 month period that data was available between 7/31/13 and 12/21/14. The attached summary, Attachment F, was made from the breakdown reports provided by the District. Although requested, no breakdown reports were provided for previous years when breakdowns seemed much more frequent based on personal observations. Of the breakdown reports reviewed, only seven stated that no emission limits were exceeded. Emission limits were said to exceed emission limits on the remaining 39 of the 46. As can be seen on the summary sheet, many of the same failures occurred more than once, and some as many as six times. Additionally, the average for the 17 month period looked at averages over 2.5 breakdown or shutdown occurrences per month.

NCUAQMD Rule 540 States:

RULE 540 - EQUIPMENT BREAKDOWN

(a) Breakdown Conditions

For the purposes of this rule, a breakdown condition means an unforeseeable failure or malfunction of any air pollution control equipment or related operating equipment which causes a violation of any emission limitation or restriction prescribed by these rules and regulations, or by State law, or similar failure of any required in-stack continuous monitoring equipment where such failure or malfunction:

1. *is not the result of neglect or disregard of any air pollution control law or rule or regulation;*
2. *is not intentional or the result of negligence;*
3. *is not the result of improper maintenance;*
4. *does not constitute a nuisance;*
5. *is not an abnormally recurrent breakdown of the same equipment.*

It is clear that many of the breakdowns are a result of neglect as they indicate equipment breaking down due to poor condition, as is the case with the PLC and the other electrical malfunctions. These conditions also constitute a nuisance. The attached photo from 10/10/2013 shows what happens during one of these breakdowns. The black ash from this shutdown settled on people's homes and was a clear nuisance (See Attachment G). The NCUAMD Rule 540 allowed only five breakdowns every two years as evidenced in the letter from NCUAQMD in 1999 to Ultra power (Attachment H). At some point the rule was updated and loosened such that there was no maximum.

Loosening the rules for Blue Lake Power (formerly Ultrapower) to allow them to continue to exceed emission during breakdowns is unacceptable. If this facility is to operate it should be fully updated and not continue unreliable operation that is a nuisance to the community.

The Consent Decree should be updated to allow only a finite number of breakdowns and specific fines for each breakdown that result in excess emissions. This plant is and always has been unreliable and the community should not have to deal with the impacts.

Thank you in advance for considering these requests to modify the consent decree. It has been a difficult task to review this consent decree and provide meaningful comments. Many members of

the public are interested in this issue and concerned about the impacts on air quality, but did not feel competent to make comments of a technical nature, so recognize that for the comments you do receive, there are probably dozens of other concerned citizens who care but did not comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Merritt Perry". The signature is fluid and cursive, with the first name "Merritt" being more prominent than the last name "Perry".

Merritt Perry

Address:

Email:

Attachments

- A. Excerpts from 2015/2016 Blue Lake Budget Showing General Fund Revenue and Revenue from Blue Lake Power
- B. Blue Lake Council Minutes from 3/12/13 with Nancy Diamond Opinion on CEQA Permitting for BLP and Default Letter from Nancy Diamond to Blue Lake Power on Behalf of City of Blue Lake Lease Revenue Issues.
- C. 2011 Settlement Agreement between NCUAQMD and Blue Lake Power
- D. Excerpts of Blue Lake Power Permit to Operate
- E. Rejection of Request for 24-Hour Averaging
- F. Breakdown Summary from 7/13 - 12/14, Table Created from District Provided Records
- G. Nuisance Photo from 10/10/14 - Black Soot leaving stack in still morning air and settled on City
- H. Excessive Breakdown Letter from NCUAQMD to Blue Lake Power

ATTACHMENT A - Excerpts from 2015/2016 Blue Lake Budget
 Showing General Fund Revenue and Revenue from Blue Lake
 Power

General Fund
 Revenue Total
 \$856,805

#	Fund	14-15 Budget	14-15 Est. Actual	15-16 Budget
10	GENERAL	816,475	856,802	856,805
22	HCAOG GRANTS	105,000	136,029	252,000
24	GAS	-	-	-
25	GAS	37,113	89,060	51,400
30	SB-325	66	-	-
31	TDA	75,655	75,655	75,683
32	SOLID WASTE	7,312	12,322	14,378
33	LAW ENFORCEMENT	100,000	100,000	100,000
34	SAFETEA	9,422	8,079	8,079
36	IND EXP	125,436	484,093	63,977
38	CDBG-PI	10	2,660	4,635
42	HOLDING	18,579	99,462	7,040
44	HOUSING-CDBG	14,988	79,240	220,000
50	MONDO WAY	-	-	-
60	WATER	645,981	641,652	450,325
61	WATER CONNECT	193	26,414	4,190
62	WATER RESERVE	70,165	50,141	46,000
63	GRUNSKY RESERVE	-	-	31,000
64	TURBIDITY	10,521	18,892	14,500
65	WATER CAPITAL IMPR	-	-	-
70	SEWER	482,569	453,052	405,398
71	SEWER CONNECTION	7,264	22,506	22,430
72	SEWER RESERVE	109,032	109,032	109,300
77	RANCHERIA	-	316	-
80	DENTAL	9,915	9,950	9,950

Attachment A - page 2 of 3

CITY OF BLUE LAKE
 BUDGET WORKSHEET
 FISCAL YEAR 2015-16
 REVENUES AND TRANSFERS IN
GENERAL FUNDS

Acct. No.	Title	Actual 7/1/2013 6/30/2014	Budget 7/1/2014 6/30/2015	Est. Actual 7/1/2014 6/30/2015	Budget 7/1/2015 6/30/2016
4310	Interest earned	1,654	1,100	975	975
	RENTS				
4400	Luna / Ink People	-	-	1,890	3,000
4401	150 Taylor Way	24,450	-	13,698	8,715
4402	Blue Lake Power	108,385	108,385	113,965	113,965
4403	Little League	1,200	1,200	-	-
4405	Resource Center	4,423	4,422	4,422	4,422
4406	Caretaker cabin	7,985	7,985	7,590	7,590
4408	Park facilities	10,997	3,300	6,407	6,407
	Total Rents	157,440	125,292	147,972	144,858
	STATE REVENUE				
4420	Motor vehicle in-lieu	106,929	106,929	108,911	108,911
4421	Other State grants	44,868	52,153	39,500	48,900
4422	Homeowners property tax relief	1,788	1,520	1,426	1,520
4423	SB 90 Reimbursement	-	-	985	985
4440	Prop 172 public safety	14,728	12,000	12,892	12,000
4490	Miscellaneous Grants	6,456	6,456	9,850	-
	Total State Revenue	174,769	179,058	173,564	172,316

BLP Lease Revenue of \$113,965=13.3% of General Fund

Attachment A - page 3 of 3

General Fund Expenditures Match Revenue Indicating Dependence on Blue Lake Power Lease Revenue

SUMMARY OF EXPENDITURES 2015-2016 BUDGET

#	Fund	14-15 Budget	14-15 Est. Actual	15-16 Budget
10	GENERAL	816,475	856,802	856,805
22	HCAOG GRANTS	105,000	112,471	252,000
24	GAS	-	-	-
25	GAS	66,197	89,060	51,400
30	SB-325	7,162	-	-
31	TDA	75,655	74,155	75,683
32	SOLID WASTE	13,671	11,304	14,378
33	LAW ENFORCEMENT	100,000	100,000	100,000
34	SAFETEA	9,422	8,071	8,071
36	IND EXP	131,968	148,144	63,977
38	CDBG-PI	1,782	2,660	-
42	HOLDING-CDBG	18,579	99,462	7,000
44	HOUSING-CDBG	271	-	220,000
50	MONDO WAY	-	-	-
60	WATER	594,675	487,052	438,060
61	WATER CONNECT	-	-	-
62	WATER RESERVE	20,000	7,449	46,000
63	GRUNSKY RESERVE	-	-	31,000
64	TURBIDITY	14,766	18,892	14,500
65	WATER CAPITAL IMPR	-	-	-
70	SEWER	489,447	401,641	405,398
71	SEWER CONNECTION	-	-	-
72	SEWER RESERVE	46,000	58,482	26,000
77	RANCHERIA	-	-	-
80	DENTAL	13,136	8,500	8,500

March 12, 2013

The Blue Lake City Council met in regular session at 7:00 p.m. on March 12, 2013. Mayor Sherman Schapiro called the meeting to order. Council Members present were Kevin Benjamin, Lana Manzanita, Stephen Kullmann and Greg Sawatzky. Others present were City Manager John Berchtold, City Clerk Adrienne Nielsen, and City Attorney Nancy Diamond.

Motion to Approve Agenda

Councilmember Benjamin moved, seconded by Councilmember Sawatzky to approve the agenda after moving items in order of item 4, 12, 10, 9, 11, 5 and remainder items. The motion carried unanimously.

Public Input

None

City Attorney: Blue Lake Power Compliance Issues

Nancy Diamond, City Attorney gave a brief overview of the relationship between Blue Lake Power and the City. She gave the Council an overview of the Conditional Use Permit issued in 1983 and the CEQA documents and well as the Nuisance Ordinance that followed in 1984. She stated that Blue Lake Power is not required to comply with the amendments to the ordinance because they were adopted after the conditional use permit was issued. Praj White from Manhard Consulting stated that he would try to have a presentation in regards to the lighting issues for the Council by end of March or early April.

Mayor Schapiro: Schedule of River Watch Compliance

The Council discussed information from the document "Required Steps on the Way to Releasing Sewer Pond Capacity". Items 1 and 2 have been completed and items 3 and 4a will be worked on in the next agenda item.

City Manager Recommendation to Accept SHN Local Limits Study and Allocation Report and Direct City Attorney to Draft Ordinance

After discussion and review of the items provided at previous meetings, Councilmember Manzanita moved, seconded by Councilmember Benjamin to approve the City of Blue Lake Wastewater Treatment Facility Maximum Allowable Headworks Loading (MAHL) and Maximum Allowable Industrial Loading Analysis (MAIL) Report from SHN Consulting dated October 5, 2012. The motion carried unanimously. After further discussion on the BOD document, Councilmember Manzanita moved, seconded by Councilmember Benjamin to approve the document WWTP BOD Allocation Load lb/day dated February 27, 2013 and direct staff to draft a resolution. The motion carried with a vote of 4 to 1 with Councilmember Kullmann abstaining. Councilmember Manzanita moved, seconded by Councilmember Benjamin to direct City Attorney, Nancy Diamond to draft an ordinance providing revised local limits. The motion carried unanimously.

Redwood Coast Energy Authority Presentation on Community Energy Purchase

Executive Director, Matthew Marshall from Redwood Coast Energy Authority gave a presentation on the CCA program that lets local governments acquire power for their community.

Mayor Schapiro: Truck Route

Discussion of the truck route and GPS devices giving the wrong routes to the industrial park took place. Councilmember Sawatzky will contact industrial park businesses for their input. City Manager Berchtold is working with CalTrans on this issue.

Councilmember Manzanita: Impact of SB7 Upon Local Government (Discussion/Action)

After discussion by Council, Councilmember Manzanita moved, seconded by Councilmember Benjamin to approve the sample letter in opposition of SB7. After a vote of 2 nays and 3 abstentions, the motion failed.

Liaison with Mad River Alliance

After discussion of a liaison for the Mad River Alliance, Councilmember Kullmann said he would bring more information back to the Council on whether the position is just a liaison or a governing board member.

LAW OFFICES OF
NANCY DIAMOND

Nancy Diamond
ndiamond@ndiamondlaw.com

Tracy M. Boobar
tboobar@ndiamondlaw.com

822 G Street, Suite 3
Arcata, California 95521
Telephone: 707-826-8540
Facsimile: 707-826-8541

August 20, 2015

Glenn Zane
Blue Lake Power, LLC
1615 Continental St., Ste. 100
Redding, CA 96001

*Sent via e-mail to gzane@crsinet.com
and via U.S. Mail*

Re: Notice of Default

Dear Mr. Zane,

This is to provide notice pursuant to that certain ground lease entered into between the City of Blue Lake as lessor and Blue Lake Power, LLC as tenant, that tenant is in default of the following lease obligations:

- Failure to pay rent on July 1, 2015 in the amount of \$28,491.26, with interest accruing at the rate of 10% per annum.
- Failure to keep the Property free and clear of a mechanics' lien, recorded in the Humboldt County Recorder's Office as Document No. 2015-014249-2 on July 22, 2015.
- Failure to keep the Property free and clear of a utility lien, recorded in the Humboldt County Recorder's Office as Document No. 2015-015127-3 August 4, 2015,.

If this default is not cured within 30 days after the date of this Notice, the lessor may take additional action under the terms of the lease.

Thank you for your attention.

Yours very truly,

Nancy Diamond
City Attorney, City of Blue Lake

ND/met
c: John Berchtold, City Manager
Enclosures



**North Coast Unified Air Quality
Management District**
2300 Myrtle Avenue, Eureka, CA 95501
Telephone (707) 443-3093 FAX (707) 443-3099

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") offer is made by the North Coast Unified Air Quality Management District ("District") and accepted by Blue Lake Power, LLC, a California limited liability company ("Blue Lake Power"), effective on the date of the last party signing below ("Agreement Date"), and is based on the following recitation of facts:

RECITALS

1. Blue Lake Power owns and operates a wood fired steam generation plant located at 200 Taylor Way Industrial Park, Blue Lake, CA, ("Facility") which is located within the jurisdiction of the District, and is operated under District Permit to Operate NCU 097-12 ("PTO").
2. For activity beginning April 22, 2010 and continuing through May 14, 2010, the District issued 12 Notices of Noncompliance ("NONs") to Blue Lake Power for alleged violations of conditions of its PTO and/or alleged violations of District, State or Federal laws pertaining primarily to alleged violations of opacity, continuous operation of electrostatic precipitator (ESP) and excess particulate matter emissions identified by the following numbers:

NON No. 011117, 011118, 011119, 011120, 011122, 011684, 011685, 011686, 011820, 011821, 011822, 011823
3. For activity beginning April 22, 2010 and continuing through August 8, 2010, the District is aware of at least 111 alleged violations by Blue Lake Power in its operation of the Facility in addition to the 12 alleged violations recited above of PTO conditions III.A (particulate matter emissions), III.B (carbon monoxide emissions) and III.C (nitrogen oxides emissions).
4. During the period July 19, 2010 and continuing through August 1, 2010, the District identified six alleged violations of the District Breakdown or Malfunction Rule 101 § 1.40, resulting in alleged air contaminant emissions in violation of the PTO. Notification of said alleged violations was provided to Blue Lake Power by letter from the District's Air Pollution Control Officer ("APCO") dated August 10, 2010, and for which a penalty settlement was offered but not accepted by Blue Lake Power.
5. Blue Lake Power has continued to operate through the Agreement Date. This Agreement also settles and resolves any alleged violations by Blue Lake Power of reporting, breakdown, emissions; permit conditions, air quality laws or regulations or any other action enforceable by the District up through and including the Agreement Date.
6. Recent COMS data reviewed by the District indicate no opacity violations occurred during

the month of September 2010. Such new monitoring data indicate that Blue Lake Power has improved Facility operations and is capable of and expected to continuously operate the Facility within the PTO requirements.

7. The APCO enters into this Settlement Agreement with Blue Lake Power pursuant to its authority under Health and Safety Code § 42400 et seq, District Rule 105 and District Compliance Policy to settle enforcement actions. Pursuant to such authority, civil penalties are considered to be a sanction and meaningful deterrent, and the APCO is empowered to determine the level of monetary sanction appropriate to the case based on a consideration of all relevant circumstances including factors in mitigation as well as factors in aggravation, and the following: 1) the extent of harm caused by the violation; 2) the nature and persistence of the violation; 3) the length of time over which the violation occurs; 4) the record of maintenance, 5) the unproved or innovative nature of control equipment, and 6) corrective action, if any, taken by the facility owner.
8. After a careful consideration of all such relevant circumstances, the APCO hereby extends this offer and the parties enter into this Agreement to settle the violations identified in Recitals 2, 3, 4 and 5, above. A dispute exists between the parties regarding the liability of Blue Lake Power for the alleged violations. However the parties wish to avoid the burden, costs, and uncertainties of litigation, and by and through this Agreement, to fully and finally settle any disputes arising from or related to the violations alleged in Recitals 2, 3 and 4. The parties consider this Settlement Agreement to constitute a reasonable settlement of said alleged violations.

NOW THEREFORE, the parties agree as follows:

I. Civil Penalty and Injunction

- A. Blue Lake Power shall immediately refrain from operating any article, machine, equipment or other contrivance in violation of its Permit to Operate NCU 097-12, any successor permit thereto, or in violation of any District, State or Federal order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air.
- B. For the 123 alleged violations identified in Recitals 2 and 3, the APCO hereby acknowledges the maximum civil penalty allowable pursuant to Health and Safety Code § 42402.1 of \$3,100,000 total, and assesses a reduced penalty at \$1,230,000 based on Blue Lake Power's responsive actions to address the violations and efforts to correct the problems causing emission violations as indicated by September 2010 COMS data.
- C. For the 6 alleged violations identified in Recital 4, above, the APCO hereby imposes the maximum civil penalty allowable pursuant to Health and Safety Code § 42402.3 in the amount of \$25,000 per violation or \$150,000, of which no amount will be reduced for circumstances in mitigation.
- D. The combined penalty of \$1,380,000 shall be paid by Blue Lake Power as follows:
 1. \$ 100,000 shall be paid to the District within 60 days after the Agreement Date.

Settlement Agreement Should have Completed Audit and Recommendations for Full Compliance

- 2. \$ 60,000 shall be paid to the District within six (6) months after the Agreement Date.
- 3. \$ 100,000 shall be paid to the District within 18 months after the Agreement Date.
- 4. \$ 16,300 shall be credited as previously received by the District and applied toward the purchase of a mobile air monitoring station presently deployed in the City of Blue Lake.

5. \$ 99,700 shall be credited upon completion of a thorough environmental audit of the Facility conducted by a contractor approved in advance by the APCO. Blue Lake Power shall engage a contractor for such audit within 30 days of the Agreement Date, and shall provide notice to the APCO at the time of contract execution. The audit shall be completed within 45 days after execution of the contract. Said audit shall include recommendations and detailed instructions for compliance with all applicable environmental regulations and air permit conditions. Audit results shall be sent to the APCO at the same time and in the same format as results are presented to Blue Lake Power.

- 6. \$ 467,000 shall be credited for installation of system-wide operational control enhancements such as localized temperature and pressure monitoring at specific locations to ensure operational efficiency.
- 7. \$ 10,000 shall be credited for payment of direct monetary assistance to the City of Blue Lake for three annual wet street sweeping activities, to be paid in one lump sum to the City no later than June 30, 2012.
- 8. \$ 15,000 shall be credited for payment of direct monetary assistance to the District's wood stove change out program, to be paid to the District in two installments: \$7,500 no later than June 30, 2012 and \$7,500 no later than December 31, 2012.
- 9. \$ 15,000 shall be credited for payment of direct monetary assistance to the District for public outreach programs, to be paid to the District in two installments: \$7,500 no later than June 30, 2012 and \$7,500 no later than December 31, 2012.

Should Be Completed Already and Not wait until Consent Decree

0. \$ 154,000 shall be credited for completion of the following specific compliance projects within the specified time frames:

(a) Management of fuel stock, in BLP's discretion, to maintain moisture content appropriate for facility operation in compliance with air quality standards.

Should Be Completed Already and Not wait until Consent Decree

(b) Development of and approval by the APCO of a Dust Mitigation Control Plan to control the release of chip particles and ash from all on site activities, including the installation of adequate covers on conveyor belts where

Should Be Completed Already and Not wait until Consent Decree

necessary. The Dust Mitigation Control Plan must be submitted to the District within 60 days after the Agreement Date. If not acceptable to the APCO, revisions must be received within 20 calendar days after notification from the APCO of any deficiencies.

(c) Full completion of and continued compliance with all items identified in that letter from Blue Lake Power to the District dated May 14, 2010, attached hereto as Exhibit A and incorporated herein. Item 12 of said letter shall be replaced in its entirety by the following:

“12) As to a longer-term solution to moderate the fuel moisture content during the wet months, BLP will, by October 15, 2011, utilize an offsite fuel storage location(s) where unprocessed fuel material will be stored primarily in log form on a gravel, pavement or other non-moisture retaining surface(s). During the months of December through February, BLP will, to maintain reliable operations, process to boiler ready condition and deliver such dryer fuel to BLP fuel yard in Blue Lake at a rate adequate to maintain an inventory of approximately 4,000 BDT of boiler ready fuel at less than 55% moisture content in addition to any other boiler ready fuel that may be in inventory.”

11. \$343,000 will be suspended and cancelled in accordance with Section V upon payment of penalties and completion of the actions described in Section I(D), Items 1-10.

II. Stipulated Penalties

Upon written demand by the APCO identifying specific violations of this Agreement, Blue Lake Power agrees to pay within 30 days of notice stipulated penalties in accordance with the following schedule for each failure to comply, which shall be immediately due and payable.

A. Failure to complete any component of Section I.D other than payment of a penalty:

- | | |
|---------------------------|--|
| 1) 1 to 14 days late: | \$2,500 per day for each day or partial day late |
| 2) 15 to 30 days late: | \$5,000 per day for each day or partial day late |
| 3) 31 and more days late: | \$7,500 per day for each day or partial day late |

B. Failure to make on time payments of any monetary penalty identified in sub-Sections I.D. 1, 2, 3, 8, 9, and 10: Blue Lake Power agrees to pay \$5,000 per day for each day or partial day late.

III. Release

Upon the successful completion of all terms in this Agreement and Agreement termination in accordance with Section V, the District shall release and waive any and all claims of any kind or character against Blue Lake Power, its agents and employees in connection with the violations

expressly listed or identified in Recitals 2, 3, and 4, above.

IV. Extension of Time

The APCO may extend any of the dates specified in this Agreement due to unanticipated circumstances or unavoidable delays. Both parties agree that the decision of the APCO will be the final determination of this condition.

V. Termination

After Blue Lake Power has satisfactorily complied with the requirements of this Agreement, including compliance with all conditions of the Facility's Permit to Operate, and paid all civil and accrued stipulated penalties, Blue Lake Power may serve upon the APCO a Request for Termination, stating that it has satisfied the requirements of this Agreement, together with all necessary supporting documentation. Upon receipt of a Request for Termination, the APCO shall respond in writing to Blue Lake Power stating whether it concurs in Blue Lake Power's request to terminate this Agreement, and if so, the Agreement shall be deemed terminated on the date identified by the APCO, and the suspended penalty amount of \$343,000 will be cancelled. If the APCO does not concur that Blue Lake Power has satisfactorily complied with the requirements of this Agreement, the APCO shall respond to Blue Lake Power with a description of Blue Lake Power's deficiencies, and the Agreement shall remain in effect until said deficiencies are satisfied by Blue Lake Power or waived by the APCO.

VI. Miscellaneous

1. Blue Lake Power acknowledges and warrants that execution of this Settlement Agreement is free and voluntary and that it has read and understands the terms of this Settlement Agreement.
2. The person or persons executing the Settlement Agreement on behalf of Blue Lake Power each warrants and represents that he/she has the authority to execute this Agreement on behalf of Blue Lake Power, and has authority to bind Blue Lake Power to the performance of its obligations hereunder.
3. In the event of material default under this Agreement by Blue Lake Power, after notice and reasonable opportunity to cure, Blue Lake Power agrees to toll any applicable statute of limitations and to waive any defense or claim under a theory of statute of limitation that may bar court action by the District to enforce the underlying violations alleged Recitals 2, 3, and 4 above.
4. In the event the District is required to enforce any term, condition or provision of this Agreement by law or action, the District shall be entitled to an award of actual attorney's fees, staff time and costs incurred by the District in said action to collect.
5. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

- 6. This Agreement shall be binding on any successors to Blue Lake Power. At least 30 days prior to a transfer of any legal interest in the Facility, Blue Lake Power shall provide written notification to the transferee of the existence of this Agreement, including the terms herein, and shall provide a copy of said notification to the APCO. Failure to comply with this notification shall be considered a material breach of the Agreement. The terms of this Agreement shall be binding on any successor to Blue Lake Power to an interest in the Facility.
- 7. The APCO may, for good cause, extend any time period or deadline specified herein.
- 8. Blue Lake Power denies any liability arising out of the transactions or occurrences alleged herein, and this Agreement may not be construed as an admission by Blue Lake Power of any liability thereto.
- 9. This Agreement may be amended or superceded only by a writing that is signed by a duly authorized representative of each party.
- 10. In the event that any provision of this Agreement is held to be invalid or unenforceable, such finding shall not invalidate any other term or provision of this Agreement and the remaining provision of this Agreement shall continue in full force and effect.

WHEREFORE, the parties have executed this Agreement effective as the date of the last party signing below.

NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT

By: *Richard L. Martin Jr.*
Richard L. Martin Jr.,
Air Pollution Control Officer

Date: 5/20/11

Approved as to form:

By: *Nancy Diamond*
Nancy Diamond, District Counsel

Date: May 20, 2011

ACCEPTED BY BLUE LAKE POWER:

By: *Glenn Zane*
Glenn Zane, General Manager

Date: 5/20/2011

By: _____

Date: _____

Print Name:

Its:

Approved as to form:

By: *Jane Luckhardt*
Jane Luckhardt,
Attorney for Blue Lake Power, LLC

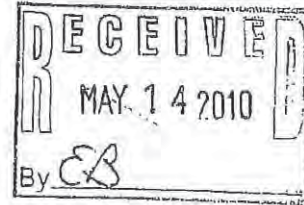
Date: 5/19/2011

EXHIBIT A

**Letter From Blue Lake Power, LLC To Richard L. Martin, APCO
Dated May 14, 2010**

Blue Lake Power, LLC

1615 Continental Street
Redding, CA 96001



May 14, 2010

Mr. Richard L. Martin, Air Pollution Control Officer
North Coast Unified Air Quality Management District

COPY

Dear Rick:

Thank you for arranging for our group to meet with you and your staff on May 13, 2010. This letter will follow up on that meeting to propose certain actions.

We request that, in light of the following proposal, Blue Lake Power, LLC be allowed to enter into a Stipulated Order of Abatement to proceed in an orderly manner to accomplish the necessary work in continuing the restart of the Blue Lake Power plant over the period from today until July 30, 2010. This letter constitutes our agreement to enter into such an Order subject to all parties being in agreement and subject to our being reasonably able to comply with the terms.

We propose the following schedule of milestones that BLP be held accountable to accomplishing in the allotted time.

- 1) Set the date for source testing by Avogadro as of July 15, 2010;
- 2) Provide a fuel yard management plan by May 20th;
- 3) Install a direct telephone line to the control room and provide you with the number (for you to keep private and use to contact our operators at any time). On Thursday, after we returned from the meeting with you and your staff, we held a specific training session to impress on the operators the need to reduce power output immediately on determining there was a fuel issue that caused reduced heat rather than attempting to increase fuel feed and maintain power. This action should help avoid the opacity excursions. Randy Paterson also gave specific instructions to the operators to call you upon any excursion in excess of permit values;

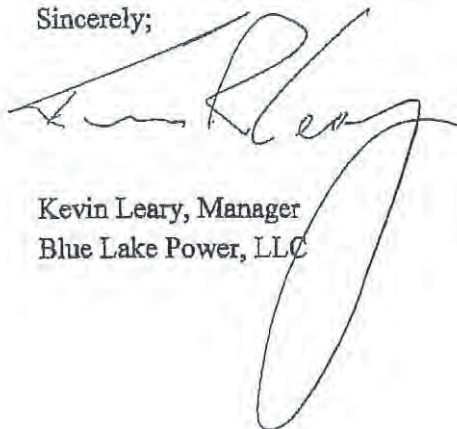
- 4) Complete the install of covers on the two high level conveyors to reduce or eliminate the fine fuel particles that are sometimes pulled off the belts in windy conditions – this to be completed by June 5, 2010;
- 5) Bring the fuel dryer system into full operation by June 15, 2010;
- 6) Install plugged chute detectors in the fuel-metering bin by June 15, 2010.
- 7) Complete the purchase and installation of a new high capacity air compressor to enhance the fuel metering bin air cannons that have been installed and activated with the existing and rental air compressors by June 15, 2010. These devices are effective in reducing the bridging of fuel in the metering bin above the feed screws.
- 8) BLP hired a fuel yard consultant, R. Scott McDonald, who has implemented tested practices in the fuel yard to obtain a more efficient and better handling of the fuel. Mr. McDonald spent the week of May 10 -14, 2010 on the work and has completed a detailed map of our fuel yard which we will employ in item 9 below. We have also arranged to bring him back in mid-June to continue his work and verify that we have completed the specified configuration.
- 9) Clear at least of one acre in which to place fuel and to mix low and higher moisture content fuels and obtain optimum average moisture content. This work is already started and we will continue to move the fuel that is causing the primary excursion issues to a site on the western end of the fuel yard where it can be dealt with as needed. We will complete the clearing of the one-acre area by June 1, 2010.
- 10) Purchase for use in the fuel yard a new instantaneous reading moisture meter for the use of the loader operators. These devices are not suitable for trade, but are only recently available and will prove to be useful in planning fuel intermediate storage.
- 11) At a cost of approximately \$30,000 we will purchase and install a moisture meter on the infeed system to constantly monitor incoming fuel and allow operators to prepare for pockets of fuel with higher moisture content. This will be accomplished by July 1, 2010 or earlier if the device can be obtained more quickly.
- 12) As to a longer-term asset addition that will moderate the fuel moisture content issue, we will, by June 15, 2010, have submitted to the City of Blue Lake for permitting, a planned location and footprint for a covered fuel storage structure to be installed that is of adequate size to hold 3 days of fuel (about 75 truckloads). Upon completion of permitting we will allocate the funds to purchase and install the fuel cover within 120 days.

It is important to know that it has been painful for us to realize that our performance has not been good at all since start up on April 18th. But, it has steadily improved and we have already taken significant steps to bring the plant operation into compliance with all standards. We continue to improve practices as we learn the idiosyncrasies of this fully-refurbished machine.

As you know, we have arranged to make a presentation at a public meeting on May 18th and plan to open the floor for discussion and questions at that time. Our full intent has and will continue to be one of being a business the community can be proud of and one that is focused on benefit to the environment.

We think it is also fair to keep in mind the benefits that accrue to the operation of the Blue Lake facility and the goals we had at the outset. Our intent is to produce power through burning of material that is renewable and is now mostly being allowed to decay or burn in uncontrolled conditions during times of the year when real air quality degradation cannot be repaired. Our goal is to reduce greenhouse gas emissions as we reduce the fire hazard and to enhance forest health through our operation.

Sincerely;

A handwritten signature in black ink, appearing to read "Kevin Leary". The signature is stylized with a large, sweeping loop at the end.

Kevin Leary, Manager
Blue Lake Power, LLC

Attachment D - Excerpts of
Blue Lake Power Permit to
Operate

PERMIT TO OPERATE

NCU 097-12

**BLUE LAKE POWER COMPANY, LLC
BLUE LAKE, CA**

**Issue Date: MARCH 18, 1998
First Revision: AUGUST 10, 1999
Transfer of Ownership: May 18, 2010**

**NORTH COAST UNIFIED
AIR QUALITY
MANAGEMENT DISTRICT**

**2300 MYRTLE AVENUE
EUREKA, CALIFORNIA 95501**

**PHONE (707) 443-3093
FAX (707) 443-3099**

PERMIT UNITS

A. Combustion Processes

(1) Permit Number - **NS-071 (Steam Generator)**
Name - Boiler

I. BASIC EQUIPMENT - The permittee operates a 118,000 pounds steam per hour (185 million Btu/hr heat input) boiler manufactured by Zurn Corporation. An ash reburn chamber is utilized to burn the carbon contained in the ash from the air preheater dropout, and multiclone dropout. Heat from the reburn chamber is directed into the combustion chamber above the grates. The facility uses a 80 million Btu/hr propane burner for use during startups, shutdowns and periods of poor wood combustion.

II. CONTROL EQUIPMENT - Particulate matter is controlled with mechanical multiclones followed by an electrostatic precipitator manufactured by Research Cottrell Corporation. The unit has two separate transformer/rectifier fields and a collection plate area of 21,002 sq.ft. The two fields are rated at 85 KVA. A forced overfire air system is utilized to help control gaseous emissions.

III EMISSIONS LIMITATIONS

A. Particulate Matter

1. Particulate loading - The permittee shall not discharge particulate matter into the atmosphere in excess of 0.04 pounds per million Btu of heat input [Regulation 1, Rule 220(b) Authority to Construct dated 1/12/84 and reissued on 6/13/86, 10/20/87 and 9/24/91].

2. Visible emissions - The permittee shall not cause to be discharged into the atmosphere any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity. The opacity standard applies at all times except during periods of startup, shutdown, or malfunction [40 CFR 60.43b(f)] [Regulation 1, Rule 220(b) Authority to Construct dated 1/12/84 and reissued on 6/13/86, 10/20/87 and 9/24/91].

Carbon Monoxide and NOx to be on 3 hour Average, Also note no new Authority to Construct which would require BACT

B. Carbon Monoxide - The permittee shall not discharge carbon monoxide into the atmosphere in excess of 1.00 pounds per million Btu of heat input on a 3-hour average basis [Regulation 1, Rule 220(b) Authority to Construct dated 1/12/84 and reissued on 6/13/86, 10/20/87 and 9/24/91].

C. Nitrogen Oxides - The permittee shall not discharge nitrogen oxides (as nitrogen dioxide) into the atmosphere in excess of 0.15 pounds per million Btu of heat input on a 3-hour average basis [Regulation 1, Rule 220(b) Authority to Construct dated 1/12/84 and reissued on 6/13/86, 10/20/87 and 9/24/91].

IV. COMPLIANCE MONITORING

A. The following methods shall be used for determining compliance with the above emissions limitations:

1. Particulate Matter - CARB Method 5 or other EPA approved method. The permittee shall be required to have particulate matter from the boiler tested once per calendar year. If the compliance test result is less than one-half the permitted limit, then the next year compliance test may be waived by the District [Regulation 1, Rule 240(d)].

2. Visible Emissions - The permittee shall operate at all times a continuous opacity monitoring system (COMS) [40 CFR 60.48b(a)].
a. 40 CFR 60, Appendix B, Performance Specification 1 shall be the basis for the operation of the COMS [40 CFR 60.49b(b)].

3. Carbon Monoxide and Nitrogen Oxides - CARB Method 100 or other EPA approved method.

No later than July 1, 1999, the permittee shall install, operate at all times and maintain a continuous emissions monitoring system (CEMS) for the determination of carbon monoxide and nitrogen oxides from the boiler. The CEMS shall be operated

Mr. Walter Nystrom
Plant Manager
Blue Lake Power, LLC
200 Taylor Way
Blue Lake, CA 95525

RE: Title V Renewal Application – Unable to Process NOx Revisions

Dear Mr. Nystrom:

As part of the Title V application package, Blue Lake Power, LLC (BLP) submitted a request to revise the CO and NOx emission limits to either a tiered based limit, or a limit based on a 24-hour block average. The engineering analysis and draft Title V permit for the proposed renewal that was available during the public comment period and distributed at the public hearing included the regulatory basis for a 24-hour rolling average and the corresponding permit conditions. Shortly after the public hearing, District staff informally submitted the draft permit to EPA for input. After a cursory review, EPA staff opined that in order to change the compliance averaging period for CO and NOx that the original construction permit, referred to as the Prevention of Significant Deterioration (PSD) permit would first require revision. Having received this guidance, the District, EPA, and BLP began a records search to locate the original permit issued some 29 years prior. Unfortunately, to date, a copy cannot be located.

It is customary for a PSD permit to be issued prior to construction or installation of equipment; and a Title V permit to operate issued after construction is complete and the facility deemed to be in compliance with the PSD permit conditions. When the Title V is first issued, many of the PSD conditions are carried over and incorporated into the Title V; including emission limits, Best Available Control Technology (BACT) determinations, and operating conditions. The 3-hour average limits for CO and NOx in the current Title V permit are based on a BACT determination made in 1984, and as such, it can reasonably be assumed to have also appeared in the original PSD permit issued that same year.

When historical documents cannot be located, EPA's guidance is to utilize the best representative information available. In this case, the District has determined that the current Title V permit contains all the conditions and requirements the District and EPA staff at the time determined were applicable. Moving forward, for administrative purposes, the District will consider the current version of the Title V permit as the PSD permit.

**North Coast Unified Air Quality
Management District**

2300 Myrtle Avenue, Eureka, CA 95501
Telephone (707) 443-3093 FAX (707) 443-3099
<http://www.ncuqamd.org>



Should BLP continue to desire to modify the CO and NOx compliance averaging period, a PSD modification request must be filed with the District. In order to do so, please complete the 1300 series forms appropriate for the equipment at the facility as well as form 1313 which is specific for PSD/Title V actions. Note, modification of a compliance averaging period is considered a "significant modification" for purposes of completing the form.

The District is currently conducting an internal review of the proposed Title V renewal permit and anticipates completion during the week of December 16th. Once the District review has been completed, BLP will receive an electronic copy for review. We look forward to your comments. Should you have questions or require additional information, feel free to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason L. Davis", is written over a horizontal line.

Jason L. Davis
Division Manager

18 Month Breakdown Summary from 7/31/13 - 12/31/14

Date	Breakdown/Shutdown Reason	Exceeded Emissions (Y/N)	Count
7/15/2013	Incorrect Fuel Mixture	y	1
7/16/2013	Fuel Dryer Wiring	y	2
8/3/2013	Fuel dryer Wiring	y	3
8/10/2013	Clogged Hopper	y	4
8/15/2013	Shutdown to add Cooling tower	y	5
8/19/2013	PLC CommunicatioN Failure	y	6
8/22/2013	PLC CommunicatioN Failure	y	7
8/26/2013	Failed Steam Fuse	y	8
8/26/2013	Plant Start up	y	9
9/6/2013	Failed Transformer	y	10
9/15/2013	PG&E Shutdown	y	11
9/16/2013	ESP Broken	y	12
9/16/2013	Maintenance outage	y	13
9/17/2013	Hopper Clogged	y	14
10/4/2013	Fuel dryer Gearbox	y	15
10/5/2013	Fuel dryer Gearbox	y	16
10/10/2013	PG&E Shutdown	y	17
10/10/2013	Wire Failue	y	18
10/18/2013	Fuel Dreyer Plugged	y	19
11/1/2013	Clogged Hopper	y	20
11/12/2013	Maintenance outage	y	21
11/13/2013	CEMS out	N	22
11/13/2013	Overfire Air Controller	Y	23
11/14/2013	Clogged Grate	y	24
11/20/2013	ESP Broken	y	25
11/20/2013	Overfire Air Fan	y	26
11/21/2013	Water leak	Y	27
11/22/2013	Incorrect Fuel Mixture	y	28
1/4/2014	PG&E Shutdown	y	29
1/8/2014	Failed Transformer	y	30
1/14/2014	Steam Tube Leak	y	31
1/17/2014	Internal Cooler Fan on Failed on Monitor	n	32
1/17/2014	PLC Communication Failure	n	33
2/6/2014	Start up Following emergency event	y	34
2/8/2014	Clogged Hopper	n	35
2/8/2014	PG&E Shutdown	n	36
2/15/2014	PG&E Shutdown	y	37
2/16/2014	Start up Following emergency event	y	38
4/27/2014	Failed Transformer	y	39
4/28/2014	Failed Transformer	y	40
4/28/2014	Steam level to high in steam Drum	n	41
5/11/2014	Maintenance outage	y	42
5/11/2014	Turbine Control valve malfunction	y	43
5/12/2014	Grounded Wire Shut off Induced Draft Fan	y	44
5/12/2014	ID fan trip	y	45
5/18/2014	Fuel Dreyer Plugged	n	46

Breakdown/Shutdown Reason	# of Occurences
Clogged Hopper	3
PLC CommunicatioN Failure	3
ESP Broken	2
Transformer	3
Fuel Dryer	6
Incorrect Fuel Mixture	2
Overfire Air Controller	2

Attachment G - Nuisance Photo from 10/10/14 - Black
Soot leaving stack in still morning air and settled on
City



Attachment H - Excessive Breakdown

Letter from NCUAQMD to Blue Lake Power

NORTH COAST UNITED AIR QUALITY DISTRICT
2300 Myrtle Avenue, Eureka, CA 95501
Phone (707) 443-3093 Fax (707) 443-3099



February 24, 1999

Mr. Gary Leonard, Plant Manager
Ultrapower 3
PO Box 1158
Blue Lake, CA 95525

Dear Mr. Leonard:

Attached is an accounting of excess visible emissions related to the failure of various boiler steam tubes. It appears there have been eight such instances over the past two years which seems abnormal when compared to other such boilers in our area.

The District has utilized our Breakdown Rule, 540, to provide an exemption for many of these episodes, however our policy on breakdowns only allow five such incidents within a two year period. Once the episodes account for more than five instances, then the District is required to take enforcement action. Prior to taking action in this regard, we would like to know what Ultrapower believes is the cause of such a high number of these tube failures and what actions are being taken to reduce these occurrences.

If you would like to discuss this matter, please call to make arrangements for a meeting.

Sincerely,

Wayne Morgan
Air Pollution Control Officer

From: Jacob Pounds <[REDACTED]>
Sent: Thursday, March 31, 2016 12:55 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: Decision regarding Blue Lake Power, LLC.
Attachments: 1 NCUAQMD 2010 Letter of Violations to BLP.pdf; 2 Blue Lake Ash 7-7-11 Krug Letter Low Res.pdf; 3 Blue Lake Rancheria Particulate Tape Sampling Event Low Res.pdf; 3-6-14 EPA Notice of Violation.pdf; 4 BLR Letter to NCUAQMD 7.2.13 Low Res.pdf; 5 3-6-14 EPA Notice of Violation.pdf; 6 'Green' Wood-Fired Power Plants Generate Pollution Violations - WSJ.com.pdf; 7 Sample Correspondence Notes with North Coast Unified Air Quality Management District.docx; 8 BLR Government to Government Consultation Introduction EPA 9.15 FINAL.doc; 9 11.19.1983 BLR Letter to Ultrapower.pdf; 9.8.1989 Ultrapower Letter to Chairperson Daniels.pdf; 10 9.8.1989 Ultrapower Letter to Chairperson Daniels.pdf; 11 EPA Detailed Facility Report Blue Lake Power.pdf; 11.19.1983 BLR Letter to Ultrapower.pdf; BLPDojJacob.docx

Greetings Attorney General,

Attached you will find my comment letter regarding your decision about Blue Lake Power, LLC. Text of the letter has been copied into the body of this message below my signature. Multiple e-mail attachments are all referenced in the letter and are for your consideration also.

Respectfully,
Jacob Pounds
[REDACTED]

Assistant Attorney General
United States Department of Justice – ENRD
P.O.Box 7611
Washington, D.C. 20044-7611

Re: United States and North Coast Unified Air Quality Management District v. Blue Lake Power, LLC, Civil Action No. 3:16-cv-00961

Dear Attorney General,

My name is Jacob Pounds, a resident of Blue Lake that lives and works within 1 mile of the Blue Lake Power, LLC. (BLP) cogeneration biomass power plant. I am disappointed with the outcome of the Department of Justice(DOJ) decision concerning the operations at BLP. Since 2010, BLP has been operating with an inappropriately issued Title V Permit to Operate (TITLE V PTO), and has amassed a number of alleged violations directly related to their operations at the power plant. The recent decision handed down by the DOJ marginalizes public health and safety regarding the operation at BLP and is offensive and prioritizes a business with a losing track record over the public interest. I do not support the current decision.

Throughout the course of reopening BLP, there have been a number of issues that have directly affected the safety and health of me and my family, including:

- thick, dark smoke releases from the power plant stack at random times, day and night
- foul odors
- fugitive ash and dust that impacts homes, cars, fruit and vegetable gardens (see attachments) and general enjoyment of one of the most accessible and popular recreation trails and river bars/swimming holes on Mad River
- heavy truck traffic that must pass by the sole elementary school on the only route to/from BLP
- excessive noises at all hours (including alarm noise that can be heard distinctly over 1 mile away)
- light pollution
- willful and intentional water quality violations that have been documented and prosecuted by the California Department of Fish and Wildlife (see attachment)

For years, BLP has been allowed to flout the laws of the Federal Clean Air Act (CAA), operating without or under an invalid permit, while collecting nearly \$5 million in Federal subsidies, and defaulting on leases and utility bills to the City of Blue Lake on multiple occasions. Currently, BLP is in arrears to the tune of \$140,000 to the City of Blue Lake on past due bills, and is in debt to their direct oversight agency, the North Coast Unified Air Quality Management District (NCUAQMD) to the tune of \$30,000. Enough is enough!

Prior settlement agreements and fines up to \$1.3 million levied against BLP that have been fruitless. BLP claims vague “hardships,” which allows them to continue to operate as a willful and egregious polluter without installing additional pollution controls to bring their operation into compliance with the CAA, or pay even a small fraction of the assessed fines. Instead, with the assistance of the NCUAQMD, BLP has attempted to modify the terms of their outdated and invalid permit to allow business-as-usual polluting without punishment.

The history of operation at BLP has been well documented by many sources (see attachments) as having many negative impacts on the health and safety of the Blue Lake community and visitors that come to recreate. Therefore, the only way to protect the public interest in this situation is to shut down the operation at BLP permanently. There are other newer, cleaner methods of producing electricity that can and should be implemented, and time and time again, BLP has proven that their operation is negatively impacting public health and safety. Additionally, with the track record that both the EPA and NCUAQMD have shown in enforcing current regulations, I have no confidence that the provisions outlined in the Consent Decree will be enforced. EPA, NCUAQMD, and BLP have had enough chances, and they all have shown that the operations at BLP operate in opposition to the public interest.

As an avid fisherman, outdoor enthusiast, river swimmer, and recent father, I want a healthy and safe future for my family. The time has come to protect the public interest of Blue Lake - shut down BLP immediately!

Respectfully,

Jacob Pounds

[REDACTED]
[REDACTED]

Attachments:

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- Blue Lake Rancheria Particulate Tape Sampling Event Low res
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- Sample Correspondence notes with North Coast Unified Air Quality Management District
- BLR Government to Government Introduction 9.15 EPA FINAL
- 11.19.1983BLR letter to Ultrapower
- 9.8.1989 Ultrapower Letter to Chairperson Daniels
- EPA Detailed Facility Report Blue Lake Power

Additional Local Media Accounts of BLP:

BLP in debt over past due bills:

<http://www.times-standard.com/general-news/20090730/blue-lake-extends-blue-lake-power-agreement>

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**North Coast Unified Air Quality
Management District
2300 Myrtle Avenue, Eureka, CA 95501
Telephone (707) 443-3093 FAX (707) 443-3099
<http://www.ncuaqmd.org>**

August 10, 2010

Mr. Glenn Zane
Blue Lake Power LLC
P.O. Box 648
Blue Lake, CA. 95525

Re: Recent Violations at Blue Lake Power LLC

Dear Mr. Zane:

On several different occasions in the last few months, staff of the North Coast Unified Air Quality Management District (District) has spoken to several different representatives of Blue Lake Power LLC (BLP) concerning the operation of the power plant located at 200 Taylor Way in Blue Lake, CA. District staff has tried to work cooperatively with BLP personnel during the re-start of this plant after an extensive shut-down period. We have worked to discuss and correct issues of non-compliance with District, State and federal regulations concerning current operating permits issued by the District to BLP.

Although the plant has been shut down for many years, personnel at the plant have assured the District that the plant was being maintained in operational status so that the Title V permit issued to this facility would remain valid. Based on information provided to the District, the District agreed that minimal maintenance activities were being performed on the facility, and the District continued to manage this facility as a Title V source located within the District. The advantage to BLP of maintaining an active, valid permit is that an active permit allows the plant to re-start using the existing equipment and controls, and avoid the need to go through an extensive Prevention of Significant Deterioration review that would be required if the plant ever officially closed. However, maintaining valid, active permits also means that the requirements and expectations are that plant personnel be aware of federal, State and District regulations, the operating conditions contained in the permit, and that the plant be capable of re-starting and operating in a manner which complies with applicable regulations.

The District has a responsibility to insure that equipment operating within the District be operated correctly and efficiently to insure the health and safety of the citizens. The District and BLP are currently negotiating a settlement agreement for many violations of District regulations. Even though BLP is currently negotiating with the District to settle several other violations, and District personnel have made several attempts to insure BLP operates within the parameters of the regulations and their existing Title V permit, BLP continues to operate contrary to allowable conditions contained in the Permit To Operate and District regulations.

Mr. Glenn Zane, Blue Lake Power
Page 2 of 3

In particular, on August 3, 2010 Mr. Randall Paterson submitted an e-mail to the District on behalf of BLP (attached) stating *"Dear NCUAQMD: Attached a(re) (sic) Breakdown Reports for the following dates and times. We again have fallen short of some of the reporting procedures as noted for the applicable report:"* Mr. Paterson then proceeds to identify three out of seven breakdown/malfunction episodes that were not reported to the District as required in District regulations and the existing operating permit, and six of the seven reports of breakdown cannot be considered by the District as breakdowns because they were caused directly by operator error or faulty procedures. District Rule 101 § 1.40 defines Breakdown or Malfunction:

"Any unforeseeable failure or malfunction of any air pollution control equipment or operating equipment which causes a violation of any emission standard or limitation prescribed by the AQMD, State, or federal rules, regulations, or laws where such failure or malfunction:

- 1.40.1 Is not the result of intent, neglect, or disregard of any air pollution control law, rule or regulation;*
- 1.40.2 Is not the result of improper maintenance;*
- 1.40.3 Does constitute a nuisance;*
- 1.40.4 Is not an excessively recurrent breakdown of the same equipment."*

Because each of these instances occurred after several discussions with BLP representatives by several representatives of the District specifically identifying Breakdown/Malfunction procedures contained in BLP's permit and District regulations, the District considers these violations egregious and willful acts. Specifically, the District finds six of the seven incidents to be direct violations of § 42402.3 (a) of the California Health & Safety Code. Each violation carries a maximum penalty of \$75,000. Therefore, the six violations identified above carry a maximum combined penalty of \$450,000. These violations are different and separate from the violations previously identified by the District which BLP is currently negotiating with the District to resolve.

It is imperative that BLP immediately comply with all conditions listed in the Title V Permit to Operate as well as applicable federal, State and local regulations. BLP shall, as expeditiously as possible, inform all employees of the conditions contained in the Title V Permit to Operate, and instruct employees in the proper procedures to follow when reporting a breakdown or malfunction. The District, as needed, stands ready to assist BLP in understanding the Permit and District regulations. Any future violations identified by the District of a similar nature found within the next 365 days will be treated by the District as a willful and intentional emission of an air contaminant.

The District stands ready to obtain an injunction to require BLP to immediately cease operations, and/or start the process to revoke BLP's operating permit. These are extreme actions that the District has thus far refrained from instituting. The District has tried a more collegial approach with BLP in hopes that BLP would be able to obtain compliance with the permitting conditions expeditiously. However, even though it appears as if BLP has made substantial improvements, the District continues to see violations of several different permit conditions. The District has observed over 60 separate violations of opacity, carbon monoxide, nitrogen oxide or other permit conditions and limitations within the last few months, and the District continues discussions with BLP to resolve these issues as well.

However, to settle the breakdown/malfunction violations identified in this letter alone, BLP shall submit as payment a sum of \$75,000 payable to the North Coast Unified Air Quality Management District, 2300 Myrtle Avenue, Eureka, CA 95501. This total amount of \$75,000 shall be due and payable to the District no later than August 27, 2010. The remaining amount

Mr. Glenn Zane, Blue Lake Power
Page 3 of 3

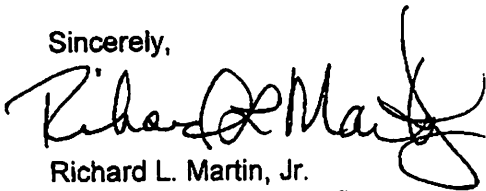
of \$375,000 will be waived if BLP complies with the identified permit conditions and applicable federal, State and local regulations. Additional violations found within 365 days of August 27, 2010 will result in the entire remaining amount of \$375,000 due and payable to the District at the above identified address within 30 days of notification by the District.

BLP must find a way to either operate within the conditions outlined in their permit and the applicable rules and regulations, or BLP must discontinue operations until such a time as they can operate within the conditions of their permit and applicable regulations. Non-compliance with permit conditions and District regulations cannot continue.

The District has spent a considerable amount of time and energy in assisting BLP in bringing a plant that has been non-active for a considerable amount of time up to operating specifications when the plant should have been in compliance from the very first day of start-up in Mid-April 2010. There have been a considerable number of problems in the almost 160 days since re-start for a plant that should have been operating in compliance from day one.

Please contact me at (707) 443-3093 if there are any questions.

Sincerely,



Richard L. Martin, Jr.
Air Pollution Control Officer
North Coast Unified Air Quality Management District

Cc: Nancy Diamond, District Counsel
Al Steer, Compliance and Enforcement Manager

State of California
Department of Fish and Game



Memorandum

Date: July 8, 2011

To: Warden Jackie Krug
Northern Region
Department of Fish and Game
619 Second Street
Eureka, California 95501

A handwritten signature in cursive script that reads "Jane Vorpagel".

From: Jane Vorpagel, Staff Environmental Scientist
Northern Region
Department of Fish and Game
619 Second Street
Eureka, California 95501

Subject: **Blue Lake Power, LLC, Ash Discharge to tributary to Mad River, Blue Lake, Humboldt County**

This memorandum documents the discharge and placement of ash where it entered into a tributary to the Mad River at Blue Lake, Humboldt County. On October 13, 2010, Department of Fish and Game (DFG) Lieutenants Robert Farrell, Rick Banko and Staff Environmental Scientist Jane Arnold visited the locations of the apparent violations by Blue Lake Power, LLC. The DFG site visit was in response to a call reporting ash slurry being deposited where it could enter Waters of the State. Ash slurry was present on the site and in the tributary channel adjacent to the Mad River (see Map 1 and Photographs 1, 2, and 3). Ash samples were collected at the site and from the tributary. During this site visit, the ash slurry was not entering the Mad River. However, Ms. Arnold walked the entire length of the tributary to the Mad River where she observed evidence of previous ash deposits and a culvert connecting the tributary to the Mad River (Jane Arnold, personal communication).

The ash slurry was deposited in the drainage for approximately 100 lineal feet. The slurry was several inches deep and a few feet in width.

The North Coast Regional Water Quality Control Board has issued an Industrial Storm Water General Permit No. 1-12I021571 to Blue Lake Power, LLC. Under this general permit specific industrial activities must use the best technology available to reduce pollutants in their discharges.

Warden Jackie Krug

July 8, 2011

Page Two

The general permit contains the following prohibitions.

"DISCHARGE PROHIBITIONS:

1. Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.
2. Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

In addition, the facility is required to develop both a Storm Water Pollution Prevention Plan (SWPPP) and a way to monitor their progress. DFG was unable to obtain a copy of either the permit or the SWPPP.

A SWPPP requires best management practices to prevent polluted storm water runoff from leaving the site. It appeared during the site visit that straw wattles were present, but at several locations the wattles appeared to have been removed by equipment (see Photographs 4 and 5). Additionally, a hose was present, which facilitated the flow of ash slurry from the site to the tributary to the Mad River. Any discharge of non-storm water or polluted ash laden water would be a violation of the facilities Industrial Storm Water permit, as well as the SWPPP (See photograph 1). This discharge was not permitted by the Regional Water Quality Control Board. The photographs show that the removal of the straw wattles and presence of a hose allowed ash to flow to a small tributary channel which is directly connected to the Mad River via a culvert through the levee.

Additionally, containers labeled as having chemicals and diesel fuel were onsite, however, they were not stored with appropriate secondary containment for prevention of spills. This lack of containment could lead to additional releases of chemicals to the environment. (Photographs 6 and 7).

This discharge of ash slurry to the tributary or placement where the ash slurry can enter the tributary or the Mad River is a violation of Fish and Game Code Section 5650. Fish and Game Code Section 5650 states in part: (a) Except as provided in subdivision (b), it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this State any of the following:

- (2) Any refuse, liquid or solid, from any refinery, gas house, tannery, distillery, chemical works, mill, or factory of any kind....
- (6) Any substance or material deleterious to fish, plant life, or bird life.

Warden Jackie Krug

July 8, 2011

Page Three

(b) This section does not apply to a discharge or a release that is expressly authorized pursuant to, and in compliance with, the terms and conditions of a waste discharge requirement pursuant to Section 13263 of the Water Code or a waiver issued pursuant to subdivision (a) of Section 13269 of the Water Code issued by the State Water Resources Control Board.

The Blue Lake Power LLC's general permit and the SWPPP do not allow the discharge of ash slurry to waters of the state, per the above discharge prohibitions.

Following is a discussion of the ecological importance of the Mad River and its aquatic resources and the effects of ash on streams. The ash was comprised of small size particles. Aquatic species and their habitat would be adversely affected by ash discharged into the drainage which is tributary to the Mad River.

Ecological Significance of Project Setting and Beneficial Uses

The Mad River is designated pursuant to the Clean Water Act §303(d) as impaired from elevated water temperatures, turbidity and excess sediment levels. Thus, any additional inputs of the water pollutants of sediment, turbidity or temperature are cumulatively significant impacts. Under 40 CFR 1508.7, "Cumulative impact is the impact on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time" (Council on Environmental Quality 1997).

Categories of beneficial uses of water in the Mad River Hydrologic Area relevant to fish and wildlife resources include Cold Freshwater Habitat; Migration of Aquatic Organisms; Commercial and Sport Fishery; Rare, Threatened, or Endangered; Spawning, Reproduction, and/or Early Development; and Wildlife Habitat. Thus, protection of riparian areas and source control best management practices are necessary to protect the above listed instream beneficial uses, aquatic species and their habitat.

The Mad River watershed has regionally-important fish-bearing streams supporting coho (*Oncorhynchus kitsuch*) and Chinook salmon (*O. tshawytscha*), steelhead trout (*O. mykiss*), and coastal cutthroat trout (*O. clarki clarki*). The Mad River also supports longfin smelt (*Spirinchus thaleichthys*), green sturgeon (*Acipenser medirostris*), eulachon (*Thaleichthys pacificus*), Pacific lamprey (*Lampetra tridentate*), and other fish species. The National Marine Fisheries

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Page Four

Service listed coho and Chinook salmon, steelhead trout, eulachon, and green sturgeon as "threatened" pursuant to the federal Endangered Species Act. DFG has listed coho salmon and longfin smelt as "threatened" pursuant to the California Endangered Species Act. For Mad River coho salmon, the "Recovery Strategy for California Coho Salmon" lists impacts to recovery of: 1) reduction in habitat diversity by aggradation, 2) high fine sediment loading, and 3) high water temperature (Department of Fish and Game, 2004).

The Mad River supports foothill yellow-legged frog (*Rana boylei*) and western pond turtle (*Actinemys marmorata*), which are both California Species of Special Concern (SSC) and other amphibians and wildlife. The Department designates certain vertebrate species as SSC because declining population levels, limited ranges, and/or continuing threats have made them vulnerable to extinction or extirpation in California.

During the past 40 years, Mad River coho salmon have had an estimated 70% population decline (DFG 2004). Commercial and sport fishing are impacted by the reduced fish stocks. In 2008 and 2009, the Governor of California and the Secretary of Commerce declared fishery disasters for the commercial salmon fishing fleet. Thus, the loss of salmon fisheries has had not only an environmental impact, but also an economic one.

Effects of Ash on Aquatic Species

The ash particles released at the site were very small and would have the same effect as suspended particles in the sand-silt size class. These particles seriously compromise respiratory tissues. The ash would tend to clog the spaces between sensitive gill tissue, impeding water contact and proper gas exchange resulting in asphyxiation (Newcomb 1983).

The filling of water bodies with sediments, ash slurry or other particulate matter amounts to an obvious loss of habitat available to aquatic life, thereby resulting in injury to natural resources. But, fines or ash need not be deposited on or within benthic substrate to be deleterious. Silt and clay-size particulate materials which may not rapidly settle significantly increase the water's cloudiness or turbidity to the detriment of the fish. Salmonids are sight feeders and, as such, are dependent upon water clarity for success in finding food. Anything that decreases visibility can thus seriously affect their ability to survive. Turbid water decreases visibility, thereby adversely affecting foraging success and survival of fish. Ratios for steelhead trout smolt to adult spawner returns indicate that a small change in smolt growth can greatly affect the number of adults returning from the ocean. Reduction in smolt growth as low as 0.4 inches (10 mm) can substantially diminish the number of steelhead trout adult returns. Thus, an increase in turbidity can reduce fishes' ability to feed, diminishing their growth, and thereby reduce the number of returning adult fish to spawn (Dr. William Trush, personal communication). Discharge of ash slurry to the tributary to the Mad River is deleterious to fish and other aquatic life.

Warden Jackie Krug
July 8, 2011
Page Five

Exposure to suspended particles can also dislodge insects and algal populations sufficiently to inhibit primary and secondary productivity to the detriment of the stream's carrying capacity (Iwamoto, 1978; Gammon, 1970). Aquatic macroinvertebrates including caddisflies, mayflies, and stoneflies are key components of the diet of salmonids. These insects develop on the clean surfaces of stream substrates including small and large gravels and cobbles and depend to a large degree on turbulent water around these rocky surfaces to bring them food. The deposition of ash, silts, or clays around and over streambed substrate reduces both the area upon which aquatic insects may develop as well as impairing the water clarity and turbulence required for effective feeding. Exposure to suspended particles can also sufficiently dislodge insects and algal populations to inhibit primary and secondary productivity to the detriment of the stream's carrying capacity for fish (Gammon 1970, Iwamoto et al. 1978).

Conclusions

The detrimental effect of silt, ash and turbidity on salmonids and other aquatic species is well-documented. Based upon the biology and habitat requirements of the aquatic species listed above, there is compelling evidence that the discharge of ash slurry to the tributary channel has caused and will continue to cause deleterious effects to aquatic species and their habitats. Because the drainage channel is connected via a culvert through the levee, the discharge could have impacted resources in the Mad River, however, additional resource damage assessment would be required to determine the extent of the impacts.

If you have any questions or comments regarding this matter, please contact Staff Environmental Scientist Jane Vorpapel at (530) 225-2124.

cc: Lieutenant Robert Farrell and Lieutenant Rick Banko
Rfarrell@dfg.ca.gov, Rbanko@dfg.ca.gov

Messrs. Curt Babcock and Tony LaBanca
Mss. Donna Cobb, Jane Vorpapel, and Jane Arnold, and Laurie Harnsberger
Department of Fish and Game
cbabcock@dfg.ca.gov, tlabanca@dfg.ca.gov, Dcobb@dfg.ca.gov,
jvorpapel@dfg.ca.gov, jarnold@dfg.ca.gov; lharnsberger@dfg.ca.gov

Attachments

Warden Jackie Krug

July 8, 2011

Page Six

References

California Department of Fish and Game. 2004. Recovery Strategy for California Coho Salmon. Report to the Fish and Game Commission. 594 pp.

Council on Environmental Quality. 1997. Considering Cumulative Effects under the National Environmental Policy Act. January 1997.

Gammon, James R. 1970. The effect of inorganic sediment on stream biota. Environmental Protection Agency Water Pollution Control Research Series 18050DWC12/70.

Iwamoto, Robert N., Ernest O. Salo, Mary Ann Madej, R. Lynn McComas. 1978. Sediment and water quality: A review of the literature including a suggested approach for water quality criteria. Environmental Protection Agency, 910/9-78-048.

Newcomb, Timothy W., Flagg, Thomas A. 1983. Some Effects of Mt. St. Helens Volcanic Ash on Juvenile Salmon Smolts. Marine Fisheries Review.

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Photograph 1. Inside of the fence on the site of Blue Lake Power, Inc. photo showing ash slurry deposited where it can enter Waters of the State. A hose used to allow slurry to run off into the tributary is pictured (see arrow). Photos By Jane Arnold, October 13, 2010



Photograph 2. Ash slurry deposited in a tributary to the Mad River. The tributary, on the opposite side of the fence from the site, is connected to the Mad River by a culvert through the levee. This photo shows that ash left the site boundaries and was placed where it could enter into Waters of the State.



Photograph 3. October 13, 2010. Dried ash (arrow) in the tributary downstream of the wet ash slurry. The dried ash appeared to have been deposited from a previous discharge.



Photograph 4. Area cleared (arrow) by equipment for apparent enhancement of storm water runoff into a tributary leading to the Mad River. The area appeared to have previously had straw wattles installed. However, a low area was created with equipment to apparently allow water to flow offsite and into the tributary to the Mad River.



Photograph 5. Equipment tracks (arrow) left from apparent breaching of straw wattles. Straw wattles were intact in other areas of the site, however, at this point, they appeared to have been removed and runoff directed toward the tributary to the Mad River.



Photograph 6. Ash and slurry from the site. Barrels containing chemicals are present without proper secondary containment.



Photograph 7. Diesel fuel onsite without secondary spill containment measures.

Blue Lake Rancheria Particulate Tape Sampling Event 11.05.13, at Tribal housing around the Rancheria

Background:

The Blue Lake Rancheria (mentioned as “Tribe” through the rest of the document) has been negatively impacted by fine, oily, dark black particulate ash suspected to originate from a biomass power plant facility less than ½ mile SSE of the Rancheria boundary.

Dark, oily, crystalline-like fine particulates have fallen all around the Rancheria, and specifically impact Tribal Members living in Tribal housing approximately 1500 ft from the stack of the power plant.

The ash has blanketed trees, buildings, patios, outdoor furniture, food gardens, outbuildings, etc.

In speaking with Tribal Members, they have noticed fresh ash fall overnight in most cases, indicating nightly activity responsible for the ash deposits.

What follows is a description of the ash sampling that took place the afternoon of 11.05.13.

Materials used to collect samples are:

6 mil blue nitrile gloves, a fresh pair used for each sample to discourage cross contamination.

5 canning jars and lids, cleaned and sterilized immediately prior to sampling.

Scotch tape, used to pick up ash samples in a grab sample-type fashion.

A camera, to photo document sampling sites and the sampling process.

2:12 pm, Sampling at Bonnie Mobb’s deck and residence.

Background: The deck at Bonnie’s trailer was built less than a month ago. Since that time, a bench, tables, and potted plants have been added. Approximately 8 days ago, she set out a plastic container with a white lid, which subsequently has been covered in fine, dark particulate. She describes the substance as, “Sticky, and impossible to clean up without it smearing all over and creating a larger mess”.

A sample was taken from the white lid of the plastic container using scotch tape to remove particulates and immediately placed them in a clean, lidded canning jar, labeled with the place, date, and time. Included for reference is a photo of a geranium, which did not have any particulate matter on it when she moved into that space a month ago, and now has particulates all over the dendritic veins of the leaves. Photos:





2:31pm Sampling at Mandi Kindred's patio.

Fine ash particulate was noted all around the residence: on a boat parked there, on top of the electrical meter, where 1 sample was taken, and all over the back patio, furniture, etc. where an additional sample was taken at 2:38. Photos:





2:43 Sample at Arla Ramsey's residence.
Sample obtained from an outdoor plastic picnic table. Ash was noted all over the Yurt, deck, motorcycle, an outbuilding, on a tarp, etc. EVERYWHERE. Photos:





3:01 Sample at Art Ramsey's.

Sample obtained at a small windmill. Ash was noticed all around the property, on the deck, top of chicken coop, on apple trees, etc. Art had brought in 2 apples with similar ash on them earlier in the week, and has noticed it on his greenhouse and all over his outdoor food garden throughout the growing season. Photo:



BLUE LAKE RANCHERIA

P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

www.bluelakerancheria-nsn.gov



July 2, 2013

North Coast Unified Air Quality Management District
ATTN: Blue Lake Power, LLC. Title V Renewal
2300 Myrtle Avenue
Eureka, CA, 95501

Re: Blue Lake Power's Title V Permit Renewal

To Whom It May Concern:

Based on the public notice issued May 23, 2013, it is my understanding that the North Coast Unified Air Quality Management District (NCUAQMD) is seeking public comment on the renewal of Blue Lake Power's, LLC. (BLP) Title V Permit to Operate (PTO NCU097-12). I understand there is no change in the conditions of the permit, and allowed emissions of Carbon Monoxide, Nitrogen Oxides, Sulfur Oxides, Particulate Matter, and Volatile Organic Carbon will not change. However, because of the proximity of BLP to Blue Lake Rancheria (BLR) and numerous complaints about the operation of BLP from the residents of BLR, I submit this public comment letter on behalf of the Blue Lake Rancheria Tribe.

Since Blue Lake Power came back on in 2010, we have become increasingly concerned about the environmental impacts of their operation. Numerous complaints and violations have been noted by residents of BLR, citizens of Blue Lake and the surrounding area, visitors to the area, and agencies, including NCUAQMD and California Department of Fish and Wildlife (water quality discharge violation, see attached). Local and national press published stories concerning violations (attached). Complaints to BLR's Environmental Program staff have ranged from ash deposits on homes, vehicles, and gardens at BLR to noticeable dark emissions blow offs from the BLP stack and ash film deposits on the surface of Mad River. Blue Lake City Councilperson Lana Manzanita recently came to BLR and saw evidence of severe pollution fallout from BLP.

These impacts created by BLP are unacceptable to the tribal members and residents of BLR. Furthermore, it is not understood whether or not BLP is actually achieving the metrics set forth in their Permit to Operate, and how BLP is being held to the terms of their permit.

BLR has operated and maintained air quality monitoring equipment within the exterior boundaries of the Rancheria since 1998, to understand baseline air quality conditions. Historically, BLR has worked with the NCUAQMD to share collected continuous data on particulate matter (PM10 and PM2.5) and meteorological conditions in the lower Mad River

BLUE LAKE RANCHERIA

P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

www.bluelakerancheria-nsn.gov



valley. We will continue to monitor for these pollutants, but have suffered funding reductions from the EPA and are not at this time able to add monitors for additional pollutants of concern due to BLP's operation. We are writing to document our concerns, and to press the NCUAQMD to take seriously the concerning violations that BLP has had in the past. We urge the NCUAQMD Board to use your authority to ensure good air quality for the residents of the lower Mad River valley, including the Blue Lake Rancheria Tribe.

You are welcome to contact me or my staff to discuss this further.

Sincerely,

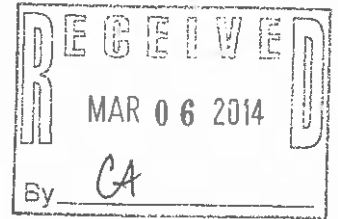
A handwritten signature in cursive script that reads "Arla Ramsey".

Arla Ramsey
Tribal Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

MAR 03 2014



IN REPLY: ENF-2-1
REFER TO: Docket No. R9-2014-02

Mr. Richard Martin
Air Pollution Control Officer
North Coast Unified Air Quality Management District
2300 Myrtle Avenue
Eureka, California 95501

Dear Mr. Martin:

Enclosed for your information is a copy of a Finding and Notice of Violation ("NOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to Blue Lake Power, LLC ("BLP"), for violations of the Clean Air Act ("Act") at its biomass-fired electric generating facility located in Blue Lake, California.

The purpose of the NOV is to notify BLP that EPA finds that it has violated certain provisions of the California State Implementation Plan. The violations are set forth more specifically in the enclosed NOV. The NOV has been issued pursuant to section 113(a)(1) of the Act, 42 U.S.C. §§ 7401-7671q.

The Act also provides that after 30 days from the issuance of an NOV, EPA may determine if any further action will be taken pursuant to section 113 of the Act.

If you have any questions concerning this NOV, please contact Mark Sims, Air & TRI Enforcement Office, at (415) 972-3965, or sims.mark@epa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen H. Johnson".

Kathleen H. Johnson
Director, Enforcement Division

Enclosure





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

MAR 03 2014

CERTIFIED MAIL # 7010 1670 0000 7048 0142
RETURN RECEIPT REQUESTED

IN REPLY: ENF-2-1
REFER TO: Docket No. R9-2014-02

Mr. Glenn A. Zane
President
Blue Lake Power, LLC
1615 Continental Street, Suite 100
Redding, California 96001

Re: Blue Lake Power Finding and Notice of Violation

Dear Mr. Zane:

Enclosed is a copy of a Finding and Notice of Violation (“NOV”) issued pursuant to section 113(a)(1) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (the “Act”), notifying you that the United States Environmental Protection Agency (“EPA”), Region IX, finds that Blue Lake Power, LLC (“BLP”), has violated certain provisions of the California State Implementation Plan at its biomass-fired electric generating facility located in Blue Lake, California (the “Facility”).

You should be aware that section 113(a)(1) of the Act authorizes EPA to issue an order requiring compliance with the requirements of the Act, issue an administrative penalty order, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, section 113(c) of the Act provides for criminal penalties in certain cases.

In addition, section 306 of the Act, 42 U.S.C. § 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in the BLP Facility being declared ineligible for participation in any federal contract, grant, or loan.

If you wish to discuss the enclosed NOV, you may request a conference with EPA within ten (10) working days of receipt of this NOV. The conference will afford BLP an opportunity to present information bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance.

If you have any questions pertaining to this NOV, please contact Mark Sims of the Air & TRI Enforcement Office at (415) 972-3965, or have your attorney contact Xiao Zhang, Office of Regional Counsel, at (415) 972-3266. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen H. Johnson". The signature is fluid and cursive, with the first name "Kathleen" being the most prominent.

Kathleen H. Johnson
Director, Enforcement Division

Enclosure

cc: Mr. Richard Martin (NCUAQMD)
Mr. Jim Ryden (CARB)
Mr. Randy Paterson (BLP)

UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 REGION IX

In the Matter of:)	
)	
BLUE LAKE POWER, LLC)	Docket No. R9-2014-02
)	FINDING AND NOTICE OF
Proceeding under Section 113(a))	VIOLATION
of the Clean Air Act,)	
42 U.S.C. § 7413(a))	
_____)	

FINDING AND NOTICE OF VIOLATION

This Finding and Notice of Violation ("NOV") is issued to Blue Lake Power, LLC ("BLP") for violations of the Clean Air Act (the "Act"), as amended, 42 U.S.C. §§ 7401-7671q, at its electric generating facility located in Humboldt County, California (the "Facility"). The North Coast Unified Air Quality Management District (the "District" or "NCUAQMD") has primary jurisdiction over stationary sources in Humboldt County. BLP violated and continues to violate the District's state implementation plan ("SIP") permitting rules, namely Rules 200(a), 200(b), 220(b)(1), 220(b)(2), 220(b)(3) and 240(a), at the Facility. This NOV is issued pursuant to Sections 113(a)(1) and 167 of the Act. Section 113(a)(1) requires the Administrator of the United States Environment Protection Agency ("EPA") to notify any person she finds in violation of an applicable implementation plan or a permit. The authority to issue this NOV has been delegated to the Regional Administrator of EPA Region IX and further re-delegated to the Director of the Enforcement Division, EPA Region IX.

Summary of Violations

The Facility is an electric generating plant that includes one biomass-fired boiler, one propane gas burner, two diesel-fired compression ignition engines, and associated wood transportation equipment including waste conveyers and wood hoppers, wheel loaders, and various rolling stock. The control equipment includes a mechanical multi-stage collector, an electrostatic precipitator, and a forced over-fire air system.

BLP made physical and operational changes to the Facility from 2008 through 2010. EPA has determined that these physical and operational changes subjected the Facility to the District's permitting rules since the changes increased the Facility's emissions of carbon monoxide ("CO"), oxides of nitrogen ("NO_x") and particulate matter ("PM₁₀"). The Facility was also restarted after being idle for nearly eleven years, which also subjects it to the District's permitting rules as a new source. Either as a modified or new major source, the Facility became subject to the Prevention of Significant Deterioration ("PSD") requirements of the Act, and the appropriate emissions controls resulting from these PSD requirements should have been included in an Authority to Construct ("ATC") and a Permit to Operate ("PTO") issued by the District.

BLP's failures to apply for and obtain an ATC from the District before making the physical changes and restarting operations at the Facility after an extended shutdown, obtain a PTO prior to operating or using the Facility, and comply with the District's SIP-approved PSD program by including PSD

requirements in the ATC and PTO were, and continue to be, violations of the District's Rules 200(a), 200(b), 220(b)(1), 220(b)(2), 220(b)(3) and 240(a).

STATUTORY & REGULATORY BACKGROUND

National Ambient Air Quality Standards

1. The Administrator of EPA, pursuant to authority under Section 109 of the Act, 42 U.S.C. § 7409, promulgated National Ambient Air Quality Standards ("NAAQS") for certain criteria pollutants relevant to this NOV, including CO, NO_x (measured as NO₂) and PM₁₀. See 40 C.F.R. §§ 50.6, 50.8 and 50.11.

2. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region ("AQCR") in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The CO, NO₂ and PM₁₀ attainment status designations for the California AQCRs are listed in 40 C.F.R. § 81.305.

Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan that provides for the implementation, maintenance and enforcement of primary and secondary NAAQS in the state. Upon approval by EPA, the plan becomes part of the applicable SIP.

Prevention of Significant Deterioration Program

3. Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), requires that each SIP include a PSD permit program as provided for in Part C of Title I of the Act, 42 U.S.C. §§ 7470-7491 ("Part C"). Part C sets forth requirements

for SIPs for attainment areas to ensure maintenance of the NAAQS. Under Part C, PSD permitting requirements apply to all new or modified major stationary sources that emit significant amounts of regulated pollutants that are unclassified or meeting NAAQS in any particular AQCR.

4. EPA promulgated federal PSD regulations at 40 C.F.R. § 52.21 on June 19, 1978, pursuant to Sections 160 through 169 of the Act, 42 U.S.C. §§ 7470-7479. 43 Fed. Reg. 26,402. Subsequent to 1978, the PSD regulations have been periodically revised, including on Aug. 7, 1980. 45 Fed. Reg. 52676. The federal PSD regulations apply in areas without a SIP-approved PSD program.

5. While the District operates a SIP-approved PSD program, as further discussed in Paragraph 17, it incorporates by reference at various times the 1980 version of 40 C.F.R. § 52.21. Therefore, all citations to the federal PSD regulations in this NOV refer to the 1980 version of the federal PSD regulations ("PSD Regulations").

6. The PSD permitting process generally requires that, among other things, an owner or operator of a new or modified major stationary source obtain a PSD permit, 40 C.F.R. § 52.21(i); install best available control technology (BACT), 40 C.F.R. § 52.21(j); model air quality, 40 C.F.R. § 52.21(l); and perform a detailed impact analysis regarding both NAAQS and allowable increments, 40 C.F.R. § 52.21(k).

7. With limitations that do not apply in this case, 40 C.F.R. § 52.21(b)(1)(i)(b) defined a "major stationary source".

as "any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Act."

8. For purposes of PSD, a "new" source includes the reactivation of a permanently shut down facility.

9. To determine whether a shutdown is permanent, EPA considers the intent of the owner or operator at the time of and during the shutdown based on all facts and circumstances, including the amount of time the facility has been out of operation, the reason for ceasing operations, statements by the owner or operator regarding intent, cost and time required to restart the facility, status of permits, and ongoing maintenance and inspections conducted during the shutdown. See In the Matter of Monroe Electric Generating Plant Entergy Louisiana, Inc., Petition No. 6-99-2, EPA Order Partially Granting and Partially Denying Petition for Objection to Permit 8-10 (June 11, 1999) ("Monroe Electric Order").

10. The PSD Regulations defined a "major modification" as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 C.F.R. § 52.21(b)(2)(i).

11. The PSD Regulations, at 40 C.F.R. § 52.21(b)(3)(i), defined "net emissions increase" as the "amount by which the sum of the following exceeds zero:

a. Any increase in actual emissions from a particular physical change or change in the method of operation at a

stationary source; and

b. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and otherwise creditable."

12. 40 C.F.R. § 52.21(b)(23)(i) defined "significant" net emissions, in reference to CO, as an increase that would equal or exceed 100 tons per year (tpy); in reference to NO_x, as an increase that would equal or exceed 40 tpy; and in reference to PM₁₀, as an increase that would equal or exceed 15 tpy.

13. 40 C.F.R. § 52.21(b)(21)(ii) defined "actual emissions" as follows: "the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four month period which precedes the particular date and which is representative of normal source operation." The PSD regulations also provided that "[f]or any emissions unit . . . which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit on that date." 40 C.F.R. § 52.21(b)(21)(IV).

14. 40 C.F.R. § 52.21(b)(4) defined "potential to emit" as the "maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including the air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable."

15. Even if the restart of a long-dormant source does not qualify it as a "new" source for PSD purposes, the restart or physical changes made to the source may still subject it to PSD requirements as a "major modification." If the source was non-operational for the source's baseline under PSD, its "actual emissions" would be zero. In such a case, the source's "net emissions increase" is "significant" if the overall emissions from the source after the restart exceed the PSD "significance" levels set forth in 40 C.F.R. § 52.21(b)(23)(i). See Monroe Electric Order at 13-15.

SIP-Approved ATC and PTO Programs

16. The District has primary jurisdiction over stationary sources of air pollution sources in the Humboldt, Del Norte and Trinity counties in Northern California. This jurisdiction includes the Facility.

17. In 1985, EPA approved the District's PSD rules, including Rules 130, 200, 220 and 230. 50 Fed. Reg. 30941 (July 31, 1985); and the District's Permit to Operate rule, Rule 240, 50 Fed. Reg. 19529 (May 9, 1985). These District rules apply to the Facility and the violations identified in this NOV, and references to them refer to the 1985 SIP-approved versions of these rules.

18. The initial statement to the District's SIP-approved New Source Review permitting rules state that "All permit requirements and procedures covered by this chapter are and shall be interpreted in accordance with the provisions of the Clean Air Act of 1977; [and] The Code of Federal Regulations

52.21 (August 7, 1980);"

19. An owner or operator must obtain an ATC from the District "prior to starting construction, modification, operation or use of any stationary or indirect source which may cause, potentially cause, reduce, control, or eliminate the emission of air contaminants." NCUAQMD Rule 200(a).

20. Furthermore, an ATC issued to a new major stationary source or for a major modification as defined in 40 C.F.R. § 52.21 must meet and contain all applicable PSD requirements. NCUAQMD Rule 200(c)(6); Rule 230(a)(3).

21. Similar to the federal PSD requirements, the District's PSD permitting process requires, among other things, that for pollutants emitted in significant amounts, the owner or operator of a new or modified major stationary source apply BACT, NCUAQMD Rule 220(b)(1) (incorporating by reference 40 C.F.R. § 52.21(b)(12)); conduct air quality analysis and monitoring, NCUAQMD Rule 220(b)(2) (incorporating by reference 40 C.F.R. § 52.21(m)); and analyze the impact on PSD increments and the source's own net emissions increases, NCUAQMD Rule 220(b)(3).

22. In determining when an ATC must include PSD requirements, emissions from a new or modified source are based on a source's "potential to emit" any air contaminant subject to regulation under the Act. NCUAQMD Rule 220(a)(1) (which incorporates by reference 40 C.F.R. § 52.21(b)(4)). In addition, emissions from a proposed modified source are based on the cumulative net emission increases or reductions occurring

from the modifications and both the ATC and PTO conditions. NCUAQMD Rule 220(a)(2) (which incorporates by reference 40 C.F.R. §§ 52.21(b)(2) and (3)). Finally, for the emissions increase analysis, baseline emissions of existing sources are generally based on the actual rate of emissions during the two year period of operation prior to the date of application. NCUAQMD Rule 220(a)(3) (which incorporates by reference 40 C.F.R. §§ 52.21(b)(2) and (3)).

23. The District rules define "potential to emit" as the "maximum capacity of a stationary source to emit an air pollutant under its physical and operational design, after considering physical and operational limitations that are enforceable by conditions imposed by the district in both the Authority to Construct and Permit to Operate." NCUAQMD Rule 130(p4) (which incorporates by reference 40 C.F.R. § 52.21(b)(4)).

24. The District rules define "significant" emissions as the "potential of a new or modified stationary source to emit air contaminants that would equal or exceed" 100 tons per year for CO, 40 tons per year for NO_x, and 15 tons per year for PM₁₀. NCUAQMD Rule 130(s2) (which incorporates by reference 40 C.F.R. § 52.21(b)(23)(i)).

25. The District rules define "net increase in emissions" as the "amount by which the sum of any increase in actual emissions from a particular physical change or change in method of operation at a stationary source, and any other increases and decreases in actual emissions at the source that are creditable

in accordance with 40 C.F.R. § 52.21(b)(3) and (21), exceed zero." NCUAQMD Rule 130(n1).

26. The District's Rule 200(b) requires an application for an authority to construct, erect, modify, replace, operate, or use any equipment or indirect source that may cause, potentially cause, reduce, control, or eliminate the emission of air contaminants to be filed at the office of the District or its designated agent for accepting applications.

27. An ATC remains in effect for one year, or until a PTO is issued, whichever comes first. NCUAQMD Rule 200(a).

28. An owner or operator must obtain a PTO prior to operating any stationary source that will cause, reduce, or control the issuance of air contaminants. NCUAQMD Rule 240(a).

29. A PTO may not be issued to a stationary source unless the source is constructed pursuant to an ATC that meets all District requirements, including but not limited to the applicable PSD program requirements; an emission analysis is performed; and the source is altered if necessary to comply with all of the District's requirements, including the requirements of Rule 230. NCUAQMD Rule 240(c).

30. Any owner or operator who commenced construction of a major stationary source or major modification subject to the District's Rules 200, 220, 230 and 240 that failed to apply for and obtain an ATC; obtain a PTO before beginning operation or use of the source; or incorporate all applicable PSD requirements into the ATC and PTO is subject to appropriate enforcement action by EPA. Sections 113 and 167 of the Act, 42

U.S.C. §§ 7413 and 7477.

FINDINGS OF FACT

31. The Facility is an electric generating facility located in Blue Lake, Humboldt County, California.

32. Humboldt County was designated as attainment/unclassifiable at all times for CO, NO₂ and PM₁₀ by operation of law under Section 107(d)(1)(C) of the Act, 42 U.S.C. § 7407(d)(1)(C). See 40 C.F.R. § 81.305. Therefore, the PSD program requirements apply to the Facility for these pollutants.

33. BLP is a current operator of the Facility.

34. The combustion of wood waste and diesel at the Facility produces emissions of CO, NO_x and PM₁₀, among other pollutants, which are released into the atmosphere from the Facility.

35. The Facility was first issued an ATC from the District on Jan. 12, 1984.

36. Construction of the Facility was initially completed in 1986 and operations began in 1987.

37. The Facility ceased operations on April 29, 1999. Between May 1, 1999 and 2008 all equipment at the Facility was idle; most of the time there was only one employee or security guard working at the Facility; only minimal maintenance was performed on the equipment at the Facility, consisting largely of turning on the conveyers and fans manually; the fuel storage area had sapling alder and willows growing on it, indicating lack of use; and statements were made by a representative of the

prior owner or operator of the Facility that future plans for the Facility included "dismantling the plant completely, or shipping the plant out-of-state."

38. BLP purchased the Facility on January 17, 2008.

39. Between 2008 and 2010, BLP undertook various construction work at the Facility, including on the boiler island, the electrical substation, the fuel conveying system, turbine/generator, emissions control devices and other equipment. The cost of this work was over \$6 million.

40. BLP began testing the Facility on December 20, 2009, and restarted operations of the Facility on April 20, 2010, almost eleven years after the Facility had stopped operating. BLP continues to operate the Facility.

41. BLP did not apply for or obtain a new ATC for the work described in Paragraph 39 or for the restart of the Facility, but rather claimed it did not need an ATC.

42. BLP did not obtain a new PTO before restarting operations or using the Facility as described in Paragraph 40, but is rather operating under the Facility's original 1998 PTO.

FINDING OF VIOLATION

43. The changes identified in Paragraph 39 are "physical changes" for purposes of the definition of "major modification" in accordance with the District's Rule 200(c)(6) and 40 C.F.R. § 52.21(b)(2)(i).

44. Restarting the Facility as described in Paragraph 40 is a "change in the method of operation" for purposes of the definition of "major modification" in accordance with the

District's Rule 200(c)(6) and 40 C.F.R. § 52.21(b)(2)(i).

45. Restarting the Facility in 2010 as described in Paragraph 40 also makes the Facility a "new" source pursuant to the District's Rule 200(c)(6) and 40 C.F.R. § 52.21(a)(2) since the 1999 shutdown was a "permanent" shutdown of the Facility.

46. As determined by the District, the Facility's annual emissions after the restart are at least 810.3 tpy of CO, 120.6 tpy of NO_x and 32.4 tpy of PM₁₀.

47. The Facility's potential to emit, at a minimum, is the annual emissions identified by the District as described in Paragraph 46.

48. For the restart of a long-dormant source, such as the Facility, the baseline from which to calculate an emissions increase pursuant to the District's Rule 220(a)(3) and 40 C.F.R. § 52.21(b)(21)(ii) is zero. Because there are no other creditable increases or decreases in actual emissions at the Facility, the Facility's "net emissions increase" as defined in the District's Rule 130(n1) and 40 C.F.R. § 52.21(b)(3)(i) are the overall potential emissions from the Facility after the restart, which at a minimum are those emissions identified in Paragraph 46.

49. Since the Facility's potential to emit, as identified in Paragraph 46, is greater than 100 tpy of CO, 40 tpy of NO_x and 15 tpy of PM₁₀, the Facility is subject to the requirements of PSD as a modified source with no baseline emissions and a "significant" net emissions increase. Since the Facility's potential to emit is greater than 250 tpy of CO, the Facility is

also subject to PSD requirements as a new source that has the potential to emit above the threshold for "major stationary source."

50. As a result, BLP's physical changes to the Facility and restart of the Facility after almost eleven years of being idle subjected the Facility to the ATC permitting requirements of Rule 200 and 230.

51. Moreover, since BLP's physical changes to the Facility and restart of the Facility resulted in "significant" net emissions from the Facility that also exceeded the threshold for "major stationary source," the ATC was also required to incorporate PSD requirements pursuant to Rule 220.

52. Finally, because the Facility became subject to the District's ATC permitting requirements and PSD requirements, the Facility was also required to obtain a new PTO containing all applicable PSD requirements before it began operating the Facility in April 20, 2010.

53. BLP's failures to apply for and obtain an ATC prior to commencing the changes identified in Paragraph 39 and restarting the facility; obtain a new PTO prior to restarting or using the Facility; and having the PSD requirements included in the ATC and PTO violate the District's Rules 200(a), 200(b), 220(b)(1), 220(b)(2), 220(b)(3), and 240(a).

NOTICE OF VIOLATION

**Authority to Construct or Modify,
Prevention of Significant Deterioration, and Permit to Operate**

54. Pursuant to Section 113(a)(1) of the Act, notice is

hereby given to BLP that the Administrator of the EPA, by authority duly delegated to the undersigned, finds that BLP is in violation of the District's requirements to apply for and obtain an ATC for the Facility; obtain a PTO for the Facility; and comply with all applicable PSD requirements, as described in this NOV.

Enforcement

55. For any violation of a SIP, such as for permit violations, Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of thirty (30) days following the date of the issuance of a notice of violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the SIP, issue an administrative penalty order, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$32,500 per day for each violation that occurs after March 14, 2004, and not more than \$37,500 per day for each violation that occurs after January 12, 2009. 42 U.S.C. § 7413(a)(1); Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended; 40 C.F.R. Part 19.

56. Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides for criminal penalties, imprisonment, or both for persons who knowingly violate any federal regulation or permit requirement. For violations of the SIP, a criminal action can be brought thirty (30) days after the date of issuance of a Notice of Violation.

57. Section 306 of the Act, 42 U.S.C. § 7606, the regulations promulgated thereunder at 2 C.F.R. Part 180, and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in BLP and/or the Facility being declared ineligible for participation in any federal contract, grant, or loan.

Penalty Assessment Criteria

58. Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), states that the Administrator or the court shall determine the amount of a penalty to be assessed by taking into consideration such factors as justice may require, including the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violation.

59. Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2), allows the Administrator or the court to assess a penalty for each day of violation. This section further provides that for purposes of determining the number of days of violation, where EPA makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of an NOV, the days of violation shall be

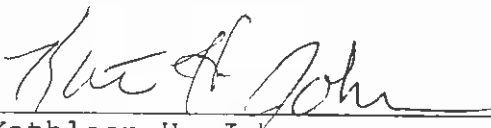
presumed to include the date of the NOV and each and every day thereafter until the facility establishes that continuous compliance has been achieved, except to the extent that the facility can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

Opportunity for Conference

60. BLP may confer with EPA regarding this NOV if it so requests. A conference would enable BLP to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. If BLP seeks such a conference, it may choose to be represented by counsel. If BLP wishes to confer with EPA, it must make a request for a conference within ten (10) working days of receipt of this NOV. Any request for a conference or other inquiries concerning the NOV should be made in writing to:

Xiao Zhang
Office of Regional Counsel
U.S. EPA (ORC-2)
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3266

Dated: 3/3/14



Kathleen H. Johnson
Director, Enforcement Division

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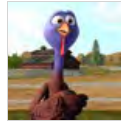


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By JUSTIN SCHECK and IANTHE JEANNE DUGAN

Updated July 23, 2012 11:38 p.m. ET

BLUE LAKE, Calif.—Malodorous brown smoke from a power plant enveloped this logging town on April 29, 2010, and several hundred residents fled until it passed.

Six months later, the plant got \$5.4 million from a federal program to promote environmentally preferable alternatives to fossil fuel.

The plant, Blue Lake Power LLC, burns biomass, which is organic material that can range from construction debris and wood chips to cornstalks and animal waste. It is among biomass plants nationwide that together have received at least \$700 million in federal and state green-energy subsidies since 2009, a calculation by The Wall Street Journal shows.

Yet of 107 U.S. biomass plants that the Journal could confirm were operating at the start of this year, the Journal analysis shows that 85 have been cited by state or federal regulators for violating air-pollution or water-pollution standards at some time during the past five years, including minor infractions.



Enlarge Image

Blue Lake Power is a wood-fired plant in Blue Lake, Calif. Justin Schreck/The Wall Street Journal

Biomass is growing as a source of electricity, its production up about 14% in the past 10 years, according to the Department of Energy. Alternative electricity-production sources as a whole generate about 13% of power in the U.S., and biomass is about 11% of the alternative production.

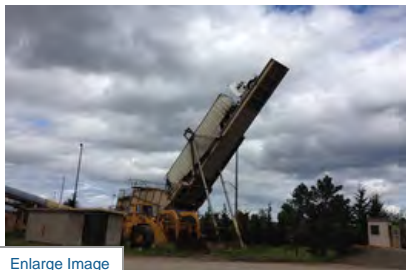
As federal and state governments promote such sources—largely to cut emissions

believed to affect the climate but also for related goals such as providing cleaner air to breathe, preventing acid-rain harm to lakes and reducing reliance on energy imports—biomass plants generally qualify along with wind and solar.

Although the biomass plants inevitably produce emissions, since they burn things, what they burn replenishes itself, qualifying them as renewable power.

They also count as carbon-neutral, on the notion that the carbon released when they burn a material such as scrap wood eventually would get into the atmosphere anyway, when the wood decays.

The Biomass Power Association says any emissions noncompliance lies with a small number of plants. "The idea that members of my association are out of compliance with environmental restrictions on a regular basis is totally wrong," said Bob Cleaves, president of the group, which represents more than 80 power plants that burn wood, not including Blue Lake.



Enlarge Image

More than two dozen truckloads of wood arrive each day at Blue Lake Power. Justin Scheck/The Wall Street Journal

Mr. Cleaves, who declined to comment on specific plants, said biomass is cleaner than the fossil fuels because it is carbon-neutral, and produces "clean energy" efficiently. Mr. Cleaves said the biomass industry gets a disproportionately small share of public funding in relation to the amount of energy it generates.

Michael Van Brunt, director of sustainability for a division of Covanta Holdings Corp. that owns eight biomass

plants, said such power is a vital piece of the nation's renewable-energy supply and gets less in government support than fossil-fuel sources. Fossil-fuel industries also receive government subsidies, but these generally aren't intended to improve the environment.

Some in the industry say a range of issues, from inconsistent fuel supplies to age, can make compliance with emissions standards challenging at biomass plants. "It's goddamn hard to stay in compliance," said Kevin Leary, co-owner of Blue Lake Power.

Mr. Leary—who blamed its smoke release on low-quality fuel—said a problem some biomass plants face is simply that they are old, tracing back to a Carter-era program to spur alternatives to imported oil, and weren't designed to meet today's more stringent emissions rules.

"Without the ability to change the geometry of the furnace, you've got to pull a rabbit out of a hat" to meet limits on nitrogen-oxides emissions, Mr. Leary said, and use strategies such as large smoke scrubbers and precise monitoring of fuel and oxygen levels.

Blue Lake is 27 years old. It was idle for a decade until Mr. Leary helped restart it in 2010. Since then it has had emissions violations, a machinery fire and an explosion that blew a 6-foot hole in a concrete wall. For a while last year it was on an EPA watch list of plants with compliance issues. Now, Mr. Leary says, it is operating within its permit.

Nearly all U.S. biomass plants receive government support from subsidies, grants or state-approved power contracts. The federal economic-stimulus act of 2009 provided more than \$11 billion for renewable power, of which about \$270 million went to biomass plants, in grants administered by the Treasury Department. Other federal agencies involved in such subsidies include the departments of energy and agriculture.

More than 30 states require utilities to buy a percentage of their power from sources that are renewable, generally letting the utilities pay more for this power than they would for electricity generated by fossil fuels. Blue Lake sells its electricity to a San Diego utility that pays it about twice as much for coal-fired plants' energy.

In Old Town, Maine, a facility called Old Town Fuel and Fiber has received more than



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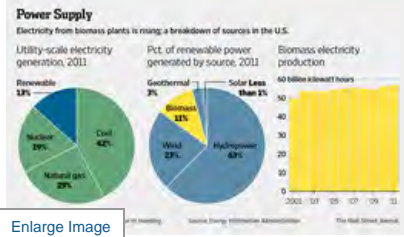
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\$5 million in federal funds to develop renewable fuels since 2007, most recently \$377,000 from the state for equipment.

Old Town also has exceeded state-mandated limits on sulfur or another pollutant in every quarter since the end of 2009, federal records reviewed by the Journal show. Violations continued after the plant paid almost \$300,000 in fines



between 2008 and 2011.

Company president Dick Arnold said the violations should stop once the plant receives a new state permit, which he said will increase its allowable carbon-monoxide emissions. A spokeswoman for the Maine Department of Environmental Protection said such a permit is in the approval process. She said the department and Old Town are in the process of negotiating a "six-figure settlement" in which Old Town will pay fines for prior violations.

Old Town hasn't been required to pay back its grant funding or subsidies. In almost all cases, green-power subsidies aren't linked to environmental compliance.

Mary Booth has studied biomass power for the Environmental Working Group, an organization that calls for stricter regulation, and the Partnership for Policy Integrity, a smaller group that is critical of biomass plants. She says government agencies should withhold grants from plants that violate emissions standards. "Why are we subsidizing and incentivizing something that's dirtier than coal power in certain ways?" she said.

Daniel Kammen, a professor at the University of California at Berkeley who also studies renewable energy, says that in the long term, creating electricity by burning organic waste should help reduce greenhouse gases. But he says much recent government funding has gone to projects that were already online, old ones that are more prone to break down and are "not necessarily the best in terms of local air quality."

Some violations are attributed to regulatory standards that are still being ironed out. Simpson Tacoma Kraft Co. of Tacoma, Wash., which mills lumber, got an \$18 million federal grant in February toward the cost of a new wood-burning boiler that produces electricity and heat. Since it started up in 2009, the boiler has emitted higher levels of nitrogen oxides than its original state-issued permit allowed, according to state regulators and Simpson.

Washington state bases permits on the emissions levels achievable by the best boiler technology. Simpson's permit was based on claims the manufacturer made about what its emissions should be, but the nitrogen-oxide emissions turned out to be higher, said a Simpson spokesman, Dave McEntee. The company has done a study to figure out whether the permit should be changed to allow higher emissions.

Robert Carruthers, a Washington Department of Ecology engineer, said the higher emissions rate is a "nuanced ongoing issue" that may be resolved by increasing the plant's allowable emissions.

Mr. McEntee said the plant currently is in "full compliance" with a temporary limit the state set. He added that EPA calculations show that since the plant started operating it has helped avoid 179,000 metric tons of carbon emissions, versus buying conventionally produced power.

California, with 33 biomass plants, has nearly a third of the nation's total. In the Central Valley, four biomass plants received more than \$10 million in state clean-energy subsidies from 2009 through 2011 while accruing more than \$2 million in fines during the same period.

Crown Disposal runs a biomass plant near Fresno called Madera Power, which the owner's website describes as producing "green renewable electricity." Crown took it

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over in 2004. Since then, state regulators have cited the plant more than two dozen times, fining it several times from 2004 to 2009 for failing to perform emissions tests and emitting excess sulfur and visible smoke.

Madera Power nonetheless qualified under a California program that used a "public goods" surcharge on utility bills to fund a "self-sustaining renewable energy supply for California." From 2009 through 2011, when that program ended, Madera Power received nearly \$6 million in subsidies, state records show.

During that time, it emitted excess sulfur, particulates, carbon monoxide and nitrogen oxides and at one point was found to be burning plastic and rubber, which weren't allowed.

A second Crown Disposal plant nearby received \$3.1 million in state subsidies from 2009 to 2011 and had multiple violations. The San Joaquin Valley Air Pollution Control District fined Los Angeles County-based Crown \$1.875 million in 2010 for the violations.

Since then, regulators have fined the Madera plant for continued excess sulfur and carbon-monoxide emissions, regulatory documents show. The air district fined it for excess visible smoke in December, and this year it has had two citations for excess carbon dioxide.

Crown's owner, Thomas Fry, said the Madera plant hasn't been producing power in recent months. "It's pretty darn hard to stay in compliance with anything any more," he said.

Mr. Fry said that officials from the Air Pollution Control District "just come out, decide they need money, and write a citation."

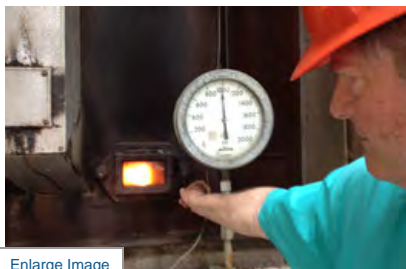
A district spokeswoman said that before levying a fine, officials hold multiple meetings with plant managers to figure out how they can come into compliance. The plants were fined, she said, because they had a pattern of violations and "were burning literally tons of illegal materials" like plastics.

Two nearby Central Valley power plants, in El Nido and Chowchilla, received more than \$2.5 million in state clean-power subsidies from 2009 to 2011 and violated restrictions on nitrogen, sulfur and carbon monoxide at various times during those same years. The EPA last year fined them \$835,000.

A problem was inconsistent fuel supplies, said a person who had a management role with the plants. They had mainly burned building debris, but the construction slowdown reduced that and forced plants to use more agricultural waste, including orchard trimmings that didn't burn cleanly.

A spokeswoman for the plants' current owner, Akeida Capital Management, said they have been running without violations since it acquired them in December. She added that the plants provide employment for 41 people and use waste that might otherwise go to landfills.

Blue Lake Power, the plant that once sent residents fleeing, was resurrected with the help of federal funds.



[Enlarge Image](#)

Blue Lake co-owner Kevin Leary opens a window to the plant's boiler, where wood chips are burned to heat steam. *Justin Scheck/The Wall Street Journal*

Built in 1985, it closed in 1999. Hoping to get into the growing renewable-power industry, Mr. Leary, a former fiber-optic-cable engineer, decided to buy the plant with several partners.

Mr. Leary's group received a \$2 million grant from the U.S. Forest Service and more than \$16 million in investments to buy and refurbish the plant, knowing a provision of the federal stimulus act would refund 30% of the investment, amounting

to subsidies of over \$5 million.

Mr. Leary lived for months in the plant's dusty offices, making deals with logging companies for wood waste and getting permits in line. The plant fired up on April 29, 2010, and immediately began spewing dark smoke.

Curtis Thompson, who works at the Mad River Brewery across the street, picked up his wife and young daughter and fled, as did several hundred other residents. "We were smoked out," Mr. Thompson says. The people returned over the next couple of days as the air cleared.

The plant went idle. The North Coast Air Quality Management District investigated and found several violations. It reached a settlement with Mr. Leary requiring Blue Lake to pay \$1.4 million but allowed it to spend most of the money buying new pollution-control equipment and developing better operating practices rather than paying the agency.

"It has been painful for us to realize that our performance has not been good at all," Mr. Leary wrote in 2010 to the air board's general manager, Rick Martin.

Blue Lake briefly reopened last year, closing again after a wood-loading conveyor belt caught fire. Last summer the EPA put the plant on its watch list of problematic polluters with unresolved compliance issues. It was removed in October.

The plant restarted again in March 2012 and promptly had a pipe explosion that blew a hole in the boiler and a concrete wall. These have been fixed, and the plant is operating again.

Mr. Martin of the air board says he hopes it can stay in compliance. There are four power plants in his district. Three have been fined for environmental violations over the last two years. They for their electricity.


A fourth plant, Mr. M energy subsidies. "It







Write to Justin Sche ianthe.dugan@wsj.c

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Notes 11/4/13

I spoke with Al Steer, the Compliance and Enforcement Manager of NCUAQMD yesterday (11/4/13) at about 2pm Pacific.

It was an interesting call (see also the email below he forwarded to me), in that Al was certain the particulate matter pollution the Tribe was seeing was not from Blue Lake Power.

Al started the conversation by asking me what the issue was. I told him the Tribe had reported to me that significant particulate matter pollution was blanketing their vegetation and homes, and that it had intensified over the last 5 months or so, to become a nightly event for some.

Al responded by saying 'he was certain the plant was not the cause, that the winds at the Rancheria were primarily from the NW, blowing from the Rancheria toward the plant, and that there are many potential sources of particulate matter — a soil enhancement facility, 2 ag facilities, farms, Kern construction (crushed asphalt) in that direction'. He did agree that Blue Lake Power (BLP) was to the SE.

I asked him what data he was using to determine the prevailing wind direction and his response was 'my knowledge and experience'. When I pressed him on the data, he said there was none that he knew of in BLP's file, and he suggested I go to NOAA's website and look up the wind rose (he helpfully spelled that out for me) data for Eureka / McKinleyville. I responded by saying the reports from the Tribe indicated the micro-climate winds in the Mad River valley are consistent with carrying particulate matter from the stack to the impacted area. At that point Al said well maybe the Redding CARB, but he didn't really know, had more detailed data. (The Tribe's Environmental Programs division has wind rose data from this area.)

Al reported he had spoken to Glenn Zane (owner of BLP) by phone right after Glenn Zane and Walter Nystrom had met with Arla and I at the Rancheria. At first Al characterized his interaction with Glenn this way: 'I requested that Glenn take a sample of his fly ash and particulate matter and send it off to the lab for speciation analysis.'

Al suggested that I gather samples 'in one of those plastic cups that come from children's cough syrup, or a plastic baggie' and that he would send me the name and address of a lab, or any lab we chose, and that we should get our material tested. When I asked him for details on what specific testing he requested of Glenn, a scope of work, results, Al said he didn't get that detailed -- and at that point Al said that his conversation with Glenn went this way, 'I told Glenn, 'you know how you make this go away, you get your samples analyzed and you get a sample from the Rancheria, and when they don't match, you prove the dust is not from the plant.' Because I fully expect this to be the case.'

When I pressed him on whether he had personally ever been in a compliance issue of this type, with this type of data analysis, he said he had not.

I suggested that lab analysis of material that is a snapshot in time does not take into account biomass fuel differences over time, nor does it account for changes in equipment and operation. And I said that it was reasonable to assume that because the Tribe is near, but not immediately

next to, the stack or fly ash, that there will be some other materials mixed into the Tribe's samples.

I asked him if the NCUAQMD's job was to monitor the fuel that was being used, and how that was done. Al reiterated that the plant was 'only permitted to burn wood waste' and that 'they get their fuel most from full logs stored in Willow Creek and chip them as they need them, and from other sources, mill waste and chips.'. He confirmed it was NCUAQMD's job to monitor compliance with the fuel standards. The methods are an (announced) full compliance inspection annually, and random inspections typically every month or two. I said we would like to see those records, and that I would be submitting an additional records request. At that point Al made a point of stating that for their 4-county area, they only had two (2) inspectors.

Based on Jason Davis' statement that there was a 'loose correlation' between opacity and particulate matter, I asked Al the same question - how is particulate matter monitored and how often. He clawed back Jason's statement and said ' we can't extrapolate a particulate matter from opacity directly, but there is a correlation'. He said they monitor opacity 1 x minute, through a system that is in the stack, with a 6 minute average. He said they conduct an announced, annual 'full source test which costs the power plant about \$30,000 and is conducted by a 3rd party testing company and takes 1-2 days.' I responded that I was not concerned with the cost of the testing, that when a company chooses to be in a regulated business, there are costs associated with that. [As a regulator, why was Al keen to describe the expense?] When I asked if there were other monitors, he said I would need to speak with 'Wendy, in monitors'. He said he 'thought there may have been mobile monitoring stations at some point.' So we will follow up on that.

I said that I was not assuming anything about the source of the pollutants, but asked if the Tribe wanted to lodge a formal complaint, what would the process be? Al said to call the NCUAQMD, report the issue, and they would respond as quickly as possible. That if there was a link (which he doubts) that they would look at dates and correlate any activities in the Blue Lake area that could be the cause.

My sense is that we need to go directly to the EPA. These guys seem to be protective of BLP for some reason?

Jacob Pounds of the Tribe's EPA and I collected samples today from various locations. We documented all of it, including methodology.

Jacob also has a call into the EPA, we will ask about their imminent 45-day review of BLPs permit and see if we can change the terms and/or make other inputs.

From: Al Steer <asteer@ncuaqmd.org>
Reply-To: <alsteer@ncuaqmd.org>
Date: Monday, November 4, 2013 3:59 PM
To: Jana Ganion <jganion@bluelakerancheria-nsn.gov>
Subject: BLP questions of fallout

Jana

This is an email I sent to one of your neighbors this morning.

Thank you for the photos and your information.

We share your concern with the particulate accumulation demonstrated in the photos.

We believe the particulate might be from some source other than the Power Plant.

Things like; open burning, field tilling, road construction, and soil enhancement facilities all generate airborne particulate.

The dominant wind direction through this area is from the NW to the SE and BLP has been operating very cleanly according to "in place instruments". There are several potential sources of airborne particulate NW of your location that must be investigated.

It is natural to assume a nearby power plant would likely be the source of the particulate but please don't jump to that conclusion.

We would appreciate continued feedback from you especially with attached time and date information.

Again, thank you for providing information that might help us keep the air clean for everyone.

Respectfully,

Al Steer

Al Steer Compliance & Enforcement Manager North Coast Unified AQMD 2300 Myrtle Avenue Eureka, CA 95501-3327 (707) 443-3093 Ext 119
~alsteer@ncuaqmd.org~http://www.ncuaqmd.org

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Notes 11/1/13

I spoke with Jason Davis at the North Coast Unified Air Quality Management District (NCUAQMD) at about 1:15pm today (11/1/13).

Jason is the contact for permitting.

Jason's opinion was that the particulate pollution issue / impact was not something that would be addressed under the current BLP permit renewal process.

The permit renewal process is at the stage where public comment is closed, and the next step is for NCUAQMD to send the permit application to the US EPA Region 9 team for review – which has a 45-day timeline, but no public comment process. He said they were 99% done and sending the package to EPA would be happening soon.

Jason said the permit renewal process does not require review of impacts from pollution. I asked if BLP has a current, valid permit. He said it was complicated but that BLP has an existing permit and has applied for renewal. I asked what the expiration date was on their current permit, and he did not give me a straight answer.

I asked what types of monitoring occur regarding particulate matter volume and composition. He said they have gather data on "opacity" every 6 minutes from a monitor on the BLP stack, and when I asked what opacity tells them about particulate matter he said there is a "loose correlation" between opacity and particulates. He also mentioned area monitoring stations, but he was more vague on this topic, although he said there was one at the Rancheria(?). We monitor air quality for the EPA, but I do not believe we are under agreement to/nor do we provide air quality data to NCUAQMD (but I will check).

He said NCUAQMD does not do grab sampling of the particulates in the emission stream – that they assume the plant is adhering to the terms of their permit, including burning only wood waste according to its legal definition and that the fuel is "free of contaminants". I pointed out that written definitions and real-life fuel composition and handling could be quite different.

Jason also said that the Tribe's letter (attached, with the exhibits), which was submitted during the recent permit renewal public comment period 'did not require a response from NCUAQMD because there was "not anything of substance to respond to" in terms of air quality'.

He said the particulate pollution issue would be handled through the compliance / enforcement unit of NCUAQMD, which is run by Al Steer (I have a message in to Al, and hope to hear from him today). Jason said it sounded like the Tribe should file a complaint with this division, since it sounded to him that the issue was with the 'equipment and how it is being operated'.

Jason also tried to take issue with my description of the particulate matter that is blanketing the Rancheria as 'oily' --- he said 'typically particulates from biomass power plants are not oily' and that he had some ideas about other causes, mentioning the area 'being close to roads'. I responded by saying that certain areas of the Rancheria are next to Highway 299 and we are not seeing particulate residue to the same degree in the 299 corridor and adjacent areas, and, that the environmental programs staff has done prevailing wind work, and the particulates we are seeing are consistent with those patterns, which blow directly from the BLP stack. And, I told him that the volume of wood waste necessary to fuel that plant might lead to soil and other contaminants being mixed in.

Lastly, I asked Jason if there was a current BLP violation being handled by the compliance division. He confirmed there was, and that he thought it was close to a settlement, but that until it was settled, he did not think those records could be released to the public.

JG

BLUE LAKE RANCHERIA

A Native American Tribe

P.O. Box 428
Blue Lake, CA 95525Office: (707) 668-5101
Fax: (707) 668-4272www.bluelakerancheria-nsn.gov

September 22, 2015

Karin Koslow
Deputy Director
American Indian Environmental Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington D.C.
Via email and hand-delivery hard copy to follow

RE: Particulate Matter Pollution at Blue Lake Rancheria; Government-to-Government Consultation

Dear Karin,

On behalf of the Blue Lake Rancheria, California, a federally recognized Native American tribe ("Tribe"), we are submitting this introductory letter to inform the government-to-government consultation with the U.S. Environmental Protection Agency scheduled for Tuesday September 22, 2015 at 11am Eastern.

For over 30 years, the Tribe has endured impacts – particulate matter, noise, light, arsenic, and other types of pollution – caused by an ~11MW biomass-fueled power plant located in the City of Blue Lake's industrial park, 0.5 miles from the Tribe's boundary. These impacts are well documented in various notices of violation throughout the plant's 30+ year operating lifespan.

By way of background, the Tribe has a long history of advocacy for biomass energy technology, including a 1983 letter from tribal leadership supporting the initial opening of this same biomass plant. The Tribe helped provide initial funding for the 2010 restart of the same biomass power plant after it had lain dormant for 10 years. And in 2012, the Tribe invested in a small 175kW biomass-fueled power system of its own on the Rancheria.

While the Tribe believes in the value of biomass-fueled power, especially as it relates to creating economic uses for hazardous fuels in our overgrown forests that have resulted in catastrophic "megafire" wildfires this year, the Tribe has suffered health, environmental, and economic damage from the particulate matter pollution created by this biomass plant.

Since the plant restarted operations in ~2010 after a decade of dormancy, our tribal members have registered consistent complaints of fine, dark-colored/black particulate matter blanketing their houses, cars, vegetation (including mature trees, fruit, and vegetable gardens), and window sills and other exterior and interior surfaces, often with an oily texture that makes it very difficult to remove. Over the last approximately 36 months, these complaints have intensified. Most complaints received by the Tribal Office state that the blanketing of dark-colored particulates occurred *nightly* in the period from 2012-2015. Tribal Environmental Programs staff observed black particulates on the surface of the Mad River, a waterway that is already classified as impacted for turbidity and temperature relevant to endangered and threatened species it contains. The plant's operators have

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been cited with a water quality discharge violation from the California Department of Fish and Wildlife. Trees in the vicinity of the plant are coated in this black soot-like material, and some are dying.

Seventy five percent (75%) of the Tribe's membership is comprised of elders and children. Further, many tribal elders have suffered related health impacts including chronic respiratory illnesses, pneumonia, and asthma.

The Tribe has communicated this issue to the North Coast Unified Air Quality Management District (NCUAQM) and our regional U.S. EPA contacts repeatedly and consistently. Examples include: the Tribe submitted comments regarding its concerns about particulate pollution during the Title V Permit renewal public comment period. These comments were hand-delivered by Jacob Pounds, Tribal Environmental Programs Technician, to NCUAQMD at the meeting held July 2, 2013. To date the Tribe has had no substantive response. The Tribe communicated its concerns to the plant operators through multiple meetings with Glenn Zane, plant owner, Walter Nystrom, plant manager, Arla Ramsey, Vice Chair of the Tribe and Jana Ganion, Energy Director. During the in-person meetings, the Tribe gave Mr. Zane a thorough tour of the property and the severe fly ash fallout that was present. The Tribe also presented photos and other evidence and documentation of the issue.

Despite concerted collection of evidence and repeated requests to plant owners (Blue Lake Power, LLC and/or Renewable Energy Providers, Inc., and/or other name(s)), the NCUAQMD, and the local U.S. Environmental Protection Agency (EPA) representatives, requesting greater enforcement, more particulate matter monitoring, and more communication around chronic violations by the plant operators, these requests are consistently ignored and/or dismissed as inaccurate. Prior to the plant going idle in May of 2015 (see below), the current levels of particulate matter drifting over the Tribe's lands, tribal residences, government offices, economic enterprises, and onto/into homes of vulnerable populations is both environmentally unjust and unacceptable.

The plant's chronic particulate matter, arsenic, light, and noise violations, including but certainly not limited to the March 2014 Finding and Notice of Violation which suggests that the permit and the terms/conditions of the permit in force from 2010-2015 was not valid, and their multiple, chronic violations of that permit would have been avoided, had the proper standards been applied. The plant was also categorized as a "High Priority Violator"¹ by the EPA. NCUAQMD has issued many violations and conducted multiple enforcement and settlement actions against plant operators, who have a history of non-compliance and associated fines. Other serious issues have included defaulting on payments to the City of Blue Lake and uncontrolled biomass fuel fires.

Current situation

The biomass plant is currently idle, due to voluntary actions by its owners. One explanation could be the owners sold their power purchase agreement back to the issuing utility and are waiting for the passage of California Assembly Bill 590, which could make significant funds available to "dormant" biomass plants for retrofits.

Another possible explanation for the operators' decision to shut down the plant is that the EPA rescinded (or threatened to rescind) the plant's Title V permit due to erroneous review at the time of restart, and application of a grandfather clause which preserved the permit terms present at the time of the prior closure (~1999) – terms

¹ <http://www.epa-echo.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=110013858398>

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which had expired at the time of the most recent restart ~2010 — and that the Title V PTO NCU097-12 under which the plant operated from ~2010-2015 was not valid.

Because the plant is currently idle, the Tribe's current request for consultation is simple: the Tribe would like to pursue administrative remedies that ensure the following:

- 1) The most recent and most stringent air quality (including PM 2.5, PM 10, and all others) and water quality regulations, standards and thresholds should be applied to any restart of this plant.
- 2) Real-time best available technology for particulate matter sampling, and other sampling related to all the plant's violations (e.g. arsenic) be installed at the Rancheria in multiple locations impacted by the plant and used to determine compliance with any permits issued.
- 3) Any violation of the plant's permit(s) be enforced immediately with the maximum penalties.

The Tribe opposes the renewal of the plant's Title V permit and/or issuance of any new or supplemental permit to operate, until this issue can be resolved.

Sincerely,

Arla Ramsey
Vice Chairperson



CITY OF BLUE LAKE

HUMBOLDT COUNTY, CALIFORNIA

NOTICE OF DETERMINATION

TO: County Clerk,
 County of: Humboldt

Secretary for Resources
 1416 Ninth Street
 Sacramento, CA 95814

NOTE: This document rescinds a previous Notice of Determination that
 FROM: The City of Blue Lake was improperly filed.

SUBJECT: Filing of NOTICE of DETERMINATION in compliance with
 Section 21108 and 21152 of the Public Resources Code.

PROJECT TITLE: Pre-zoning of parcels 313-231-01 & 02, portion
 of 312-161-14.

STATE CLEARINGHOUSE #: N/A

CONTACT PERSON: Lia A. Sullivan, City Planner; City of Blue Lake
 (707) 668-5656

PROJECT LOCATION: Inside area designated Blue Lake Industrial Park
 and to the west and adjacent to said park.

PROJECT DESCRIPTION: To pre-zone the area outside City boundaries
 and adjacent to and part of Blue Lake Industrial Park to "M"
 Industrial preparatory to annexing said area to the City of
 Blue Lake.

This document is to advise that the City Council
 of the City of Blue Lake has, on November 1, 1983, made the fol-
 lowing determination regarding the above described project:

The project will; will not, have a significant
 effect on the environment, and,

- 1). A Negative Declaration was prepared for this
 project pursuant to the provisions of CEQA,
 and certified. A copy of said document is
 on file in the City Clerk's Office, Blue Lake.
- 2). An Environmental Impact Report was prepared
 for this project pursuant to the provisions
 of CEQA. A Statement of Overriding Consid-
 erations was; was not, adopted for
 this project.

DATED: November 3, 1983 SIGNED: *Bolipi Risco*

TITLE: Mayor, City of Blue Lake

CITY HALL, 111 GREENWOOD AVENUE / POST OFFICE BOX 458
 BLUE LAKE, CALIFORNIA 95525 PHONE: (707) 668-5655

November 19, 1983

Mr. David Allen
Ultrapower Incorp.
44A Sunny Brae Centre
Arcata, Ca. 95521

Dear David Allen:

This letter is in response to your letter of Nov. 9, 1983 regarding the sentiment of the residence living on the Blue Lake Rancheria toward the development of your Blue Lake Ultrapower project.

We are very pleased with the findings that you, David Allen, have spoken with us on. At this point, with the knowledge we now have about "Ultrapower", the majority of us feel there would be minimal adverse problems put upon the residence of the Blue Lake Rancheria from the final construction of the plant site within the City of Blue Lake's Industrial Park.

We were very pleased to be able to study and review with our community you application book you had prepared for the City of Blue Lake's Planning Department. It set us at ease to see the plot plan; and know that the chip storage will be placed on the southern end of parcel #312-161-14, as the northern portion of this parcel is adjacent to the boundaries of our Rancheria.

As time moves on, we are sure that more concerns may arise; questions will need to be answered. But, at this time, we feel good about the openness we have received from you.

It was our pleasure to have been able to travel to Burney and look over the site area. Seeing it first hand gave us a much better idea of what we may expect in our area. Our many thanks to you, David, for being a very cordial host.

With this type of power plant wanting to build within the Industrial Park, we are sure the City of Blue Lake will grow and expand. We still have unsettled matters, with the city, on this

future expansion. We can only hope, with the help of Ultrapower and its firm commitment to be a good neighbor to our Rancheria, that we can all work together in harmony to solve any problems that may arise with new development.

Sincerely,

BLUE LAKE RANCHERIA SOCIETY
OF AMERICAN INDIANS

CHAIRPERSON

Se. Dew Daniels

VICE-CHAIRPERSON

Arla Ramos

SECRETARY/TREAS.

Lynette Ramsey

cc: P.J. Stevens
T.L. Ogletree
R.P. Kennel
J.D. MacInnes

UCOS

September 8, 1989

Sylvia Daniels
Blue Lake Rancheria
P.O. Box 428
Blue Lake, CA 95525

Dear Sylvia:

As you are aware, we have experienced sporadic opacity problems with our boiler. When we experience these problems, the Rancheria has on occasion received ash fallout on houses and cars.

We are very sorry that you, our neighbors, have been bothered by these problems. We are working to discover the cause of the problems and to rectify them. Until we can determine the cause of these problems, we want you to know that we will try to run the boiler in such a manner as to minimize the ash discharge and if we do have excursions that causes problems, we will work with you in order to correct the problems.

We have taken the boiler down on two different occasions to have the manufacturers of the various pieces of equipment inspect the unit. We have also conducted performance tests on the multiclone and the precipitator (at a cost of \$15,000) to determine if these units are performing up to design specifications. We want to be sure that we find the real problem and repair it. We are currently waiting for the results from this test to help us finalize our repair plans. Other tests and investigations are continuing. At the present time we feel that the precipitator is part of the problem but we feel we need to investigate all avenues.

In addition, we will be taking the unit down on September 15, 1989 so that experts can inspect the unit to determine what repairs can be performed on the precipitator. As soon as we get their recommendations and the results of all tests, we will determine what is the best and most rapid solution to the problem.

UC OPERATING SERVICES

P.O. BOX 1158 • BLUE LAKE, CA 95525 • (707) 668-5631 • (707) 668-5918
A JOINT VENTURE BETWEEN ULTRAPOWER SERVICES AND CONSTELLATION OPERATING SERVICES

I hope that you will be patient with us a little longer. We are confident we will achieve a satisfactory solution.

I feel with good communication and cooperation that we can work together as friends and neighbors.

Sincerely,


Patricia Murphy
Plant Manager

cc: Don Vowell
Chet Krage

PM:jj
89-61

UC OPERATING SERVICES

P.O. BOX 1158 • BLUE LAKE, CA 95525 • (707) 668-5631 • (707) 668-5038
A JOINT VENTURE BETWEEN ULTRAPOWER SERVICES AND CONSTELLATION OPERATING SERVICES

UCOS

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Detailed Facility Report

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Facility Summary(#)

BLUE LAKE POWER LLC
200 WAY INDUSTRIAL PARK, BLUE LAKE, CA 95525

Facility Information (FRS)

FRS ID: 110013858398 (http://oaspub.epa.gov/enviro/fii_query_dtl_disp_program_facility?p_registry_id=110013858398)
 EPA Region: 09
 Latitude: 40.87907
 Longitude: -123.988571
 Industry:
 Indian Country: N
[Go To Facility/System Characteristics \(#pane2\)](#)

Regulatory Interests

Clean Air Act: Operating Major (0602300011)
 Clean Water Act:
 Resource Conservation and Recovery Act:
 Safe Drinking Water Act:

Also Reports

Air Emissions Inventory (EIS):
 Greenhouse Gas Emissions (eGGRT):
 Toxic Releases (TRI):

Enforcement and Compliance Summary

Statute	Insp (5 Years)	Date of Last Inspection	Current Compliance Status	Qtrs in NC (of 12)	Qtrs in Significant Violation	Informal Enforcement Actions (5 years)	Fo En Ac yee
CAA	--	--	Significant Violation	3	12	3	1

[Go To Enforcement/Compliance Details \(#pane3\)](#)

Facility/System Characteristics(#)

Facility/System Characteristics

Statute	Identifier	Univer
CAA	110013858398 (http://oaspub.epa.gov/enviro/fii_query_dtl_disp_program_facility?p_registry_id=110013858398) 0602300011	Major

Facility Contact Information

System	Identifier	Facility Name	Facility Address	Contact Name
		BLUE LAKE	200 WAY INDUSTRIAL	

AFS	0602300011	BLUE LAKE POWER LLC	LAKE, BLUE LAKE, CA 95525 200 TAYLOR WAY, BLUE LAKE, CA 95525	x	
-----	------------	---------------------	--	---	--

Facility SIC Codes

System	Identifier	SIC Code	SIC Desc
AFS	0602300011	4911	--

Facility NAICS Codes

System	Identifier	NAICS Code	NAICS Desc
AFS	0602300011	221112	Fossil Fuel Electric Power Generation

Enforcement and Compliance^(#)

Filter Enforcement and Compliance Information

Include all statutes (default)

Restrict information to:

- CAA Only (6)
- CWA Only (0)
- RCRA Only (0)
- SDWA Only (0)

Compliance Monitoring History (5 years)

Statute	Source ID	System	Inspection Type	Lead Agency	
CAA	0602300011	AFS	STATE PCE/ON-SITE	State	0
CAA	0602300011	AFS	TITLE V COMPLIANCE CERTIFICATION REVIEW BY STATE	State	0
CAA	0602300011	AFS	EPA INVESTIGATION CONDUCTED	EPA	0
CAA	0602300011	AFS	STATE PCE/ON-SITE	State	0
CAA	0602300011	AFS	EPA PCE/OFF-SITE	EPA	0
CAA	0602300011	AFS	STATE PCE/ON-SITE	State	0

Compliance Summary Data

Statute	Source ID	Current SNC/HPV	Description	Current As Of
CAA	0602300011	Yes	VIOLATION ADDRESSED; STATE HAS LEAD ENFORCEMENT	06/22/2013

Three Year Compliance Status by Quarter

Statute	Program/Pollutant/Violation Type	QTR 1	QTR 2	QTR 3	QTR 4
CAA (Source ID: 0602300011)		JAN-MAR 11	APR-JUN 11	JUL-SEP 11	OCT-DEC 11
	Facility-Level Status	HPV	HPV	HPV	HPV
	HPV History	Unaddr-State	Unaddr-State	Addr-State	Addr-State
	Program/Pollutant in Current Violation				
CAA	SIP	--	V-No Sched	V-No Sched	V-No Sched
	VISIBLE EMISSIONS	--	--	--	--
CAA	PSD	--	--	--	--
CAA	NSPS	--	--	--	--
CAA	TITLE V PERMITS	UNKNOWN	V-No Sched	V-No Sched	V-No Sched
	FACILITY-WIDE PERMIT REQUIREMENTS	--	--	--	--
	PARTICULATE MATTER < 10 UM	--	--	--	--
	VISIBLE EMISSIONS	--	--	--	--

Informal Enforcement Actions (5 Years)

Statute	Source ID	Type of Action	Lead Agency	Date	Ref Err
CAA	0602300011	STATE NOV ISSUED	State	24-JUN-10	(dfr_er 29891.txt& ISSUED & &sourceid:
CAA	0602300011	STATE NOV ISSUED	State	13-MAY-10	(dfr_er 29891.txt& ISSUED & &sourceid:
CAA	0602300011	STATE NOV ISSUED	State	30-APR-10	(dfr_er 29891.txt& ISSUED & &sourceid:

Formal Enforcement Actions (5 Years)

Statute	Source ID	Type of Action	Lead Agency	Date	Pen
CAA	0602300011	STATE COURT CONSENT DECREE	State	20-MAY-11	460000

ICIS Case History

Primary Law/Section	Case No.	Case Type	Lead Agency	Case Name	I I
---------------------	----------	-----------	-------------	-----------	-----

No data records returned

Environmental Conditions^(v)

Water Quality

Permit ID	Watershed (HUC 8)	Watershed Name (HUC 8)	Watershed (HUC 12)	Watershed Name (HUC 12)	Receiving Waters	Impaired Waters
11001385839818010102		MAD-REDWOOD	180101020408	Mill Creek-Mad River	--	--

Air Quality

Non-Attainment Area?	Pollutant(s)
No	Ozone
No	Lead
No	Particulate Matter

Pollutants^(#)

TRI History of Reported Chemicals Released in Pounds per Year at Site

Year	Total Air Emissions	Surface Water Discharges	Off-Site Transfers to POTWs	Underground Injections	Releases to Land	Total On-site Releases	T C R
No data records returned							

TRI Total Releases and Transfers by Chemical and Year

Chemical Name
No data records returned

Demographic Profile^(#)

Demographic profile of Surrounding Area (3 Miles)

Select radius:

3 miles

This section provides demographic information regarding the community surrounding the facility. ECHO compliance data alone are not sufficient to determine whether violations at a particular facility had negative impacts on public health or the environment. Statistics are based upon the 2010 US Census and American Community Survey data, and are accurate to the extent that the facility latitude and longitude listed below are correct. The latitude and longitude are obtained from the EPA Locational Reference Table (LRT) when available.

Radius of Area:	3	Land Area:	99%	Households in Area:	1,202
Center latitude:	40.87907	Water Area:	1%	Housing Units in Area:	1,280
Center Longitude:	-123.988571	Population Density:	101/sq.mi.	Households on Public Assistance:	33
Total Persons:	2,824	Percent Minority:	13%	Persons Below Poverty Level:	760

Race Breakdown	Persons (%)	Age Breakdown	Persons (%)
White:	2,458 (87.04%)	Child 5 years and younger:	139 (4.92%)
African-American:	10 (.35%)	Minors 17 years and younger:	552 (19.55%)
Hispanic-Origin:	139 (4.92%)	Adults 18 years and older:	2,272 (80.45%)
Asian/Pacific Islander:	30 (1.06%)	Seniors 65 years and older:	347 (12.29%)
American Indian:	159 (5.63%)		
Other/Multiracial:	166 (5.88%)		
Education Level (Persons 25 & older)	Persons (%)	Income Breakdown	Households (%)
Less than 9th Grade:	42 (2.19%)	Less than \$15,000:	633 (32.95%)

9th through 12th Grade:	86 (4.48%)	\$15,000 - \$25,000:	118 (10.09%)
High School Diploma:	544 (28.32%)	\$25,000 - \$50,000:	265 (22.65%)
Some College/2-yr:	616 (32.07%)	\$50,000 - \$75,000:	230 (19.66%)
B.S./B.A. or More:	633 (32.95%)	Greater than \$75,000:	395 (33.76%)

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Last updated September 24, 2013

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CITY OF BLUE LAKE

HUMBOLDT COUNTY, CALIFORNIA

NOTICE OF DETERMINATION

TO: County Clerk,
 County of: Humboldt

Secretary for Resources
 1416 Ninth Street
 Sacramento, CA 95814

NOTE: This document rescinds a previous Notice of Determination that
 FROM: The City of Blue Lake was improperly filed.

SUBJECT: Filing of NOTICE of DETERMINATION in compliance with
 Section 21108 and 21152 of the Public Resources Code.

PROJECT TITLE: Pre-zoning of parcels 313-231-01 & 02, portion
 of 312-161-14.

STATE CLEARINGHOUSE #: N/A

CONTACT PERSON: Lia A. Sullivan, City Planner; City of Blue Lake
 (707) 668-5656

PROJECT LOCATION: Inside area designated Blue Lake Industrial Park
 and to the west and adjacent to said park.

PROJECT DESCRIPTION: To pre-zone the area outside City boundaries
 and adjacent to and part of Blue Lake Industrial Park to "M"
 Industrial preparatory to annexing said area to the City of
 Blue Lake.

This document is to advise that the City Council
 of the City of Blue Lake has, on November 1, 1983, made the fol-
 lowing determination regarding the above described project:

The project will; will not, have a significant
 effect on the environment, and,

- 1). A Negative Declaration was prepared for this
 project pursuant to the provisions of CEQA,
 and certified. A copy of said document is
 on file in the City Clerk's Office, Blue Lake.
- 2). An Environmental Impact Report was prepared
 for this project pursuant to the provisions
 of CEQA. A Statement of Overriding Consid-
 erations was; was not, adopted for
 this project.

DATED: November 3, 1983 SIGNED: *Bolipi Risco*

TITLE: Mayor, City of Blue Lake

CITY HALL, 111 GREENWOOD AVENUE / POST OFFICE BOX 458
 BLUE LAKE, CALIFORNIA 95525 PHONE: (707) 668-5655

November 19, 1983

Mr. David Allen
Ultrapower Incorp.
44A Sunny Brae Centre
Arcata, Ca. 95521

Dear David Allen:

This letter is in response to your letter of Nov. 9, 1983 regarding the sentiment of the residence living on the Blue Lake Rancheria toward the development of your Blue Lake Ultrapower project.

We are very pleased with the findings that you, David Allen, have spoken with us on. At this point, with the knowledge we now have about "Ultrapower", the majority of us feel there would be minimal adverse problems put upon the residence of the Blue Lake Rancheria from the final construction of the plant site within the City of Blue Lake's Industrial Park.

We were very pleased to be able to study and review with our community you application book you had prepared for the City of Blue Lake's Planning Department. It set us at ease to see the plot plan; and know that the chip storage will be placed on the southern end of parcel #312-161-14, as the northern portion of this parcel is adjacent to the boundaries of our Rancheria.

As time moves on, we are sure that more concerns may arise; questions will need to be answered. But, at this time, we feel good about the openness we have received from you.

It was our pleasure to have been able to travel to Burney and look over the site area. Seeing it first hand gave us a much better idea of what we may expect in our area. Our many thanks to you, David, for being a very cordial host.

With this type of power plant wanting to build within the Industrial Park, we are sure the City of Blue Lake will grow and expand. We still have unsettled matters, with the city, on this

future expansion. We can only hope, with the help of Ultrapower and its firm commitment to be a good neighbor to our Rancheria, that we can all work together in harmony to solve any problems that may arise with new development.

Sincerely,

BLUE LAKE RANCHERIA SOCIETY
OF AMERICAN INDIANS

CHAIRPERSON

Se. Dew Daniels

VICE-CHAIRPERSON

Arla Ramos

SECRETARY/TREAS.

Lynette Ramsey

cc: P.J. Stevens
T.L. Ogletree
R.P. Kennel
J.D. MacInnes

From: Salina Rain >
Sent: Thursday, March 31, 2016 11:07 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: Blue Lake Power plant

The violations of this company are so many and so detrimental to our community that I, as a property owner and full time resident, would like to see more accountability. No fines should be forgiven or lessened, as this brings to zero their motivation to follow the law and the health and safety guidelines. Thank you for doing your job with the public welfare in mind, as it always should be.

Salina Rain



PHYSICAL DOCUMENT

ENV_ENFORCEMENT-n2581811-v1

CITIZEN COMMENTS

Author: McAnaney, Sheila

Document Type: LETTER

LSA(s): KBROWN

Co-Counsel:

Counsel LSA(s):

Distribution List: ENRD, EESCaseManagement (ENRD);Lattin, Sue (ENRD);Rose, Robert (ENRD);Reed, Jason (ENRD);True, Michael (ENRD);McAnaney, Sheila (ENRD);Brown, Ken (ENRD)

Fileroom: EES - 6th Floor

DJ#: 90-5-2-1-11038

Case Name: U.S. AND NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT V. BLUE LAKE POWER, LLC, ET AL.

Court: CA N.D. Cal.; 9th Cir.

Notes:

Double-Sided:

Received Date: 4/5/2016

Urgent:

Oversize:

Bound Document:

McAnaney, Sheila

Bobbi Ricca

May 31, 3016

Assistant Attorney General
United States Department of Justice – ENRD
P.O.Box 7611
Washington, D.C. 200444-7611

DEPT OF JUSTICE - ENRD
ENVIRONMENT DIVISION
16 APR -5 PM 12:04

Re: United States and North Coast Unified Air Quality Management District v. Blue Lake Power, LLC, Civil
Action No. 3:16-cv-00961

Dear Sir or Madam:

As a 35 year resident of Blue Lake, I was the mayor when the power plant now called Blue lake Power, LLC was permitted and constructed here. The city, with its technical advisors, went to great lengths at that time to provide safeguards for the residents, knowing that this was a large installation to locate so close to residences. The plant was able to operate for many years with only occasional, minimal violations of air quality and other restrictions. That it is unable or unwilling to do so under its new ownership is of serious concern to this community.

It would be better for Blue Lake to have the plant shut down, despite loss of (as yet unpaid) income, than to let it continue to flout the reasonable, achievable requirements it is mandated to meet. Please support the North Coast Unified Air Quality Management District.

Sincerely,

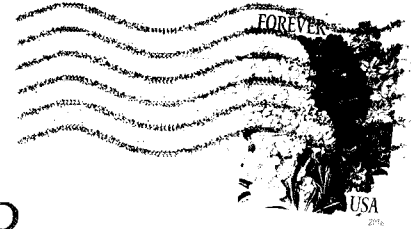


Bobbi Ricca

Ricca

EUREKA CA 955

01 APR 2016 PM 1 T



X-RAYED

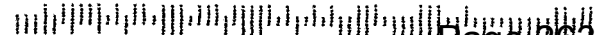
APR 05 2016

DOJ MAILROOM

Assistant Attorney General
United States Department of Justice – ENRD
P.O.Box 7611
Washington, D.C. 20044-7611

PUBLIC COMMENTS

2004487611



Page 263

From: Robbins, Marnin@Wildlife < >
Sent: Monday, April 04, 2016 6:43 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Cc: humfarm@gmail.com
Subject: U.S.and NCUAQMD v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038

To: Assistant Attorney General, Environment and Natural Resources Division

Regarding: *United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038 – Consent Decree*

Our names are Marnin Robbins and Christine Griffin. We reside at, and are the home owners of, which is located less than a quarter mile from the Blue Lake Power Plant in Blue Lake, CA. We object to the consent decree between Blue Lake Power and the North Coast Unified Air Quality Management District for the following reasons:

- 1) Blue Lake Power has demonstrated their disregard for the law beginning with the upgrade of the plant without the proper permits.
- 2) BLP has repeatedly demonstrated their disregard for their contractual obligations by refusing to pay their lease payments and water and sewer bills to the City of Blue Lake, only bringing them up to date when they needed something from the city. They currently owe the city more than \$100,000.
- 3) BLP has repeatedly demonstrated their disregard for the citizens of Blue Lake by spewing ash and dirt into our air and by only complying with the zoning ordinances on lighting and noise when forced to by the city attorney, costing the City even more money.
- 4) BLP demonstrated their disregard for their employees when they shut the plant down last year, putting their employees out of work not because they were having business problems but because the owners could profit by ending their supply contract.

We ask that Blue Lake Power be shut down permanently. They have been poor corporate citizens and neighbors in Blue Lake and have a history of noncompliance with the laws, agreements, and contractual obligations that a legitimate business must adhere to. Although Blue Lake power has been found in violation of numerous air quality laws and have been given ample opportunity to fix issues of non-compliance over a period of many years, they have willfully and repeatedly refused to do so. As the Department of Justice, we believe it is your responsibility to ensure that entities who break the law are prohibited from doing so again. In this case, the only course of action is to permanently shut down Blue Lake Power from further operation.

As citizens, we rely on the Department of Justice and the North Coast Unified Air Quality Management District to enforce the laws that protect our health and safety. Thank you.

Marnin Robbins and Christine Griffin

From: Lizard King < >
Sent: Monday, April 04, 2016 3:19 AM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: US vs. Blue lake power llc, civil action 3:16-cv-00961

Dear Mr Friedman,

I would like to comment on the enforcement action taken against blue lake power llc.

I have lived in blue lake since 2012. 20 years ago I toured the plant with the engineering class I was enrolled in at Humboldt state. At that time, the plant looked terrible. There was alot of rust. The control consoles looked like they could have been from the 1950s.

More recently, living in blue lake I noticed that when the plant was operating, I had to close my window at night or I might wake with respiratory distress. I observed that the exhaust from the plant seemed to increase at night.

And one time the plant's electrical system shorted out 9000 volts. It was a dramatic sound. Luckily, no one was hurt.

The facility is at the heart of blue lake on prime scenic riparian area. It has always been a source of loud noise and vapors on a popular trail.

It is my understanding that electricity generation does not pay for the business overhead. This is ironic, as the business is actually polluting our town.

A \$5000 fine is way too small. The public and the environment are harmed by this business even if they update they're equipment. As long as they are operating, they will be contributing to global warming in two ways: by transporting slash to the site and burning it.

Blue lake power should not receive public funding for that enterprise because it harms the public. They should not be granted a renewal on their license.

Geoffrey Robinson
B.S., Environmental Resources Engineering, Humboldt State University, 2001

Sent from [Outlook Mobile](#)

From: Zuzka Sabata < >
Sent: Saturday, April 02, 2016 8:18 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: Blue Lake Power, LLC, Civil Action No. 3:16-cv-00961

To Whom it concerns,

As a resident and someone who is employed in Blue Lake as well, I have been impacted by the intense noise (during the years 2010-11, when sounds at 3am in the morning closely resembled a jet plane taking off in my backyard) and effects on air quality.

I would like to add my voice to the letter below which provides much further details about why I also do not support the DOJ's decision regarding BLP.

Respectfully submitted,
Susanne Sabata

Re: United States and North Coast Unified Air Quality Management District v. Blue Lake Power, LLC, Civil Action No. 3:16-cv-00961

Dear Attorney General,

My name is Jacob Pounds, a resident of Blue Lake that lives and works within 1 mile of the Blue Lake Power, LLC. (BLP) cogeneration biomass power plant. I am disappointed with the outcome of the Department of Justice (DOJ) decision concerning the operations at BLP. Since 2010, BLP has been operating with an inappropriately issued Title V Permit to Operate (TITLE V PTO), and has amassed a number of alleged violations directly related to their operations at the power plant. The recent decision handed down by the DOJ marginalizes public health and safety regarding the operation at BLP and is offensive and prioritizes a business with a losing track record over the public interest. I do not support the current decision.

Throughout the course of reopening BLP, there have been a number of issues that have directly affected the safety and health of me and my family, including:

- thick, dark smoke releases from the power plant stack at random times, day and night
- foul odors
- fugitive ash and dust that impacts homes, cars, fruit and vegetable gardens (see attachments) and general enjoyment of one of the most accessible and popular recreation trails and river bars/swimming holes on Mad River
- heavy truck traffic that must pass by the sole elementary school on the only route to/from BLP
- excessive noises at all hours (including alarm noise that can be heard distinctly over 1 mile away)
- light pollution
- willful and intentional water quality violations that have been documented and prosecuted by the California Department of Fish and Wildlife (see attachment)

For years, BLP has been allowed to flout the laws of the Federal Clean Air Act (CAA), operating without or under an invalid permit, while collecting nearly \$5 million in Federal subsidies, and defaulting on leases and utility bills to the City of Blue Lake on multiple occasions. Currently, BLP is in arrears to the tune of \$140,000 to the City of Blue Lake on past due bills, and is in debt to their direct oversight agency, the North Coast Unified Air Quality Management District (NCUAQMD) to the tune of \$30,000. Enough is enough!

Prior settlement agreements and fines up to \$1.3 million levied against BLP that have been fruitless. BLP claims vague "hardships," which allows them to continue to operate as a willful and egregious polluter without installing additional pollution controls to bring their operation into compliance with the CAA, or pay even a small fraction of the assessed fines. Instead, with the assistance of the NCUAQMD, BLP has attempted to modify the terms of their outdated and invalid permit to allow business-as-usual polluting without punishment.

The history of operation at BLP has been well documented by many sources (see attachments) as having many negative impacts on the health and safety of the Blue Lake community and visitors that come to recreate. Therefore, the only way to protect the public interest in this situation is to shut down the operation at BLP permanently. There are other newer, cleaner methods of producing electricity that can and should be implemented, and time and time again, BLP has proven that their operation is negatively impacting

public health and safety. Additionally, with the track record that both the EPA and NCUAQMD have shown in enforcing current regulations, I have no confidence that the provisions outlined in the Consent Decree will be enforced. EPA, NCUAQMD, and BLP have had enough chances, and they all have shown that the operations at BLP operate in opposition to the public interest.

As an avid fisherman, outdoor enthusiast, river swimmer, and recent father, I want a healthy and safe future for my family. The time has come to protect the public interest of Blue Lake - shut down BLP immediately!

Respectfully,
Jacob Pounds
(address omitted for this post)
Blue Lake, CA 95525

Attachments:

- 2010 North Coast Unified Air Quality Management District Letter of Violations
- Blue Lake Ash 7-7-11 Krug Letter Low res
- Blue Lake Rancheria Particulate Tape Sampling Event Low res
- BLR Letter to NCUAQMD 7.2.13 Low Res
- 3-6-14 EPA Notice of Violation
- 'Green' Wood-fired Power Plants Generate Pollution Violations – [WSJ.com](http://www.wsj.com)
- Sample Correspondence notes with North Coast Unified Air Quality Management District
- BLR Government to Government Introduction 9.15 EPA FINAL
- 11.19.1983BLR letter to Ultrapower
- 9.8.1989 Ultrapower Letter to Chairperson Daniels
- EPA Detailed Facility Report Blue Lake Power

Additional Local Media Accounts of BLP:
BLP in debt over past due bills:
<http://www.times-standard.com/general-ne...>

BLP 'smokes out' Blue Lake:
<http://www.times-standard.com/article/ZZ...>

Zuzka Sabata
Arts Engagement Director
Dell'Arte International
www.dellarte.com

From: Jean Stach < >
Sent: Friday, April 01, 2016 10:47 AM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038

Assistant Attorney General, Environment and Natural Resources Division

I disagree with your action regarding the Blue Lake Power Plant. Laws and penalties are there for a reason! Enforce the laws and penalties. Why have them in place if they are never enforced? As every parent knows, don't threaten what you won't carry through with. Blue Lake Power has trampled the law consistently over the years and they always get away with it. Stop them! Make them follow the law and pay the penalties if they don't.

Sincerely,

Jean Stach

From: Walker, Kristina A@DOT < >
Sent: Monday, April 04, 2016 3:53 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038
Attachments: Comments from Consent Decree-4-4-2016-k.pdf

Please find PUBLIC COMMENTS attached regarding *United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC*, D.J. Ref. No. 90-5-2-1-11038.

If you have any questions or comments or need any additional information, please contact me. Thank you.

Kristina Walker

Kristina Walker

April 4, 2016

RE: THE CONSENT DEGREE No. 3:16-cv-0091, REGARDING BLUE LAKE POWER, DATED 2/25/2016.

BACKGROUND:

- The Ultrapower Plant, the current Blue Lake Power Plant, shutdown in 1999.
- No Title V or any documents were filed for this power plant from 2000-2007.
- Blue Lake Power purchased the facility from North American Power Group and received federal funding in the amount of \$ 5,378,717, in 2008, to enable them to start the plant.
- The Blue Lake Power Plant started the power plant in 2010.
- The plant did not obtain a PTO or an ATC, which would require a PSD, prior to operating.
- A Settlement Agreement with the North Coast Unified Air Quality Management District was signed on May 20, 2011. All agreements of the settlement have **not** been met.
- The EPA filed two Notice of Violations to the Blue Lake Power, LLC in March and April of 2014.
- Blue Lake Power continued to operate in violation and with knowledge of incorrect permitting until May 20, 2015.

ROLES AND RESPONSIBILITY OF THE EPA:

- The Mission Statement of the EPA *is to protect human health and the environment. The purpose of the EPA is to ensure that:*
 - *all Americans are protected from significant risks to human health and the environment where they live, learn and work;*
 - *national efforts to reduce environmental risk are based on the best available scientific information;*
 - *federal laws protecting human health and the environment are enforced fairly and effectively;*

THE NOTICE OF VIOLATIONS ISSUED BY THE EPA:

- The plant restarted or opened without the correct permitting, they opened in violation of the CLEAN AIR ACT. They did not permit the plant as a “new” facility as it was shutdown for almost 11 years, nor did they get an ATC, or operate under the PTO, including the PSD permit that would be required for a “major modification.” The PSD would REQUIRE, at a minimum:

- 1.) the best BACT installation,
 - 2.) performing an air quality analysis,
 - 3.) an impact analysis
 - 4.) the opportunity for public involvement.
 - NONE of these items were addressed. **The plant should be required to preform all of the tasks, 1, 2 (including SOx, HCL, ammonia, VOCs), 3, and 4 (above) as part of the Consent Decree, prior to being allowed to operate.**
- Page 11-12, of the Consent Decree. Changing the plants averaging times from 3-HR to 24-HR, appears to be inconsistent with reducing the amount of emissions by this facility. It actually increases their emissions, and is what Blue Lake Power specifically asked for this and denied, see attached letter dated December 20, 2013, NCUAQMD. **The Consent Decree should require that the plant maintains the 3-HR averaging (Consistent with the State of CA Ambient Air Quality Standards (1-HR or 8-HR) (AAQS) for NOx and CO, and add in SOx. This facility should also be required to verify that their concentrations are well below the allowable AAQS Standards, including breakdowns. (Breakdowns are pollutants be attributed to our environment by this facility.)**
- Page 13, line 25, of the Consent Decree. Dust Management. The plant was required per the Environmental Assessment document to provide “*Edge Treatment, Screening Treatment, and Entry Way Treatment.*” This included shrubs and trees. This work was poorly incorporated, 30 years ago, and was also addressed in the Settlement Agreement. There appears to be several of the same issues arising time and time again. Which solidifies Blue Lake Powers negligence. They were also asked for a gravel or concrete pad for storage of their hardwood to chip on site, within the Settlement Agreement. As of March 31, 2016, this had not been completed. (See attached images of wood storage and chip storage from 3/31/2016) The burning of hardwoods is required to decrease their emissions, with the addition of ammonia. **The Consent Decree should demand this Dust Management work is completed prior to Startup of this facility.** This has been a reoccurring violation. (It has been asked for since the plant was initially permitted.)
- Page 14, Line 23, of the Consent Decree. Emissions. **The Consent Decree should include the recording of emissions for breakdowns; In addition, include SOx, Ammonia, and VOCs within the required emission monitoring for this facility.** This plant has an excessive number of breakdowns, and the real emissions of a plant should be recorded. This plant has a “breakdown” once every 11 days on average.
- Page 8, line 9, of the Consent Decree. Consent Decree Penalty. A penalty of \$5,000 is excessively low, and doesn’t meet the requirements of the EPA, as it doesn’t “ENFORCE [a] FAIRLY AND EFFECTIVE” fine (see EPA mission and requirements, above.) Reference NOV, R9-2014-02a, pg. 16., “*of not more than*

\$32,500 per day for each violation that occurs after March 14, 2004, and not more than \$37,500 per day for each violation that occurs after January 12, 2009...." They were in operation for approximately 1300 days after January 2009. This appears to be a very "UNFAIR" violation fee in regards to a recent case of *United States of America (EPA) vs. Global Ampersand*, where approximately \$820,000 in fines were given, in a somewhat similar case. In addition, a \$5,000 penalty does not meet the goals and requirements of the EPA, as it would not appear to be an "EFFECTIVE" fine. The proposed \$5,000 fine is less than 4% of what Blue Lake Power Pays in its annual rental to the City of Blue Lake and the fees to the NCUAQMD. They have been allowed to be in violation with opening, operating, and polluting for FIVE years. **The Fines within the Consent Decree should be between \$800,000 and \$1,500,000, representing a "Fair and Effective" penalty.**

- Page 15, Line 6, Consent Decree. **Add the following text to the Consent Decree. The ammonia testing will take place using a representative sample of wood material being used during the majority of the year (not when propane is being burned). A minimum of one test will be conducted during the wet season.** These tests have the potential to broadly vary depending on the moisture content of the Redwood Chips being utilized by the plant, with average winter moisture content of approximately 65%, within their woodchips. Therefore, during the wettest part of the year, when the uncovered, saturated wood chipped are being funneled into the plant would seem like a warranted time to sample, given it has rained almost 62 inches here this year. The Consent Decree should not allow for emissions to be higher.

BLUE LAKE POWER:

- Blue Lake Power who opened the power plant in 2010, has received complaints from most of the community to both the City of Blue Lake and to the NCUAQMD. There has been large amounts of ash fallout, complains from joggers on the levee, that they can't breathe, homeowners with stuff all over their vehicles and gardens. This facility is within a mile from: Tribal Lands (SEE 40CFR 52.21(b)(23)(iii)-Blue Lake Rancheria (a CLASS 1 area, where the Air Quality is not allowed to be degraded.)); a school; where people sleep, play, and go to church. To dump an excess of 810.3 tons/yr of CO, 120.6 tons/yr of NOx, and 32.4 tons/yr, within our community without our involvement or comments from our community is unjustifiable. **The Consent Decree should mandate Blue Lake Power to permit this facility as a "new" source allowing for public comment and local agency review.**
- A requirement of the Permit to Operate is to measure Sulfur Dioxide. **The Consent Decree needs to incorporate SOx as part of the emission requirements for Blue Lake Power.**

- Blue Lake Power has been negligent on their maintenance, modifications, and startup of this facility. The number of “BREAKDOWN REPORTS,” exhibits due negligence. They refer to almost every Maintenance Issue as an “Emergency Breakdown.” Rule 540 from the NCUAQMD, states that the “Breakdowns” are not allowed to be due to:
 - The result of improper maintenance (redundancy of same failures within breakdown reports, or lack thereof.)
 - Or constitute a nuisance (It is a nuisance see attached image-photo1.jpg). It is also a concern for health issues including asthma and heart disease, and environmental concerns. Please see average of annual failures below. In addition, most of these are a **violation** of their PTO. They are not allowed to 1) be a public nuisance, 2) *discharge into the atmosphere any source whatsoever for a period more than three (3) minutes, a shade as dark or darker than No. 2, Ringlemann’s Chart.* (See attached images.) They are in violation, constantly with these excessive discharges.
 - Not allowed more than 5 such breakdown incidents within a two-year period. (See letter dated 2/24/99, Wayne Morgan Air Pollution Control Officer.)
- Breakdown Reports –Equipment is constantly breaking, and they are allowed to constantly pollute, jeopardizing the health of the community, and our environment. The majority of all breakdowns send large plumbs of toxins into the air we breathe.
 - **33** Breakdowns were Recorded for **2013** (Plant Operated for 335 days, average of one breakdown every 10.15 days.)
 - **26** Breakdowns were Recorded for **2014**. (Plant Operated for 283 days, average of one breakdown every 10.9 days.)
 - **9** Breakdowns were Recorded for **2015**. (Plant maximum Operation for 139 days, average of one breakdown every 15.4 days.)

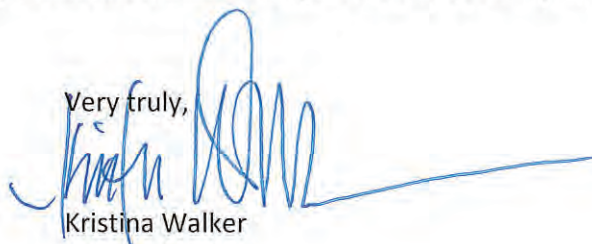
Therefore, from 2013-2015, during operating days, the plant ran for only **11 days** on average before it would have an “Emergency Breakdown.” Most of these are Maintenance Issues, and all are a public nuisance.

- During these “breakdowns” in stack monitoring has shown levels:
 - CO (a green house gas contributor) of at least 14.17 lbs/mmBTU (12/20/2013)
 - NOx of least 0.25 lbs/mmBTU (12/20/2013)
 - **There has not been any methodologies put in place to measure SOx, VOCs, Heavy metals, Ammonia or HCL. Which needs to be incorporated into the Consent Decree**
 - This is excessive , and negligent on behalf of Blue Lake Power. This is a deteriorating facility. I question its construction, modifications, and the contractors/employees that preformed this work.

- **The Consent Decree should require that there are no more than 5 “breakdowns” every two years, and that these high levels of pollutants during breakdowns are incorporated into the 3-Hr, or hourly averages, not allowing these numbers to be ignored in the overall calculations of true emissions output by this facility. It should also be noted that these breakdowns constitute a violation, as they are in many cases not an emergency. They are maintenance related, and constitute a public nuisance.**
- The Consent Decree will verify that this facility is in compliance *Per the California, Health and Safety Code, DIVISION 26. AIR RESOURCES [39000 - 44474] CHAPTER 3.5. Toxic Air Contaminants [39650 – 39675], 39666.*
- I do not believe that the emergency generators are operable. If they are why is it that with every shutdown they are not utilized to limit the amount of pollutants that are allowed to be discharged into the environment. **The Consent Decree needs to be mandate that this facility has operable generators to supply the load to the plant to bypass the potential damaging effects of these continued “breakdowns.”**
- It is a requirement of the EPA that they do not allow this plant to continue to operate in violation of Federal, State and County Laws.

I am a Professional Engineer, and more importantly I am a mother of kids that ride their bikes to and from school, past this power plant every day, and spend their day in Blue Lake. I am a community member, and care about the well-being of my family and of the people of Blue Lake. Please represent the Environmental Protection Agency and our community fairly.

If you have any questions or comments or need any additional information, please contact me by mail

Very truly,

Kristina Walker

Attachments:

- 1) Title V Renewal Application-Unable to Process NOx Revisions, December 20, 2013
- 2) Shutdown and Startup Reporting Requirements, March 13, 2014
- 3) Breakdown Rule 540, Allows only five such incidents within two years, February 24, 1999
- 4) Ambient Air Quality Standards (CA and National)
- 5) Five Photographs of Emission Pollutants, Various Dates
- 6) Two Photographs of Chip and Log Storage, March 31, 2016
- 7) One Photograph Chipping operations, January 2015.

**North Coast Unified Air Quality
Management District**

2300 Myrtle Avenue, Eureka, CA 95501
Telephone (707) 443-3093 FAX (707) 443-3099
<http://www.ncuaqmd.org>



December 20, 2013

Mr. Walter Nystrom
Plant Manager
Blue Lake Power, LLC
200 Taylor Way
Blue Lake, CA 95525

RE: Title V Renewal Application – Unable to Process NOx Revisions

Dear Mr. Nystrom:

As part of the Title V application package, Blue Lake Power, LLC (BLP) submitted a request to revise the CO and NOx emission limits to either a tiered based limit, or a limit based on a 24-hour block average. The engineering analysis and draft Title V permit for the proposed renewal that was available during the public comment period and distributed at the public hearing included the regulatory basis for a 24-hour rolling average and the corresponding permit conditions. Shortly after the public hearing, District staff informally submitted the draft permit to EPA for input. After a cursory review, EPA staff opined that in order to change the compliance averaging period for CO and NOx that the original construction permit, referred to as the Prevention of Significant Deterioration (PSD) permit would first require revision. Having received this guidance, the District, EPA, and BLP began a records search to locate the original permit issued some 29 years prior. Unfortunately, to date, a copy cannot be located.

It is customary for a PSD permit to be issued prior to construction or installation of equipment; and a Title V permit to operate issued after construction is complete and the facility deemed to be in compliance with the PSD permit conditions. When the Title V is first issued, many of the PSD conditions are carried over and incorporated into the Title V; including emission limits, Best Available Control Technology (BACT) determinations, and operating conditions. The 3-hour average limits for CO and NOx in the current Title V permit are based on a BACT determination made in 1984, and as such, it can reasonably be assumed to have also appeared in the original PSD permit issued that same year.

When historical documents cannot be located, EPA's guidance is to utilize the best representative information available. In this case, the District has determined that the current Title V permit contains all the conditions and requirements the District and EPA staff at the time determined were applicable. Moving forward, for administrative purposes, the District will consider the current version of the Title V permit as the PSD permit.

**North Coast Unified Air Quality
Management District**

2300 Myrtle Avenue, Eureka, CA 95501
Telephone (707) 443-3093 FAX (707) 443-3099
<http://www.ncuaqmd.org>



Should BLP continue to desire to modify the CO and NOx compliance averaging period, a PSD modification request must be filed with the District. In order to do so, please complete the 1300 series forms appropriate for the equipment at the facility as well as form 1313 which is specific for PSD/Title V actions. Note, modification of a compliance averaging period is considered a "significant modification" for purposes of completing the form.

The District is currently conducting an internal review of the proposed Title V renewal permit and anticipates completion during the week of December 16th. Once the District review has been completed, BLP will receive an electronic copy for review. We look forward to your comments. Should you have questions or require additional information, feel free to contact me directly.

Sincerely,

Jason L. Davis
Division Manager

**North Coast Unified Air Quality
Management District**
2300 Myrtle Ave. Eureka, CA 95501-3327
Telephone: 707-443-3093 Fax: 707-443-3099
www.ncuaqmd.org



March 13, 2014

Mr. Walter Nystrom
Blue Lake Power, LLC
200 Taylor Way
Blue Lake, CA 95525

RE: Shutdown and Startup reporting requirement

Mr. Nystrom:

Your CEMs DAS equipment has an "Audit Reporting" feature that continues to track and record emissions during "Startup" and "Shutdown" events.

Pursuant to H&SC 42303, this District will require CEMs "Audit Reports" for the twelve hour period preceding a breakdown or shutdown event, and the twelve hour period beginning when the plant initiates the restart.

These additional records are to be submitted to the NCUAQMD no later than 48 hours after the occurrence of a breakdown/shutdown and also a startup.

Please review your shutdown/breakdown, restart logs and submit past records starting on January 1, 2014.

Please submit the data in either a "pdf" or "comma delimited" format via email to the NCUAQMD Compliance & Enforcement Manager.

If you do not know how to access the Audit Reporting feature of your DAS, please contact your CEM service provider for instruction and guidance.

Please do not hesitate to call with any questions you might have.

Respectfully,

Al Steer
Compliance and Enforcement Manager
North Coast Unified AQMD

NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT
2300 Myrtle Avenue, Eureka, CA 95501
Phone (707) 443-3093 Fax (707) 443-3099

February 24, 1999

Mr. Gary Leonard, Plant Manager
Ultrapower 3
PO Box 1158
Blue Lake, CA 95525



Dear Mr. Leonard:

Attached is an accounting of excess visible emissions related to the failure of various boiler steam tubes. It appears there have been eight such instances over the past two years which seems abnormal when compared to other such boilers in our area.

The District has utilized our Breakdown Rule, 540, to provide an exemption for many of these episodes, however our policy on breakdowns only allows five such incidents within a two year period. Once the episodes account for more than five instances, then the District is required to take enforcement action. Prior to taking action in this regard, we would like to know what Ultrapower believes is the cause of such a high number of these tube failures, and what actions are being taken to reduce these occurrences.

If you would like to discuss this matter, please call to make arrangements for a meeting.

Sincerely,

Wayne Morgan
Air Pollution Control Officer

Enclosures

settlement/ultrapower letter re tube leaks

Boiler Tube Leak

Boiler tube leak	02/13/99	11:41:00	2.2
Boiler tube leak	01/24/99	09:29:00	2.4
Boiler tube leak	12/14/98	23:47:00	7.9
Water tube leak	06/17/98	17:00:00	4.3
Boiler tube leak	05/29/98	01:36:00	1.3
Tube leak at the economizer	05/24/98	05:36:00	4.9
Steam tube leak	08/22/97	14:08:00	0.6
Boiler tube leak	06/30/97	14:54:00	0.2

Soot Blower

Blue gas path plugging at the superheater section	07/03/98	13:28:00	3.2
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Gas Condenser

Main condenser-after condenser has a leak	02/23/98	14:04:00	2.2
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Startup

Startup	11/02/98	08:00:00	16.4
Planned startup	09/26/98	23:00:00	3.7
Planned startup	09/13/98	15:00:00	2.8
Planned startup	08/23/98	23:36:00	2.0
Scheduled startup	08/17/98	02:46:00	4.6
Startup	03/16/98	07:44:00	6.3
Startup after power failure	11/20/97	03:41:00	0.3
Startup	11/10/97	20:23:00	0.3
Startup	09/09/97	04:56:00	0.3
Startup	08/24/97	09:56:00	0.3
Startup	07/04/97	01:00:00	0.3
Startup	04/19/97	01:06:00	0.3

Shutdown

Plant shutdown	10/11/98	08:00:00	0.3
Planned shutdown	09/25/98	00:00:00	1.3
Planned shutdown	09/13/98	07:56:00	0.3
Planned shutdown	08/21/98	21:52:00	1.3
Scheduled shutdown	08/14/98	22:00:00	0.3
Shutdown	10/31/97	23:47:00	0.3
Shutdown at PGS request	07/13/97	05:12:00	0.3
Shutdown for 2 weeks	04/05/97	00:29:00	0.3

Cyclone plugged

Spill of fuel dryer	07/06/98	16:10:00	0.3
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Ambient Air Quality Standards

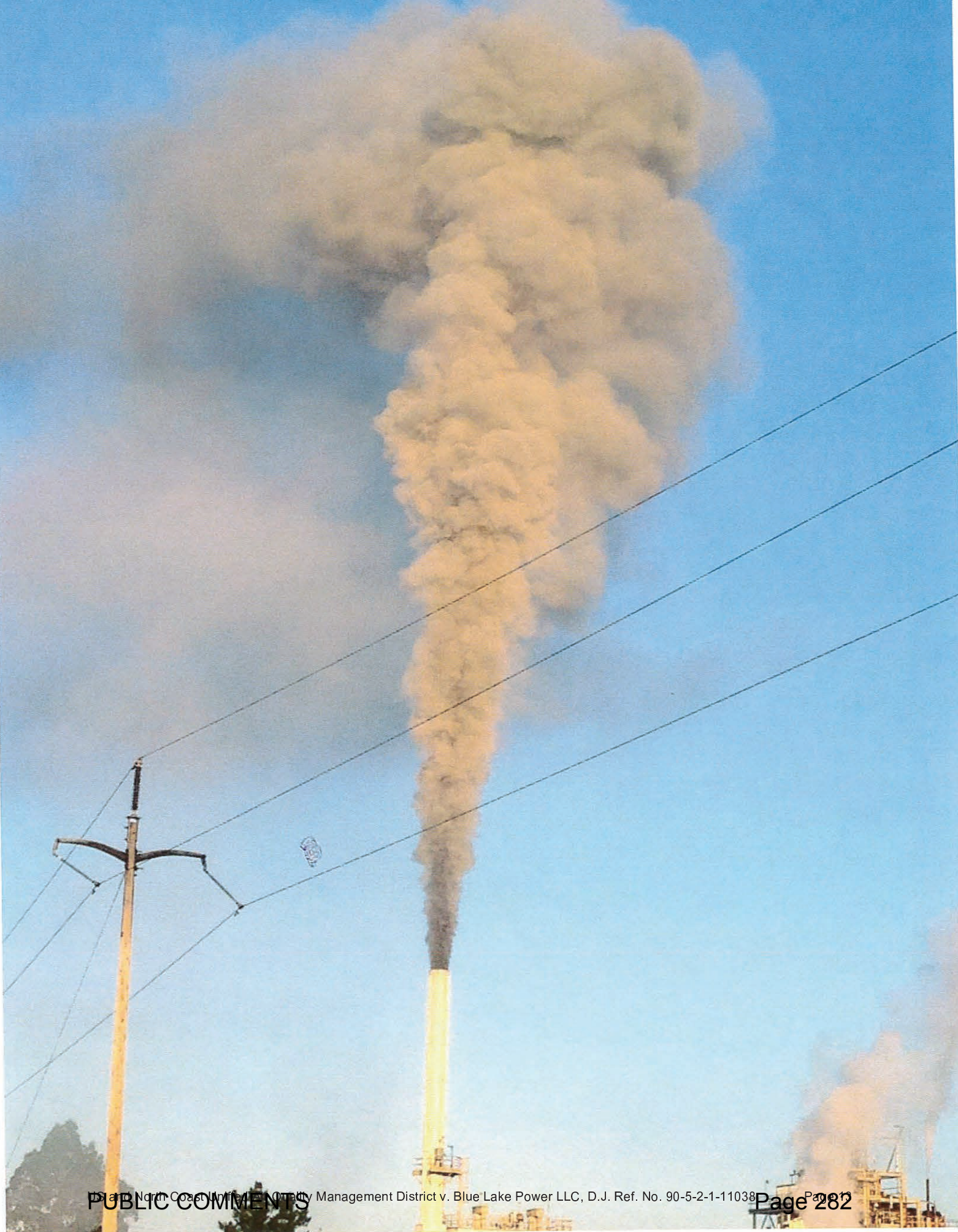
Pollutant	Averaging Time	California Standards ¹		National Standards ²		
		Concentration ³	Method ⁴	Primary ^{3,5}	Secondary ^{3,6}	Method ⁷
Ozone (O ₃) ⁸	1 Hour	0.09 ppm (180 µg/m ³)	Ultraviolet Photometry	—	Same as Primary Standard	Ultraviolet Photometry
	8 Hour	0.070 ppm (137 µg/m ³)		0.070 ppm (137 µg/m ³)		
Respirable Particulate Matter (PM ₁₀) ⁹	24 Hour	50 µg/m ³	Gravimetric or Beta Attenuation	150 µg/m ³	Same as Primary Standard	Inertial Separation and Gravimetric Analysis
	Annual Arithmetic Mean	20 µg/m ³		—		
Fine Particulate Matter (PM _{2.5}) ⁹	24 Hour	—	—	35 µg/m ³	Same as Primary Standard	Inertial Separation and Gravimetric Analysis
	Annual Arithmetic Mean	12 µg/m ³	Gravimetric or Beta Attenuation	12.0 µg/m ³	15 µg/m ³	
Carbon Monoxide (CO)	1 Hour	20 ppm (23 mg/m ³)	Non-Dispersive Infrared Photometry (NDIR)	35 ppm (40 mg/m ³)	—	Non-Dispersive Infrared Photometry (NDIR)
	8 Hour	9.0 ppm (10 mg/m ³)		9 ppm (10 mg/m ³)	—	
	8 Hour (Lake Tahoe)	6 ppm (7 mg/m ³)		—	—	
Nitrogen Dioxide (NO ₂) ¹⁰	1 Hour	0.18 ppm (339 µg/m ³)	Gas Phase Chemiluminescence	100 ppb (188 µg/m ³)	—	Gas Phase Chemiluminescence
	Annual Arithmetic Mean	0.030 ppm (57 µg/m ³)		0.053 ppm (100 µg/m ³)	Same as Primary Standard	
Sulfur Dioxide (SO ₂) ¹¹	1 Hour	0.25 ppm (655 µg/m ³)	Ultraviolet Fluorescence	75 ppb (196 µg/m ³)	—	Ultraviolet Fluorescence; Spectrophotometry (Pararosaniline Method)
	3 Hour	—		—	0.5 ppm (1300 µg/m ³)	
	24 Hour	0.04 ppm (105 µg/m ³)		0.14 ppm (for certain areas) ¹⁰	—	
	Annual Arithmetic Mean	—		0.030 ppm (for certain areas) ¹⁰	—	
Lead ^{12,13}	30 Day Average	1.5 µg/m ³	Atomic Absorption	—	—	High Volume Sampler and Atomic Absorption
	Calendar Quarter	—		1.5 µg/m ³ (for certain areas) ¹²	Same as Primary Standard	
	Rolling 3-Month Average	—		0.15 µg/m ³		
Visibility Reducing Particles ¹⁴	8 Hour	See footnote 13	Beta Attenuation and Transmittance through Filter Tape	No National Standards		
Sulfates	24 Hour	25 µg/m ³	Ion Chromatography			
Hydrogen Sulfide	1 Hour	0.03 ppm (42 µg/m ³)	Ultraviolet Fluorescence			
Vinyl Chloride ¹²	24 Hour	0.01 ppm (26 µg/m ³)	Gas Chromatography			

See footnotes on next page ...

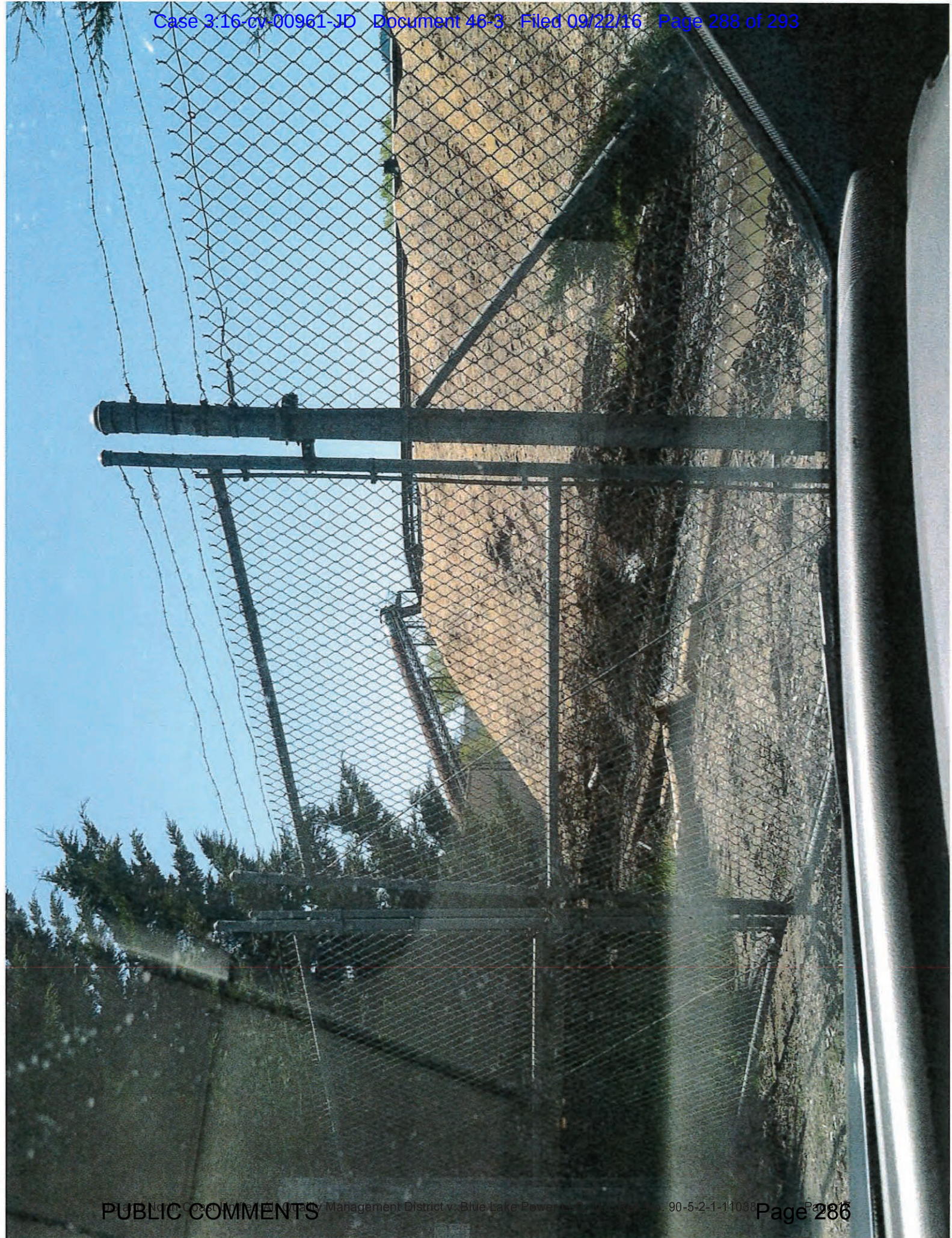
For more information please call ARB-PIO at (916) 322-2990

California Air Resources Board (10/1/15)













From: Emily Walter < >
Sent: Saturday, April 02, 2016 4:54 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: Blue Lake Power Consent Decree

Assistant Attorney General
United States Department of Justice – ENRD
P.O.Box 7611
Washington, D.C. 200444-7611

Re: United States and North Coast Unified Air Quality Management District v. Blue Lake Power, LLC, Civil Action No. 3:16-cv-00961

Dear Attorney General,

I'm a resident of Blue Lake that lives with my family, including a 2 year old, within ½ a mile of the Blue Lake Power, LLC. (BLP) cogeneration biomass power plant. I am disappointed with the outcome of the Department of Justice (DOJ) decision concerning the operations at BLP. Since 2010, BLP has been operating with an inappropriately issued Title V Permit to Operate (TITLE V PTO), and has amassed a number of alleged violations directly related to their operations at the power plant. The recent decision handed down by the DOJ marginalizes public health and safety regarding the operation at BLP and is offensive and prioritizes a business with a losing track record over the public interest. I do not support the current decision

Throughout the course of reopening BLP, there have been a number of issues that have directly affected the safety and health of me and my family, including:

- thick, dark smoke releases from the power plant stack at random times, day and night
- foul odors
- ash and dust that impacts homes, cars, fruit and vegetable gardens and general enjoyment of one of the most accessible and popular recreation trails and river bars/swimming holes on Mad River
- excessive noises at all hours

These health and safety concerns and very real to me and my family. When my daughter was less than a year old she was having breathing complications. She had a constant wheeze that sent us to walk-in clinics on several occasions. One of the doctors we consulted with asked us if we lived near any wood mills? This question horrified me. I had never considered that BLP could cause physical harm to my daughter. I can't say if BLP is the cause of my daughter's breathing complications, but I also can't say that it's not the cause. We live within half a mile of the powerplant and our garden and cars have been covered in ash from BLP. Knowing that BLP has many violations, I don't trust them. We are real lives and real people that matter. I hope money is not the deciding factor here but that the health and safety of a great community are a true priority.

For years, BLP has been allowed to flout the laws of the Federal Clean Air Act (CAA), operating without or under an invalid permit, while collecting nearly \$5 million in Federal subsidies, and defaulting on leases and utility bills to the City of Blue Lake on multiple occasions. Currently, BLP is in arrears to the tune of \$140,000 to the City of Blue Lake on past due bills, and is in debt to their direct oversight agency, the North Coast Unified Air Quality Management District (NCUAQMD) to the tune of \$30,000. Enough is enough!

Prior settlement agreements and fines up to \$1.3 million levied against BLP that have been fruitless. BLP claims vague "hardships," which allows them to continue to operate as a willful and egregious polluter without installing additional pollution controls to bring their operation into compliance with the CAA, or pay even a small fraction of the assessed fines. Instead, with the assistance of the NCUAQMD, BLP has attempted to modify the terms of their outdated and invalid permit to allow business-as-usual polluting without punishment.

The history of operation at BLP has been well documented as having many negative impacts on the health and safety of the Blue Lake community and visitors that come to recreate. Therefore, the only way to protect the public interest in this situation is to shut down the operation at BLP permanently. There are other newer, cleaner methods of producing electricity that can and should be implemented, and time and time again, BLP has proven that their operation is negatively impacting public health and safety. Additionally, with the track record that both the EPA and NCUAQMD have shown in enforcing current regulations, I have no confidence that the provisions outlined in the Consent Decree will be enforced. EPA, NCUAQMD, and BLP have had enough chances, and they all have shown that the operations at BLP operate in opposition to the public interest.

I want a healthy and safe future for my family. The time has come to protect the public interest of Blue Lake and shut down BLP.

Respectfully,
Emily Walter

From: Den Whitcomb < >
Sent: Saturday, April 02, 2016 12:27 AM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: United States and North Coast Unified Air Quality Management District v. Blue Lake Power LLC, D.J. Ref. No. 90-5-2-1-11038

I am surprised at the small fine. It's like a pat on cheek of a serial offender. In my opinion Blue Lake Power is deliberately taking advantage of the Gov't subsidies for a marginal, at best, brown power plant. The fact that they also take advantage of a small city by not paying rent to the City of Blue Lake, while using the city property to process wood for a second business by the same owner shows me that this owner is dishonest. He has earned these fines for serial violations and should pay the maximum allowed, not a miniscule amount. I am outraged that I may end up paying higher taxes when this scammer wrings the maximum from this property and abandons the plant for city cleanup.

Dennis Whitcomb



Virus-free. www.avast.com

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Exhibit 4

United States' Response to Public Comments

UNITED STATES' RESPONSE TO COMMENTS ON THE CONSENT DECREE

The Department of Justice (“DOJ”) held a 30-day comment period on the proposed Consent Decree. 81 Fed. Reg. 11,591 (March 4, 2016). The comment period ran from March 4, 2016 until April 4, 2016. The Department of Justice received 27 letters and emails from members of the public. The majority of these letters were slight variations on a standard form letter, which raised concerns and experiences with the Facility’s past operations and requested that the Department of Justice shut down the Facility completely.

Almost all the commenters expressed concern that the amount of the civil penalty was inadequate. Many of the commenters also raised questions about the financial status of Blue Lake, its ability or intention to comply with the terms of the proposed Consent Decree, and whether the Consent Decree will ensure compliance. In addition, many commenters noted that the Facility was currently not operating and had not operated since May 2015. The commenters objected that the Facility would be able to recommence operations prior to implementing the measures in the proposed Consent Decree.

In addition to the form letters, the United States received comments from the Blue Lake Rancheria (the “Tribe”), a federally-recognized tribe whose lands are located adjacent to the Facility. The Tribe objected to the level of consultation with the Tribe regarding the settlement, and also provided specific concerns regarding the injunctive relief provided by the proposed settlement. The U.S. Bureau of Indian Affairs also submitted a comment on behalf of the Tribe. Approximately four other commenters also provided in-depth comments on the terms of the proposed Consent Decree, including timing, proposed emission limits, and compliance procedures.

The following is the response of DOJ and the U.S. Environmental Protection Agency (“EPA”) to the concerns raised by the commenters. Because many of the commenters raised the same issues, this document first organizes the types of comments into overarching categories, then further narrows comments into related issue groups (indicated by Issue #) and responds to those comments together. A table at the end of this document indicates which individual comments are addressed by each issue number. The responses in this documents are supported by the declarations of Mark Sims, Shaun Burke, Laura Ebbert, Nancy Diamond, and Brian Wilson – all filed in support of the United States’ Motion to Enter the Consent Decree.

I. COMMENTS RELATED TO THE CIVIL PENALTY

Issue #1: Almost every commenter stated that the civil penalty (or fine) was too low, arguing that the penalty should be closer to the statutory maximum penalty. The Tribe specifically commented that the penalty did not comply with EPA’s “Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991 (“CAA Penalty Policy”) and Appendix I thereto, the “Penalty Policy for Violations of Certain Clean Air Act Permit Requirements for the Construction or Modification of Major Stationary Sources of Air Pollution” (“Permit Penalty Policy”). In particular, the Tribe’s comments argued that the penalty amount is insufficient to provide deterrence, does not take account for willfulness or negligence by BLP, and fails to recover any economic benefit of non-compliance realized by BLP. At least one commenter compared the penalty in this case to penalties recovered against another biomass facility.

Response: The Clean Air Act requires the United States or the court, as appropriate, to take into consideration certain penalty factors to determine the amount of a civil penalty to be assessed. One of these factors is “the economic impact of the penalty on the business.” 42 U.S.C. § 7413(e). Other factors include, as the Tribe identified, deterrence, economic benefit of non-compliance, and seriousness of violation (which would include willfulness or negligence).

EPA has issued and administered penalty policy and guidance over the decades to ensure fair and equitable treatment through the assessment of penalties that are both consistent and flexible. Specifically, EPA’s “[Uniform] Policy on Civil Penalties,” EPA General Enforcement Policy #GM – 21, dated February 16, 1984, at 5, states, “[A]ll preliminary deterrence amounts should be increased or mitigated for the following factors to account for differences between cases: . . . Ability to pay.” The Permit Penalty Policy, at 3, references the CAA Penalty Policy for how to make appropriate adjustments to the preliminary deterrence amount. The CAA Penalty Policy, in the “Ability to Pay” section, states that “[t]he Agency will generally not request penalties that are clearly beyond the means of the violator.” CAA Penalty Policy at 20; *see also* “A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA’s Policy on Civil Penalties, EPA General Enforcement Policy #GM – 22, dated February 16, 1984, at 23. Under EPA’s “Guidance on Determining a Violator’s Ability to Pay a Civil Penalty,” #GM – 56, dated December 16, 1986 (“Ability to Pay Guidance”), “EPA considers the costs of attaining compliance when applying the ability to pay factor to a civil penalty calculation.”¹

In this case, BLP claimed that it was financially unable to pay a penalty and submitted financial documentation including, but not limited to, tax returns and balance sheets in support of its claim. *See* Declaration of Mark Sims (“Sims Dec”) ¶ 17. A qualified financial analyst reviewed those documents and confirmed to DOJ and EPA that BLP had no ability to pay a civil penalty beyond that in the proposed Consent Decree. *Id.*

In each case, the United States must weigh the statutory penalty factors and the facts of that case in order to determine the appropriate penalty. For that reason, a penalty assessed in one case is not necessarily relevant or informative to the penalty in another case. The case against another biomass facility mentioned by one commenter involved different claims, facts, and circumstances than this case. (*United States et al v. Ampersand Chowchilla Biomass, LLC*, Case Number: 1:11-cv-00242-LJO-DLB (E.D. Cal.) (Consent Decree entered April 25, 2011)).

Here, the United States weighed the statutory penalty factors, including deterrence, gravity (including willfulness or negligence), and economic benefit, and its financial analysis against the evidence and risks of litigation, including the uncertainty regarding the outcome at trial and further delay in securing injunctive relief to reduce emissions from the Facility even if the United States ultimately prevailed at trial. The United States also considered the cost to BLP of installing the required injunctive relief, which was initially estimated to be \$700,000. Sims Dec.

¹ See the following website link for the enforcement guidance and policies cited in this section: <https://www.epa.gov/enforcement/policy-guidance-publications>.

¶ 18. Given the revisions to the Consent Decree, the United States now estimates the cost of the injunctive relief to be approximately \$800,000. *Id.* The Consent Decree favors expenditures on pollution control over a higher penalty amount, which is a reasonable approach where the defendant has limited financial resources. In litigating to judgment, the United States might or might not secure a larger civil penalty against BLP; but even if a larger sum were secured, payment may not have been received for years while the case was litigated, during which time the Facility would not be required to install pollution controls. Weighing all these factors, the proposed consent decree provides a fair and reasonable resolution of these matters.

Issue #2: Some commenters raised concerns that the United States was not considering the finances of companies with the same owners of BLP or the personal finances of BLP's owners.

Response: The United States has not brought an action against any individual or entity other than BLP, nor have such persons received a covenant not to sue. Therefore, in assessing BLP's ability to pay a civil penalty, it was appropriate to assess the financial situation of the defendant only.

II. COMMENTS RELATED TO PROCESS AND REGULATORY AGENCIES

Issue #3: The Tribe commented that the EPA, in negotiating the Consent Decree, failed to act in accordance with trust responsibilities owed to the Tribe. The Tribe commented that EPA did not consult with the Tribe and that the Tribe should have been included in the negotiation of the terms of the Consent Decree.

Response: DOJ and EPA conducted significant outreach to the Tribe regarding the Consent Decree and the Facility. As the Tribe's comments reflect, on September 22, 2015, representatives of the Tribe met with EPA to discuss ongoing concerns with the Facility, including concerns with the permitting process. Declaration of Laura Ebbert ("Ebbert Dec.") ¶¶ 3-7. Counsel representing DOJ and EPA in this matter participated in the meeting, listened to the Tribe's concerns, and answered questions regarding the allegations identified in EPA's March 2014 Notice of Violation to Blue Lake Power. *Id.* ¶¶ 4-6. EPA and DOJ explained that the United States was currently in discussions with the company regarding those allegations, and offered that if a settlement were lodged with the Court, DOJ would provide those documents to the Tribe upon lodging so that the Tribe could provide comments on any proposed settlement. *Id.* ¶ 6.

After the September 2015 meeting, EPA Region 9 received documentation provided by the Tribe of its concerns, including pictures and notes of meetings.² Sims Dec. ¶ 20. The United States reviewed those materials and considered the Tribe's concerns prior to concluding negotiations on the first proposed Consent Decree and lodging it with the Court. *Id.* On February 26, 2016, the day the first proposed Consent Decree was lodged, the United States shared the proposed Consent Decree with the Tribe in order for the Tribe to have the full public comment

² The majority of the documentation submitted to EPA at or after the September 22, 2015 meeting was submitted as a public comment on the Consent Decree to DOJ by Mr. Jacobs Pounds (*See* Exhibit 1).

period to formulate and provide comments. Ebbert Dec. ¶ 8. At that time, DOJ and EPA also offered to meet with the Tribe in order to answer any questions regarding the terms of the Consent Decree and the Consent Decree process. *Id.* On March 23, 2016, representatives of DOJ and EPA traveled to Blue Lake, California to meet with members of the tribal government prior to the close of the comment period. Sims Dec. ¶ 21.

To the extent possible, the Tribe's concerns expressed in the September 22, 2015 meeting were addressed in the first proposed Consent Decree. First, the United States was aware from the start of negotiations with the Facility that the local community had concerns regarding particulate matter deposition from the Facility. Sims Dec. ¶¶ 6, 9. Reduction of particulate matter emissions from the Facility, including fugitive dust, is a primary goal of the Consent Decree. *See* Consent Decree, ¶¶ 16, 18, 19, 25-27, 33. Second, prior to the conclusion of negotiations on the Decree, the United States received and considered documentation of the Tribe's concerns regarding the Facility. Sims Dec. ¶ 20.

Following the lodging of the first proposed Consent Decree, the United States reviewed comments made by the Tribe and other commenters and the Parties revised the Consent Decree in part to address comments where appropriate. Sims Dec. ¶¶ 22-27. First, in response to comments that injunctive relief should be completed prior to restart of the Facility, the revised Consent Decree expedites the submission of the Boiler Engineering Study Protocol (which controls timing for the entire CD), the Fuel Management Plan, and the Fugitive Road Dust Plan. *See* Consent Decree, ¶¶ 12, 25, and 26. These plans were submitted to EPA and the District on August 19, 2016 and August 23, 2016. Sims Dec. ¶¶ 33-34. The United States and the District provided those plans to the Tribe on September 12, 2016, in order to provide an opportunity for the Tribe to comment on the plans prior to approval. Sims Dec. ¶ 35. Second, two of the Tribe's three comments requested better particulate matter emission monitoring provisions, including an earlier stack test. (See Response to Issue #14). The proposed Consent Decree now requires that BLP conduct a stack test for particulate matter within 45 days of restart. Consent Decree, ¶ 33.a. Finally, the Tribe's comments noted the history of issues with the Facility's electrostatic precipitator ("ESP"), the primary pollution control equipment for particulate matter from the boiler. Given the concerns of the Tribe (and other commenters) regarding particulate matter deposition, as well as BLP's disclosure that the ESP needed repair, the proposed Consent Decree now requires that a third party conduct a full technical evaluation of the ESP within 14 days of restart to ensure the ESP is properly working, and BLP must promptly address any deficiencies identified by the evaluation. Consent Decree, ¶ 16.c.

Though we agree that the United States has an ongoing trust relationship with the Tribe, we disagree that the EPA or DOJ has acted contrary to any specific trust obligation to the Tribe or its members, including with respect to tribal participation in settlement negotiations with Blue Lake. Under EPA's policies, if a tribal government is not a party to an enforcement action (as was the case here throughout negotiations), EPA may discuss with the tribe public information such as official court filings or notices of violation, but must avoid the release of privileged or otherwise sensitive enforcement information that could inappropriately jeopardize settlement negotiations

and enforcement options.³ Further, the notice of violation at issue here is an enforcement matter that EPA referred to the U.S. Department of Justice (DOJ). The Department of Justice Policy on Tribal Consultation states that DOJ will consult on policies that have tribal implications but makes clear that “policies” does not include matters (like the one here) that are the subject of investigation, anticipated or active litigation, or settlement negotiations.⁴

As detailed above, DOJ and EPA provided public information to the Tribe regarding the Decree, met with the Tribe to discuss the notice of violation and the Facility, considered the Tribe’s concerns and information prior to signing and lodging the proposed Consent Decree, made an effort to ensure the Tribe was able to take full advantage of the public comment process for the Consent Decree, met with the Tribe after the comment period was closed and before negotiations on the revised Consent Decree were concluded, and made revisions to the Consent Decree based, in part, on the Tribe’s comments.

Issue #4. A number of commenters alleged that the District was biased or otherwise inclined to favor Blue Lake Power and keep the Facility open. Several commenters, including the Tribe, further alleged that counsel for the District had a conflict of interest in the matter because she is also City Attorney for the City of Blue Lake, which receives rent from Blue Lake Power. The Tribe further argued that, due to this bias, it cannot depend on the District for oversight and processing of any testing protocol.

Response: The United States refers commenters to the declaration of the District Counsel regarding the factual allegations of bias or conflict of interest. *See* Declaration of Nancy Diamond (“Diamond Declaration”) ¶¶ 3-12; Declaration of Brian Wilson (“Wilson Declaration”) ¶ 18. The United States was centrally involved in the negotiation of all the terms of the Consent Decree and there is no allegation of bias or a conflict of interest on the part of the United States. Sims Dec. ¶ 28. Furthermore, as set forth in this response, the Motion, and the supporting declarations, the United States believes the substantive provisions are adequate and reasonable.

Issue #5: The Tribe commented that the District and the United States have counseled the Tribe to report any infractions that the Tribe observes, so that the regulatory agencies could

³ EPA Policy on Consultation and Coordination with Indian Tribes, dated May 4, 2001, <https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>; Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy, dated January 17, 2001, <https://www.epa.gov/enforcement/transmittal-final-guidance-enforcement-principles-outlined-1984-indian-policy-january-17>; Memorandum, Restrictions on Communicating with Outside Parties Regarding Enforcement Actions, from Granta Y. Nakayama, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance, to Addressee, dated March 6, 2006, <https://www.epa.gov/enforcement/restrictions-communicating-outside-parties-regarding-enforcement-actions>.

⁴ See Department of Justice Policy on Tribal Consultation, DOJ Policy Statement 0300.01 at 4 (Aug. 29, 2013); www.justice.gov/sites/default/files/otj/docs/doj-memorandum-tribal-consultation.pdf

investigate. The Tribe noted that the regulatory agencies must ensure adequate monitoring and compliance activities and should not depend on the Tribe.

Response: The United States agrees that regulatory agencies must ensure adequate monitoring and compliance activities. The United States believes that the Consent Decree, and BLP's Title V Permit, require a number of monitoring and compliance activities, including reporting, that the United States will primarily depend on when assessing BLP's compliance status. However, as the United States noted to the Tribe in the March 23, 2016 meeting, in the event the Tribe or others in the community observe non-compliance at the Facility or have concerns about the Facility's non-compliance, they should feel free to contact the enforcement staff at EPA Region 9 involved in this matter. Sims Dec. ¶ 21.

Issue #6: The Tribe, and other commenters, stated that the District, California EPA, and the U.S. EPA cannot be relied upon to regulate the Facility and, therefore, DOJ should litigate this case.

Response: Congress has authorized EPA, in cooperation with states, to implement and enforce the Clean Air Act. *See* 42 U.S.C. § 7401 *et seq.* Were this case to be litigated, the United States, acting on behalf of EPA, would request relief that would be largely overseen by EPA.

Issue #7: The Tribe stated that the Tribe has met, corresponded with the District, California, EPA, and DOJ and that either the agencies have not responded, have not responded timely, and/or meetings have been unproductive. In particular, the Tribe stated that it has reached out to an EPA Region 9 Air Permitting contact regarding the renewal process for BLP's Title V permit and has not received a response for two years.

Response: The United States cannot speak to the interactions between the Tribe and other regulatory agencies, however, it refers commenters to the declarations filed by the District. *See* Diamond Dec. ¶¶ 3-12; Wilson Dec. ¶ 15. As documented elsewhere in this document and in the motion, both DOJ and EPA representatives have met with the Tribe regarding this Facility on numerous occasions in the last year. EPA Region 9 permitting staff attended and answered questions regarding BLP's Title V permit and the permit renewal process during the September 22, 2015 meeting with the Tribe. Ebbert Dec. ¶ 7. In addition, Region 9 permitting staff held a telephone meeting with the Tribe on March 29, 2016 regarding the permit process. Ebbert Dec. ¶ 9.

Issue #8. One commenter expressed the opinion that the City of Blue Lake and Rancheria should receive all reports and plans submitted pursuant to the proposed Consent Decree.

Response: The District has agreed to make all approved plans and semi-annual reports required to be submitted by BLP to EPA and the District under the Consent Decree available to the public on its website. Wilson Dec. ¶ 25; *See* the following website to the District's website containing the Complaint and original proposed Consent Decree:
<http://www.ncuaqmd.org/index.php?page=major.source.blp>.

III. COMMENTS RELATED TO STRINGENCY OF THE INJUNCTIVE RELIEF

Issue #9. A number of commenters requested that DOJ shut the Facility down permanently. Many commenters stated that the Facility should be shut down or the restart prevented because it has an inappropriately-issued or “illegal” permit. Other commenters argued that the Consent Decree should prevent the facility from restarting until BLP implements the injunctive relief required by the Consent Decree.

Response: This comment essentially presumes that the Defendant has already been found liable for violating the Clean Air Act. However, the Decree is a settlement, and all settlements necessarily involve some compromise, with parties typically settling for something other than what they might have sought if they prevailed at trial. Moreover, here, in May 2015, while the parties were in negotiations, BLP voluntarily ceased operations. Sims Dec. ¶ 19. Neither the United States nor the District required this voluntary shut down. *Id.* In a settlement of Clean Air Act violations, it is reasonable to include a compliance schedule whereby the setting defendant is given some time to design and install pollution control. Sims Dec. ¶ 5; Burke Dec. ¶ 7 (both noting that many similar settlements include such schedules). Although BLP voluntarily stopped operating for its own business reasons, that fact does not change the fundamental nature of the Decree, which is by its very nature a compromise. Although EPA’s March 2014 Notice of Violation and the Complaint in this action allege that BLP’s restart, and subsequent operation without a permit that incorporated PSD requirements, violated the Clean Air Act, these allegations have not been proven in an administrative or judicial forum.

Here, it would be infeasible for BLP to comply with certain terms of the proposed Consent Decree while idle, because the boiler must be operating during the Engineering Boiler Study required by Paragraph 13 of the Consent Decree in order to have enough information to order and purchase the control equipment in order to properly design the pollution control equipment on an existing boiler. Sims Dec. ¶ 47. Additionally, the full technical evaluation of the ESP cannot be carried out until the Facility is operating. Sims Dec. ¶ 42.

That said, the revised Consent Decree expedites the injunctive relief provisions of the Consent Decree that can be implemented prior to restart of the Facility. BLP has already submitted the Boiler Engineering Study Protocol (¶ 12 of the CD), the Fuel Management Plan (¶ 25), and the Fugitive Dust Road Plan (¶ 26) to EPA and the District Sims Dec. ¶ 33-34. As soon as the Fuel Management and Fugitive Dust Road Plans are approved, BLP must comply with their requirements. Consent Decree, ¶ 34. Finally, the Consent Decree was revised to require that BLP submit recommended operating parameters for its ESP to EPA and the District prior to restart of the Facility and comply with those parameters during operation until the ESP Optimization Plan is approved. Consent Decree, ¶ 16.a. This should ensure that BLP is implementing the key steps required by the ESP Optimization Plan to minimize PM₁₀ emissions from the boiler from restart.

Issue #10: Five commenters stated that the timing for the injunctive relief in the Consent Decree is too lenient. In particular, commenters noted that emission limits would not be effective until 22 months after the Decree.

Response: As noted elsewhere, the revised Consent Decree expedites certain timelines under the Consent Decree, including for submission of the Boiler Engineering Study Protocol. The approval of the Boiler Engineering Study Protocol sets the timing for the Boiler Engineering Study, as well as the eventual installation of the SNCR and improved OFA, so this change will expedite all the injunctive relief timelines under the Consent Decree. Consent Decree, ¶¶ 13-15, 18-20. The timing for the ESP Optimization Plan submission is also expedited to be required within 60 days of restart (rather than within 90 days of entry of the CD). Consent Decree, ¶ 16.d.

Under the Consent Decree, BLP has 12 months following EPA's approval of the Boiler Engineering Study to order, install, and begin operating the SNCR and improved OFA system. Consent Decree, ¶ 15. During that time, the following steps must be taken: soliciting quotations, selecting a vendor, and placing an order for the SNCR and OFA; engineering, designing, and fabricating such equipment; shipping the equipment to the Facility; and completing the installation, startup, and optimization process for the new equipment. The United States believes the time permitted for the process is reasonable, and indeed ambitious. Sims Dec. ¶ 48; Burke Dec. ¶ 8. Furthermore, the Consent Decree includes milestones, such as ordering the equipment, in order to ensure that BLP is taking all necessary steps to ensure the equipment is installed and operated in accordance with the timeframes in the Consent Decree. *See* Consent Decree, ¶¶ 14, 15, 52.

Although the emission limits required by the Consent Decree will not be finalized immediately, the Consent Decree requires BLP to take steps to reduce its emissions immediately. First, BLP is required to operate its pollution control equipment in accordance with good air pollution control practices for minimizing emissions at all times the boiler is operating. Consent Decree, ¶17. That means, from restart, BLP is required to operate its ESP at all times in accordance with the requirements of the Consent Decree (including the recommended operating parameters and, once approved, the ESP Optimization Plan). Once the SNCR and improved OFA systems are installed (within 12 months of approval of the Boiler Engineering Study), BLP must operate those systems at all times as well. Consent Decree, ¶ 15. Even during the one-year demonstration period, should BLP fail to operate and maintain its control equipment in accordance with these requirements, BLP will be in violation of the Consent Decree and subject to stipulated penalties. Consent Decree, ¶¶ 20, 51. The United States believes that continuous operation of this equipment will result in significantly reduced emissions from the Facility immediately. Sims Dec. ¶¶ 45, 46, 50. Additionally, it should be noted that BLP will remain subject to its currently-permitted emission limits throughout the demonstration period. Sims Dec. ¶ 12.

Issue #12. One commenter stated that the petition process for alternative emission rates in the CD is inappropriate. A number of other commenters objected that the demonstration period, which applies for a year after installation of the SNCR and improved OFA systems, permits the Facility to operate without any emission limits in the meantime.

Response: First, as to the petition process, the United States believes such a process, which it has used in similar cases, is an appropriate compromise in light of Defendant's expressed uncertainties related to retrofitting the pollution controls on the existing boiler. Sims

Dec. ¶ 51; Burke Dec. ¶ 9. Unlike new boilers that have pollution controls incorporated into their engineering design from the beginning, the efficacy of add-on or updated pollution controls retrofitted on existing boilers can be less certain, because of, for example, space or other physical constraints associated with the existing unit. Sims Dec. ¶ 52. After evaluating the boiler configuration in this case, EPA concluded that it could be difficult to definitively predict achievable emission rates from this unit. *Id.* ¶ 53. A twelve-month demonstration period is appropriate to determine achievable limits because it provides data regarding performance during all four seasons. Sims Dec. ¶ 56; Burke Dec. ¶ 9.

EPA has a high level of confidence that BLP will be able to meet the emission limits contained in Paragraphs 18 and 19 of the Consent Decree. Sims Dec. ¶ 54. However, should BLP be able to demonstrate to the satisfaction of the United States that it is technically infeasible for BLP to meet one or more of those limits, then BLP may petition for an alternative emission limit. Consent Decree, ¶ 21. BLP must propose the most stringent limit it can practicably achieve, not to exceed the back-stop limits provided in Paragraph 21. EPA has full discretion to approve, disapprove, or approve another final limit based on that proposal. *Id.* ¶ 22.

Second, as to BLP's operation during the demonstration period, throughout the process of implementing the injunctive relief required by the Consent Decree, including the demonstration period, BLP remains subject to the requirements and limitations of its current permit as well as those under the Consent Decree. Sims Dec. ¶ 12. Therefore, at no point will BLP be permitted to operate without any emission limits. Additionally, throughout the demonstration period, BLP is required to continuously operate all installed pollution control equipment, which should mean that actual emissions from the Facility are immediately reduced. Consent Decree, ¶¶ 16, 18, 21; Sims Dec. ¶¶ 45, 50.

Issue #12. Three commenters stated that the averaging period for the NO_x and CO emission limits in the Consent Decree should not be 24 hours, but should retain the 3-hour averaging period in BLP's current permit to operate. The comments expressed concerns that this change relaxed BLP's CO and NO_x emission limits and that the longer averaging period will allow BLP to have short-term spikes in emissions that would be a violation under the Facility's current permit.

Response: The United States notes that nothing under the Consent Decree relieves BLP of its obligation to comply with the terms of its current PTO. Sims Dec. ¶ 12. BLP will be required to comply with all emission limitations to which it is subject.

However, the United States believes that the averaging periods for the emission limits in the proposed Consent Decree are appropriate. First, although the averaging period for the short-term NO_x and CO limits is longer than those in the Facility's current permit to operate, the short-term numerical limits for the Facility are reduced (or no higher with respect to NO_x) from those in the PTO as follows:

	PTO Limit	CD Limit	Backstop CD Limit
NO _x	0.15	0.12	0.15
CO	1.0	0.40	0.55

PM10	0.04	0.02	0.03
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Sims Dec. ¶ 12; Consent Decree, ¶¶ 18, 21. Additionally, the Decree requires BLP to meet an additional annual rolling NO_x limit of 0.10 lb/MMBTU or a backstop annual rolling NO_x limit of 0.125 lb/MMBTU, which safeguards against a higher aggregate level of NO_x emissions. Second, although the numerical backstop CD limit for NO_x is not reduced from the currently-permitted limit, BLP will only be able to petition for such a limit after collecting 12 months of emission data while continuously operating the SNCR and OFA. Consent Decree, ¶ 21. BLP must propose the lowest limit that it can practicably achieve and support such a proposal with data. *Id.* EPA retains sole discretion to approve or disapprove such a limit and will only do so in the event that BLP successfully demonstrates that it is technically infeasible for BLP to meet the primary limits in Paragraph 18 and 19 of the Consent Decree. *Id.* ¶ 22.

Third, the proposed 24-hour averages in the Consent Decree are “rolling” averages, wherein the facility is required to identify an emission rate every hour which incorporates emissions from that hour and the previous 23 hours. Consent Decree, ¶¶ 7, 18-19. The proposed 24-hour rolling averages will require 24 separate compliance determinations. Sims Dec. ¶ 58; Burke Dec. ¶ 10. The use of a rolling average is important because not only does it provide faster recognition of conditions approaching non-compliance but it requires the boiler operator to be more attentive to the emission rates from the unit. Burke Dec. ¶ 11. In comparison, the other two biomass facilities in the North Coast Unified Air Quality Basin, DG Fairhaven and Humboldt Redwood Company each have emission limits based on a 24-hour block averaging time. Sims Dec., Exh. 2.

Fourth, with respect to short-term spikes in emissions that would not be recognized during the longer 24-hour period, any spike in emissions that causes the unit to exceed the emission limit would have an impact on the next 24 hours of emission rates and could cause the unit to be out of compliance for a longer period of time. Sims Dec. ¶ 58; Burke Dec. ¶ 10. Because of this, sources operating under a 24-hour rolling average have a strong incentive to control for short-term spikes in emissions. Burke Dec. ¶ 10. Pursuant to 40 C.F.R. § 60.13(h)(2), BLP can only use emissions from hours when the boiler is operating to calculate the emission average. Sims Dec. ¶ 9. That is, BLP cannot use boiler non-operating hours (when emissions are zero) to lower the 24-hour emission average. *Id.*

Finally, the 24-hour averaging time is an appropriate averaging time for a boiler burning biomass fuel, because these boilers can be expected to have some degree of variability and that variability should not be the driving factor in how the air pollution controls are operated. Burke Dec. ¶ 11.

Issue #13. Two commenters raised specific concerns about past emissions from the Facility during periods of breakdowns, and noted that the Facility had a high number of breakdown events. The commenters stated that the CD should require the recording of emissions during breakdowns, require reporting of breakdowns, limit the number of breakdowns, and require the use of emergency generators during breakdowns.

Response: First, it should be noted that the Consent Decree requires BLP to achieve the emission limits in the Consent Decree, including during periods of breakdown (referred to by EPA as “malfunctions”). Consent Decree, ¶¶ 18 (establishing emission rates with no exception for malfunctions or breakdown conditions).

Additionally, the Facility operates continuous stack monitoring equipment (continuing emission monitoring systems or “CEMS”) to measure the emissions of NO_x and CO at all times, including periods of startup, shutdown, and malfunction (what the commenters refer to as a facility breakdown). BLP must report all periods of startup, shutdown, malfunction of the boiler, reduced to 1-hour periods. ¶ 43.a.vi. of the Consent Decree. Blue Lake must also report excess emissions, and the magnitude of the excess emissions. ¶ 43.a.vii. and viii. of the Consent Decree. In such reports, BLP must, if applicable and feasible, identify the nature and cause of any boiler malfunctions during the periods of excess emissions and to state any corrective actions taken or preventative measures adopted. ¶ 43.a.ix. of the Consent Decree.

The CD also requires Blue Lake to at all times, including periods of startup and shutdown, to the extent practicable, maintain and operate the boiler, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Consent Decree, ¶ 17. With this language, the Consent Decree makes a distinction between excess emissions that are truly caused by breakdowns and excess emissions caused by poor operation and maintenance of the equipment. The United States and the District will therefore be able to analyze excess emission events to determine whether the cause was a true breakdown or was caused for some other reason.

As discussed elsewhere in this response, the Consent Decree does not require the continuous monitoring of other pollutants not the subject of this settlement (SO₂, VOCs, ammonia). *See* Response to Comment 27. The Consent Decree does not address the use or non-use of emergency generators at the Facility as BLP’s use of emergency generators is not a subject of this enforcement action nor is it relevant to the Facility’s compliance with emission limits.

Issue #14. Three commenters, including the Tribe, stated that the particulate matter testing provisions of the CD are inadequate. The comments submitted by the Tribe through their attorneys stated that the Consent Decree should require more frequent particulate matter testing. In this comment, the Tribe also stated that the Consent Decree permitted the Facility to operate for 22 months before the main stack was tested for particulate matter emissions. A separate comment by the Tribe stated that the Consent Decree should require the installation of CEMS to monitor particulate matter emissions from the boiler in real time at joint monitoring stations with the District and EPA, paid for by BLP, at the stack, the fuel storage area, any source of particulate matter emissions at the Facility, at the Facility’s property boundaries, and at various places on the Rancheria. The Tribe and another commenter noted that nightly emissions of particulate matter occur from the Facility, when these emissions cannot be seen.

Response: Regarding the timing of the particulate matter stack testing, the Consent Decree has been revised to require Blue Lake to conduct a PM₁₀ stack test no later than forty-five (45) days following Blue Lake’s restart of operation of the boiler. Consent Decree, ¶ 33. In

addition, the Consent Decree requires Blue Lake to conduct a PM₁₀ stack test within 18 months of EPA's approval of the Boiler Engineering Study and to conduct PM₁₀ stack tests on an annual basis thereafter. Consent Decree, ¶ 33. Regardless of the stack testing requirements under the Consent Decree, the existing District Permit to Operate ("PTO") and Title V Permit require particulate matter testing at least once per calendar year. Sims Dec ¶ 12.

The United States is interpreting the Tribe to be making two separate continuous PM monitoring requests: 1) continuous emission monitoring systems ("CEMS") for particulate matter from the stack; and 2) joint ambient PM monitoring stations in additional locations. As to the first, there has been no showing that particulate matter CEMS equipment is necessary to assure compliance with the particulate matter requirements under the Consent Decree. Rather, additional assurance of compliance can be achieved through continuous monitoring of opacity and ESP operating parameters, which will provide real-time continuous surrogate data of PM emissions.

First, monitoring ESP operating parameters is a surrogate for directly measuring particulate emissions. Sims Dec. ¶ 39, 68. Paragraph 16 of the Consent Decree requires BLP to determine (and submit for approval as part of the ESP Optimization Plan) operating parameters for the ESP (for example, power input, voltages, and currents) that provide confidence that if the ESP is operated in compliance with these parameter, the Facility is meeting its limits. These parameters can be determined using manufacturer specifications or can be based upon the operating parameters recorded during PM emission stack tests that demonstrated compliance with the applicable emission limit. Sims Dec. ¶ 39. Under Paragraph 16.d of the Consent Decree, BLP must submit an ESP Optimization Plan that includes monitoring provisions to obtain and record data in real-time to demonstrate that it is operating its ESP in compliance with the approved operating parameters at all times. CD ¶ 16.d (incorporating the Compliance Assurance Monitoring provisions of 40 C.F.R. Part 64); Sims Dec. ¶ 44. Therefore, the real-time, continuous data demonstrating compliance with the ESP operating parameters will provide confidence that the facility is operating in compliance with its PM₁₀ emission limit at all times, including any night-time operations and between stack tests. Sims Dec. ¶¶ 39, 68.

Second, as the Tribe noted in its letter, under its permit, BLP is required to operate a continuous opacity stack monitor ("COMS") at all times and to meet a 20% opacity limit. Sims Dec. ¶ 12. Opacity measures how much particulate matter in a gas stream "obscures," either through absorption, reflection, or scattering, a beam of light which passes through the gas stream. Sims Dec. ¶ 56. Thus, the higher measured opacity, the higher the particulate matter emissions from the stack (including, but not limited to, PM₁₀). *Id.* BLP collects data from the COMS and submits that data to the District daily. Wilson Dec. ¶ 7. Although data from the opacity monitor does not provide a measurement of PM₁₀ emissions from the stack, it can provide an indication of whether BLP's ESP is properly operating. Sims Dec. ¶ 58.

Finally, the Tribe's request that the company should pay for joint ambient particulate matter monitoring stations in additional locations does not take into account that this Consent Decree is the product of a negotiated resolution of a PSD enforcement action with an entity that has limited resources.

Issue #15. One commenter stated that ammonia testing should take place using a representative sample of wood material being used during the majority of the year and a minimum of one test be conducted during the wet season. The Tribe additionally expressed concern that, based on the inclusion of ammonia testing provisions in the Consent Decree, ammonia emissions from the Facility have historically been a problem.

Response: The provisions in the consent decree relating to ammonia testing are only present to determine whether the SNCR system is working properly. SNCR works in the following manner: the injected urea reacts with water vapor in the flue gas stream to produce ammonia and carbon dioxide. Sims Dec. ¶ 49. The ammonia produced then reacts with nitrogen oxides and oxygen to form nitrogen gas and water vapor. *Id.* Any ammonia that does not react with nitrogen oxides is “ammonia slip.” *Id.* Therefore, the Consent Decree requires Blue Lake to test emissions from its stack for ammonia (NH₃) in order to determine the ammonia slip of the SNCR system and whether the system is working properly. Sims Dec. ¶ 69; Consent Decree, ¶¶ 30, 31 and 32 of the Consent Decree.

As to the commenter’s point regarding the protocol for ammonia testing, under the Fuel Management Plan, BLP will be required to control the moisture content of the fuel entering the boiler at all times. Consent Decree ¶ 25. Therefore, EPA does not believe that testing during the wet season is necessary to account for wet fuel. Furthermore, the CD requires that the ammonia stack tests be done “at conditions representing normal operations,” which would include using a representative fuel sample. *See* Consent Decree ¶¶ 30, 32.

Issue #16. The Tribe, and the Bureau of Indian Affairs, stated that the Consent Decree should require BLP to obtain a new permit from the District that complied with all PSD framework processes. The commenters noted this permit should be acquired prior to restart of the Facility. The Tribe further noted that a new permit would be required regardless, because the changes at the Facility required by the Consent Decree would be “major modifications.”

Response: As with many of the prior comments, this comment essentially presumes that the Defendant has already been found liable, and ignores that the Decree is, at bottom, the product of a negotiated compromise. There has been no finding that the Facility triggered the PSD permitting process. Instead, the parties have settled their claims and, as part of that settlement, the United States has obtained agreement on specific emission limits and the installation of specified pollution control equipment immediately, in lieu of requiring the settling defendant to undergo the full PSD permitting process and BACT determination. Sims Dec. ¶ 5; Burke Dec. ¶ 7. Indeed, even if the United States were to prevail in litigation, determining BACT is a multi-faceted, unit-specific endeavor that takes place as part of the PSD permitting process and it is far from certain what the ultimate result of that process would be. *See* 42 U.S.C. § 7479(3) (providing factors for permitting authorities to consider when determining BACT). By contrast, the Decree efficiently secures real emission reductions through control technology and emission limits.

IV. COMMENTS RELATED TO IMPACTS FROM THE FACILITY ON THE COMMUNITY, INCLUDING THE TRIBE.

Issue #17. A number of commenters, including the Tribe, expressed concerns about fugitive ash and dust from the BLP facility being deposited on nearby homes, gardens, and recreational areas. A few commenters provided pictures of ash deposition or smoke from the stack.

Response: The United States' appreciates the commenters' concerns about the impact of the Facility on the local community. The United States believes that the PM₁₀ emission reductions, as well as reductions of fugitive dust and other particulate, secured by the revised Consent Decree inure to the benefit of the community downwind of the Facility, including the Tribe. Indeed, many provisions in the revised Consent Decree directly address potential sources of fugitive ash and dust deposition.

The revisions to Paragraph 16 of the Consent Decree require, prior to restart of the Facility, the ESP, which controls particulate matter emissions from the boiler, is repaired and is operated by trained employees in a manner to minimize particulate matter emissions. Within 14 days of restarting, a third party must conduct full technical evaluation of the Facility's ESP to confirm that it is fully operational. Further, BLP must implement all recommendations from the evaluation within 30 days. Blue Lake will still be required to submit a more comprehensive ESP Optimization Plan to EPA and the District for approval, however, the timeframe now requires this submission within 60 days of restart of the Facility.

In addition to controlling particulate matter from the boiler, the Consent Decree addresses a number of sources of fugitive dust from the Facility – many of which were specifically identified by commenters. The CD requires Blue Lake to develop both a fuel management plan and a fugitive road dust plan. ¶¶ 25 and 26 of the Consent Decree. The Fuel Management Plan will require BLP to minimize and monitor the moisture content of its fuel, because combustion of wood with a high moisture content is inefficient combustion and a source of higher CO emissions from the boiler. In addition, compliance with the Fuel Management Plan will minimize fugitive dust from other fuel handling activities such as truck unloading, fuel pile handling, fuel transfer operations, and grinding and chipping operations. The Fugitive Road Dust Plan requires measures that are sufficient to prevent any visible dust from leaving the Facility. Among other things, the Fugitive Road Dust Plan will require BLP to remove track-out of dirt and pulverized gravel from trucks exiting the Facility, operate a motorized road sweeper at the Facility whenever track-out or pulverized material is observed, operate water sprinkler system on all unpaved roads on the Facility at least twice per day during the dry season, and perform daily inspections of paved and unpaved roads on the Facility. These plans have already been submitted to EPA and the District for approval. Sims Dec. ¶ 33-34.

Finally, the Consent Decree requires BLP to contribute \$10,000 to the District's wood-burning stove change-out and retrofit program that will reduce PM emissions. Consent Decree, ¶ 41; Wilson Dec. ¶ 23-24. The revised Consent Decree provides that the District will prioritize spending those funds on replacement projects in a 2-mile radius of the Facility, which will directly benefit the communities most impacted by the Facility's emissions. Consent Decree, ¶ 41.

Issue #18. Several commenters expressed concerns about the public health impacts of particulate matter emissions from the BLP facility. In particular, one commenter relayed concerns about her child's breathing complications. Another commenter noted her dog and horse had passed away. Finally, the Tribe commented on the public health impacts of particulate matter, and specifically particulate matter with a diameter of 2.5 (PM_{2.5}) on the elderly and children and noted that the Tribe's membership is largely elderly and children.

Response: EPA recognizes the health concerns of the public and that is one primary reason why EPA regulates emissions from facilities of this type. *See, e.g.* National Ambient Air Quality Standards for Particulate Matter, 78 Fed. Reg. 3086, 3088-89 (Jan. 15, 2013) (discussing health effects of PM_{2.5} in describing revised NAAQS). EPA believes that emissions of PM₁₀, NO_x, and CO, as well as fugitive dust, will be significantly reduced as a result of the injunctive relief, and the mitigation project, required by the Consent Decree. Sims Dec. ¶¶ 45, 50, 63; Wilson Dec. ¶ 20. Although PM_{2.5} is not a pollutant that is the subject of this enforcement action (nor is BLP receiving any covenant not to sue related to PM_{2.5} emissions), the United States does believe that the pollution control requirements (in particular, the ESP Optimization provisions in Paragraph 16) that address PM₁₀ should also result in reductions of PM_{2.5} emissions. Sims Dec. ¶ 40. This is because an ESP controls emissions of PM_{2.5} as well as PM₁₀. Sims Dec. ¶ 40. The Tribe will share in the overall environmental benefits associated with the pollution reductions that will result from the Consent Decree.

Issue #19. The Bureau of Indian Affairs noted that BLP's contribution to the Wood Stove Replacement Program should prioritize replacement of wood stoves in the area directly adjacent to the Facility. The BIA further commented that the mitigation project should involve a larger contribution.

Response: The United States agrees with the BIA's comment that the mitigation project should prioritize replacement in the areas directly impacted by the Facility. Accordingly, the parties revised the Consent Decree to provide that the District would prioritize spending the funds for applicants within a 2-mile radius of the Facility. CD ¶ 41. However, given BLP's finances, the United States believes that it is reasonable to prioritize spending on reducing emission reductions from the Facility in the future, rather than increase spending on mitigating past emissions.

V. COMMENTS RELATED TO BLP'S FINANCES AND INTENT OR ABILITY TO COMPLY WITH CONSENT DECREE

Issue #20. A number of commenters raised concerns about BLP's financial ability and intent to comply with the proposed Consent Decree. Commenters pointed to BLP's outstanding debts to the City of Blue Lake for rent, to the District for permit fees, and to BLP's history of non-compliance.

Response: The United States understands the community's concern regarding the financial ability of BLP to comply with the terms of the proposed Consent Decree. The United States shares that concern. BLP is a relatively small operation, the pollution control equipment

and engineering will be expensive, and BLP has not been operating (or generating income) for over a year. The United States further acknowledges BLP's outstanding debt, although it notes that BLP paid its outstanding permit fees through June 30, 2016 in May. Wilson Dec. ¶ 10. However, even assuming that BLP is in financial difficulty, the United States believes that the best course is to proceed with the Consent Decree, for the reasons below.

First, BLP's recent actions have evinced an intent and ability to perform the Consent Decree requirements. BLP has submitted three required plans to EPA and the District that demonstrate an understanding of the requirements of the Consent Decree and an ability to comply with those technical requirements. Sims Dec. ¶¶ 36; Wilson Dec. ¶ 22. BLP has also represented to EPA that it has purchased equipment to repair the ESP. Sims Dec. ¶ 41.

Second, the United States believes that the provisions of the Consent Decree, and the consequences of non-compliance, provide sufficient enforcement mechanisms to ensure compliance. First, under the Consent Decree, if BLP fails to comply with any of its terms, including meeting deadlines for purchase, installation, and operation of the pollution control equipment or implementation of any of the particulate matter management plans, it will be subject to stipulated penalties under the proposed Consent Decree. *See* Consent Decree, Section IX. The Force Majeure provision of the Consent Decree specifically states that BLP will not be excused from any obligations based on its financial inability to comply with the Decree. CD ¶ 62. Second, if BLP does not comply with the terms of the proposed Consent Decree and stipulated penalties are insufficient to enforce compliance, the United States may return to court to seek sanctions for contempt of a court order. *See* Federal Rule of Civil Procedure 70. Sanctions for contempt of court include penalties, jail time, and whatever equitable relief the Court judges necessary. 18 U.S.C. § 401(3). Should BLP default on any of its obligations under the Consent Decree, the United States will immediately take appropriate steps to ensure compliance. The United States believes it is in the public interest to have an entered Consent Decree, with specific and certain requirements, that provides for enforcement by this Court, rather than to litigate against a financially unstable entity that can continue to operate without the Consent Decree restrictions in the meantime.

Issue #21: The Tribe commented that the Consent Decree should require that BLP provide a financial bond to cover all costs of compliance, penalties, and routine operations for a period of proof of performance, so that in the event of any default, public interest would be served with a substantial payment. The Bureau of Indian Affairs similarly noted that the CD should require that BLP provide a financial bond to cover the costs of compliance with the Consent Decree. In addition, the Tribe stated that the Consent Decree should require independently verifiable proof of BLP's technological capability to operate the Facility in compliance with the Consent Decree.

Response: As recognized above, the United States agrees that BLP faces financial difficulties. The United States does not often require financial assurance for compliance requirements in regulatory cases. Given BLP's financial condition, the United States believes that it is preferable to ask BLP to use its available resources to comply with the immediately applicable requirements of the Consent Decree, including the installation of new parts in the

ESP, inspection of the ESP by a third party, the initial PM₁₀ stack tests, and the Boiler Engineering Study. If at any point BLP fails to meet its obligations under the Consent Decree, the United States has authority to utilize the enforcement mechanisms available to it. In the United States' judgment, there is not an appreciable benefit (nor may it be possible) to require a bond from BLP. Regarding BLP's technical capability to operate the Facility, as noted above, EPA believes that steps taken in the last month indicate BLP's submission of plans, including the content of those plans, indicates that BLP possesses the technical ability to comply with the requirements of the Consent Decree. Sims Dec. ¶ 36.

Issue #22: The Tribe commented that BLP's 2011 settlement agreement with the District was more stringent than the proposed Consent Decree, in part due to a higher penalty, and did not result in compliance. Therefore, the Tribe stated that it assumed the proposed Consent Decree also would have the same result.

Response: The District's 2011 Settlement Agreement addressed different violations of the Clean Air Act (violations of emission limits and other permit requirements) than the violations alleged in this PSD enforcement action. Wilson Dec. ¶ 11. Although the United States cannot speak to BLP's compliance with the District's settlement agreement, that agreement did not address BLP's liability for PSD violations related to NO_x, CO, and PM₁₀, nor did its injunctive relief provisions aim to correct those deficiencies. In addition, the penalties were assessed several years apart and when BLP's financial condition was different. Therefore, the United States does not believe that the Tribe's comment provides a basis to believe that the proposed Consent Decree is inadequate.

Issue #23. The Tribe commented that a 2011 settlement agreement with BLP required submission of a Fuel Management Plan, a requirement shared by the Consent Decree. The Tribe's comment concludes that BLP has not complied with the terms of the 2011 settlement agreement and, therefore, there is no confidence that BLP will comply with the requirements of the Consent Decree.

Response: The United States has no knowledge regarding BLP's compliance with the 2011 settlement agreement with the District. However, the United States disagrees that compliance with a settlement agreement is predictive of compliance with a Consent Decree, because a consent decree, as discussed above, has a wide variety of enforcement mechanisms, in part because it is a court order that can be enforced by the Court without the filing of a new lawsuit.

VI. COMMENTS RELATED TO THE UNITED STATES' DECISION TO SETTLE, RATHER THAN LITIGATE.

Issue #24. One commenter expressed dissatisfaction with the proposed Consent Decree, because BLP does not admit the violations alleged in the complaint. That commenter indicated a preference that the case be litigated and the United States prove the violations. The Tribe also indicated its preference that the United States litigate this case.

Response: Settlement provides a valuable tool in allowing cases to be resolved rather than facing years of expensive litigation. If the parties litigated this matter, there would likely be two phases of litigation: 1) to determine if Blue Lake is liable (which it contests), and 2) if the governments were successful in the first phase, to determine what pollution controls were required. Each of these phases could take years to conclude, during which time the Facility would be able to operate without installing further controls. Either decision could then be subject to years of potential appeals. This Consent Decree brings resolution and allows for implementation of improved operational practices and the process of installation of pollution controls to begin now, rather than wait years for litigation to conclude.

VII. COMMENTS REGARDING ISSUES NOT ADDRESSED BY THE CONSENT DECREE.

Issue #25. Two commenters objected that the proposed Consent Decree would release BLP from its obligations under a 2011 settlement agreement with the District. Those commenters argued that BLP has not yet satisfied those obligations and should not be granted a release.

Response: The proposed Consent Decree only resolves the PSD claims by the United States and the District alleged in the complaint. *See* Consent Decree, ¶ 87. Nothing in the proposed Consent Decree grants Blue Lake a covenant related to any settlement agreement resolving separate violations nor does the proposed Consent Decree have any impact on the obligations of Blue Lake under such other agreements.

Issue #26. A number of commenters noted that the pollution control equipment and emission limits established by the Consent Decree do not address other pollutants regulated by the Clean Air Act or by the District Rules, including SO_x, VOC, PM_{2.5}, lead, arsenic and other toxic pollutants, greenhouse gases, and opacity.

Response: The United States agrees that the Consent Decree does not address pollutants regulated by the CAA other than CO, NO_x, and PM₁₀, and BLP is not receiving any release for potential claims related to other pollutants. Consent Decree, ¶ 87. This is a PSD enforcement action based on claims that BLP modified its Facility in ways that increased annual emissions of NO_x, CO, and PM₁₀. *See* Complaint. If proven, these violations would have required installation and operation of BACT pollution controls for NO_x, CO, and PM₁₀. The proposed Consent Decree has a tight nexus to these pollutants. It requires installation of new NO_x and CO controls, and significant upgrades to the operation of the plant's existing PM₁₀ controls – both from the stack and from general maintenance of the Facility.

Issue #27. Many commenters believed that the Consent Decree should address issues that are not within the scope of the Clean Air Act, including lead, odors, light, noise, traffic, and impacts to waterways.

Response: As discussed above, the proposed Consent Decree resolves only claims under the Clean Air Act that BLP modified its Facility in ways that increased annual emissions of NO_x, CO, and PM₁₀. Therefore, the proposed Consent Decree does not address non-Clean Air Act

violations, including water, light, noise, and traffic and BLP is not receiving any release for potential claims related to those issues.

Issue #28. The Tribe stated that BLP's Title V permit should be forfeited due to its non-payment of permit fees.

Response: The revocation of permits due to non-payment of permit fees is under the purview and authority of the primary permitting agency, in this case, the District. However, the United States notes that it understands that BLP paid its outstanding permit fees through June 30, 2016 in May 2016. Wilson Dec. ¶ 10.

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Exhibit 5

Declaration of Mark Sims

1 ELLEN M. MAHAN
Deputy Section Chief
2 Environmental Enforcement Section
Environment and Natural Resources Division
3 United States Department of Justice

4 SHEILA McANANEY
Illinois Bar No. 6309635
5 Environmental Enforcement Section
Environment and Natural Resources Division
6 United States Department of Justice
P.O. Box. 7611
7 Washington, DC 20044-7611
Tel: (202) 514-6535
8 Fax: (202) 616-2427
E-mail: sheila.mcananey@usdoj.gov

9 *Attorneys for United States*

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA and
NORTH COAST UNIFIED AIR
15 QUALITY MANAGEMENT DISTRICT
16 Plaintiffs,
17 v.
18 BLUE LAKE POWER, LLC
19
20 Defendant.

Case No. 3:16-cv-00961-JD

**DECLARATION OF MARK SIMS
IN SUPPORT OF UNITED STATES'
MOTION TO ENTER
CONSENT DECREE**

21
22 I, Mark Sims, declare the following:

23 1. I am currently employed as an Environmental Engineer by the U.S. Environmental
24 Protection Agency ("EPA") at the Region 9 office in San Francisco, California. I have been with
25 the EPA as an Environmental Engineer since 1991. I received a Bachelor of Science Degree
26 from the University of California at Berkeley in Chemical Engineering in 1981.

27 2. I submit this Declaration in support of the United States' Motion to Enter Proposed
28

1 Consent Decree. I have personal knowledge of the facts stated herein.

2 3. Since approximately 2013, I have been the lead engineer assigned to the matter now
3 known as *United States v. Blue Lake Power, LLC*, Civil Action No. 3:16-cv-00961-JD. This
4 case concerns alleged violations of the Clean Air Act at Blue Lake Power LLC's ("BLP")
5 biomass-fired electric generating facility located in Blue Lake, California ("Facility").

6 4. In addition to my involvement in the above-captioned case, I was the lead engineer in
7 other enforcement actions involving biomass power facilities, including *United States et al v.*
8 *Ampersand Chowchilla Biomass, LLC*, Case Number: 1:11-cv-00242-LJO-DLB (E.D. Cal.) and
9 *United States et al v. Merced Power, LLC*, Case Number 1:11-cv-00241-LJO-SMS (E.D. Cal.). I
10 have inspected other biomass facilities and I am knowledgeable regarding the pollution control
11 equipment and technologies at those facilities. In addition, I have conducted research regarding
12 the pollution control equipment and technologies at other biomass power facilities within and
13 outside of EPA Region 9. I am familiar with the practices and policies of EPA in settling Clean
14 Air Act enforcement cases, including cases involving claims under the Prevention of Significant
15 Deterioration ("PSD") provisions in the Clean Air Act, Part C, §§ 160-169, 42 U.S.C. §§ 7470-
16 7479.

17 5. Based on my involvement in at least 10 cases resolving PSD claims and my knowledge of
18 other settlements resolving the United States' claims under PSD or NSR, most settlements of
19 such claims require a settling defendant to install specified control equipment and meet specified
20 emission limits in accordance with a compliance schedule during which the source may continue
21 operating. The specified control equipment and limits are agreed in lieu of requiring the settling
22 defendant to undergo the full PSD permitting process and determination of Best Available
23 Control Technology ("BACT") in accordance with 42 U.S.C. § 7479. I do not know of any
24 settlements that require a settling defendant to cease operations until it has implemented
25 injunctive relief.

26 ***Investigation and Involvement in this Matter***

27 6. In May 2013, I initiated my investigation of the Facility. I assisted in developing and
28 drafting two information requests, dated July 16, 2013, and January 8, 2014, issued to BLP

1 pursuant to Section 114 of the Clean Air Act regarding the Facility. BLP provided information
2 to EPA in response to those requests. Later in 2013 I also received a voicemail from a man who
3 stated that he was employed by the Blue Lake Rancheria Tribe (“Tribe”) to work on
4 environmental issues and that ash from the Facility had been found on vehicles on Tribal land.

5 7. On March 3, 2014, EPA issued a Finding and Notice of Violation (“NOV”) after review
6 and evaluation of the North Coast Unified Air Quality Management District’s (the “District”)
7 records and information provided by BLP in response to EPA’s information requests. The NOV
8 stated that EPA had made a finding that BLP was in violation of the Clean Air Act, because it
9 had failed to obtain a preconstruction or operating permit from the District that complied with the
10 requirements of the Clean Air Act’s Prevention of Significant Deterioration (“PSD”) program
11 prior to restarting the Facility in 2010.

12 8. Based on my review of District records and information received from BLP, the Facility
13 generates emissions of, among others, oxides of nitrogen (NO_x), carbon monoxide (CO), and
14 particulate matter with a diameter of less than ten microns (PM₁₀). These pollutants are generated
15 in the boiler and emitted through the Facility’s main stack.

16 9. In addition to emissions from the stack, based on my review of records and my
17 observations while walking the perimeter of the Facility in June 2013, fugitive dust could be
18 generated at various locations at the Facility, including the fuel pile, the drop points between fuel
19 conveyors, and roads. This dust could become airborne and be distributed to the area surrounding
20 the Facility.

21 10. Based on my review of records, if BLP had obtained a permit that complied with the
22 requirements of the Clean Air Act’s PSD program in 2008, when it began construction, that
23 program would have required the District to determine the Best Available Control Technology
24 (“BACT”), and associated emission limits, for NO_x, CO, and PM₁₀ emission from the Facility.

25 11. As part of PSD review, a BACT determination is made on a case-by-case basis by the
26 permitting authority which would 1) identify all control technologies; 2) eliminate technically
27 infeasible options; 3) rank remaining control technologies by control effectiveness; 4) evaluate
28 the most effective controls based on cost, environmental and energy consideration, and document

1 the results; and 5) select BACT.

2 12. I have reviewed BLP's current Title V Permit to Operate and am familiar with the
3 requirements therein, including the emission limitations and monitoring requirements. BLP will
4 remain subject to the requirements in its current Permit to Operate until that permit is renewed
5 through the permit renewal process or until BLP complies with the requirement to obtain a new
6 permit under Paragraph 78 of the Consent Decree. BLP's current Permit to Operate includes the
7 following requirements:

- 8 a. BLP must comply with the following emission limits: for NO_x, 0.15 lb/MMBtu
9 on a 3-hour rolling average basis; for PM₁₀, .04 lb/MMBtu on a 3-hour rolling
10 average basis; for CO, 1.0 lb/MMBtu on a 3-hour rolling average basis.
- 11 b. BLP must conduct a stack test to demonstrate compliance with its PM₁₀ limit
12 once per calendar year. PTO, Section IV.A.1.
- 13 c. BLP must operate a continuous opacity stack monitor at all times and meet a 20%
14 opacity limit. PTO, Section III.A.2.

15 13. On May 1, 2014, following the issuance of the NOV, counsel for EPA at the time and I
16 met with representatives of BLP for an NOV conference and began discussing terms of a
17 potential settlement.

18 14. In October 2014, DOJ and EPA began negotiating the substance of a consent decree with
19 BLP. In December 2014, the District joined settlement negotiations. Between October 2014 and
20 late January 2016, the Parties, including counsel and technical staff, met at least nine times (once
21 in person and other times by phone) in intensive negotiation sessions and exchanged numerous
22 drafts of the consent decree between meetings. An experienced engineer with expertise in Clean
23 Air Act pollution controls was one of the participants representing BLP at many of these
24 meetings.

25 15. The result of those negotiations was the proposed Consent Decree lodged with the Court
26 on February 26, 2016 ("February Consent Decree").

27 16. I have been involved in the negotiations over the injunctive relief and other terms of
28 settlement in the consent decrees lodged in this case.

1 17. In May 2014, BLP made a claim that it was unable to pay a civil penalty. BLP submitted
2 financial documentation to EPA in support of its claim, including tax returns and balance sheets.
3 An experienced financial analyst reviewed the information submitted and conducted research on
4 the biomass power market. The analyst opined to EPA and DOJ in December 2014 that BLP had
5 an extremely limited ability to pay and could not pay anything beyond a nominal civil penalty.

6 18. The United States weighed the statutory penalty factors in the Clean Air Act, including
7 economic benefit, deterrence, and the ability of the violator to continue in business, against the
8 evidence and risks of litigation, including the potential delay in securing injunctive relief to
9 reduce emissions from the Facility. Pursuant to Agency guidance,¹ the United States also
10 considered the cost to BLP of installing the required injunctive relief, which I estimated to be
11 \$700,000 based on the terms of the February Consent Decree. That estimate was based on
12 contractor estimates related to the engineering study and my knowledge and experience of the
13 cost of purchasing, shipping, and installing a Selective Non-Catalytic Reduction (“SNCR”)
14 system and improved Over-Fire Air (“OFA”) system on a boiler. I now estimate the cost of the
15 injunctive relief under the revised Consent Decree to be \$800,000. This new estimate includes
16 the previous estimate plus BLP and vendor estimates of the new costs of inspections of and
17 repairs to the ESP.

18 19. In May 2015, BLP voluntarily ceased operations at the Facility. At the time, BLP
19 represented to EPA, the District, and DOJ that the shutdown was temporary and would only last
20 a few months.

21 20. In October 2015, while negotiations were ongoing with BLP, I received information
22 submitted by the Blue Lake Rancheria (“Tribe”) to EPA’s American Indian Environmental
23 Office regarding the Facility. The information submitted included notes and pictures of
24 particulate matter deposition on the Rancheria dated November 2013, correspondence with the
25 District, including notes of phone calls, letters, and emails, and documentation of past

26
27 ¹ “Guidance on Determining a Violator’s Ability to Pay a Civil Penalty,” #GM – 56, dated
28 December 16, 1986; <https://www.epa.gov/enforcement/guidance-evaluating-ability-pay-civil-penalty-administrative-enforcement-actions>.

1 environmental non-compliance at the Facility. I reviewed those materials and considered those
2 materials carefully prior to the conclusion of negotiation of the February Consent Decree.

3 21. On March 23, 2016, I participated in a meeting, along with other representatives of EPA
4 and DOJ, with members of the Blue Lake Rancheria tribal council and the Tribe's counsel at the
5 Rancheria in Blue Lake, California to discuss the February Consent Decree and answer questions
6 about the terms of the Consent Decree and the Consent Decree process. During that meeting, the
7 representatives of DOJ and EPA, including myself, invited members of the Tribe to contact us
8 directly – and, in particular, to contact me – if they observed non-compliance at the Facility or
9 had concerns about the Facility's non-compliance in the future.

10 22. I have reviewed each of the comments submitted in response to the February Consent
11 Decree.

12 23. I directly participated in responding to comments and developing changes to the Consent
13 Decree. Among other things, expediting the timelines in the Consent Decree so that injunctive
14 relief pertaining to particulate matter was implemented prior to a restart of the Facility, since
15 particulate matter emissions from the Facility were of paramount concern to the commenters.

16 24. In May 2016, Blue Lake informed the Plaintiffs that it planned to restart as soon as
17 possible but no later than mid-July.

18 25. In June 2016, BLP informed the United States and the District that a contractor would be
19 inspecting its ESP prior to restart.

20 26. In late June 2016, following that inspection, BLP informed the United States and the
21 District that discharge electrodes and collecting plates in the ESP were damaged and needed to
22 be replaced in order for the ESP to be fully functional.

23 27. After lengthy discussions and negotiations, on September 2, 2016, the Parties finalized
24 revisions to the February Consent Decree and BLP signed the revised proposed Consent Decree.

25 28. Based on my participation in and observation of the negotiations between the Parties in
26 this case, the United States was central to the negotiation of all terms in both the February
27 Consent Decree and the revised proposed Consent Decrees.

28 29. I estimate that the settlement will result in a reduction of between 226 to 301 tons per

1 year (“tpy”) of CO, 13 to 25 tpy of NO_x, and 5 to 10 tpy of PM₁₀. The range in emission
2 reductions reflects the reductions associated with compliance with the revised Consent Decree
3 limits at ¶ 18 and the highest permissible limits at ¶ 21(a) if the initial limits are technically
4 infeasible. My estimates of the emission reductions resulting from this settlement are based on a
5 comparison with the Facility’s emissions in 2012 as a baseline. In that year the facility had the
6 highest emissions since it restarted in 2010.

7 30. A true and correct copy of the Statement of Basis for SPI Anderson, a new 31 MW
8 biomass facility in Shasta County Air Quality Management District is attached to this
9 Declaration as Exhibit 1. The Statement of Basis includes the BACT determination. Although
10 each BACT determination is source specific, the SPI Anderson BACT determination is
11 informative regarding pollution control technology at biomass facilities.

12 31. I have prepared a table of the permitted emission limits at the two other biomass facilities
13 in the North Coast Unified Air Quality Management District, which is attached to this
14 Declaration as Exhibit 2. I have personal knowledge of the facts represented in this table.

15 32. As stated in Paragraph 4 above, I am familiar with the pollution control equipment and
16 technology at comparable biomass facilities. I believe that the emission rates and control
17 technology required by the Decree are comparable to or more stringent than those for similarly-
18 situated facilities that have gone through a full analysis of BACT. By way of illustration, see
19 Exhibits 1 (Tables 7.1-1, 7.1-3, and 7.1-5) and 2 to this Declaration.

20 33. On August 19, 2016, pursuant to Paragraphs 25 and 26 of the February Consent Decree
21 (and as reflected in the revised Consent Decree), BLP submitted to EPA and the District for
22 approval a Fuel Management Plan and a Fugitive Road Dust Plan. I have reviewed these plans,
23 consulted with Brian Wilson, the Air Pollution Control Officer for the District, and requested
24 certain changes to these plans to BLP.

25 34. On August 23, 2016, pursuant to Paragraph 12 of the February Consent Decree (and as
26 reflected in the revised Consent Decree), BLP submitted to EPA and the District for approval a
27 Boiler Engineering Study Protocol. I reviewed that protocol and discussed it with Brian Wilson,
28 the Air Pollution Control Office for the District. On September 7, 2016, EPA and the District

1 requested specific technical changes to that protocol. BLP submitted a revised protocol, with the
2 requested changes, on September 8, 2016. I have reviewed the revised protocol and discussed it
3 with Brian Wilson.

4 35. EPA and the District invited the Tribe to provide comments to EPA and the District on
5 the draft Boiler Engineering Study Protocol, Fuel Management Plan, and Fugitive Road Dust
6 Plan prior to approval of the plans. I understand that counsel for the United States transmitted
7 those documents to counsel for the Tribe on September 12, 2016.

8 36. Based on my review of the content of the plans described in Paragraphs 33 and 34 and
9 BLP's prompt response to requested revisions on the Boiler Engineering Study Protocol, I
10 believe that BLP has the technical ability to comply with the Consent Decree. The plans, and
11 particularly the Boiler Engineering Study Protocol – which is a highly technical document –
12 indicate that BLP and its contractors understand the requirements of the Consent Decree and the
13 intent of these requirements.

14 37. On September 22, 2016, BLP submitted a draft ESP Optimization Plan to EPA and the
15 District pursuant to the requirement in Paragraph 16.d of the Consent Decree. BLP indicated that
16 it would resubmit the plan with recommended operating parameters following repairs to the ESP.

17 *The Facility's Electrostatic Precipitator*

18 38. Currently, the Facility's PM₁₀ emissions from the boiler are controlled by use of an
19 Electrostatic Precipitator ("ESP").

20 39. An ESP reduces emissions of particulate matter from a boiler by using the force an
21 induced electrostatic charge to remove particles from flowing gas. One method of ensuring
22 proper emission control performance of an ESP is to operate that ESP within optimal parameters
23 that affect the efficiency of the unit. Such parameters include power input, voltages, and currents,
24 among others. The optimal operating parameters for an ESP can be determined using
25 manufacturer specifications or can be based upon the operating parameters recorded during PM
26 emission tests that demonstrated compliance with the applicable emission limit. Operation of an
27 ESP in compliance with these parameters at all times therefore should demonstrate compliance
28 with the limits.

1 40. Based on my research, the SPI Anderson BACT determination concluded that an ESP
2 and a baghouse provide equivalent levels of control for PM, PM₁₀ and PM_{2.5}. (See Exhibit 1,
3 Pages 19-22). Based on my experience and research, an ESP is widely-used pollution control
4 equipment for particulate matter from boilers.

5 41. BLP has submitted to EPA invoices reflecting its purchase and full payment for the
6 discharge electrodes and collecting plates required to be replaced in the ESP.

7 42. BLP has represented to EPA that the collecting plates and discharge electrodes are
8 scheduled to be replaced at the end of September. A full technical evaluation of the functioning
9 of the ESP cannot be performed when the ESP is not operating. For example, a full evaluation of
10 the ESP rappers cannot be performed unless the ESP is in operation.

11 43. Paragraph 16.a.ii of the revised Consent Decree requires BLP to submit recommended
12 operating parameters to EPA and the District prior to restart and to comply with those operating
13 parameters until a full ESP Optimization Plan is approved. Compliance with these parameters
14 should minimize particulate matter emissions from the boiler and provide confidence that the
15 ESP is working efficiently.

16 44. Under Paragraph 16.d of the revised Consent Decree, BLP is required to formally
17 determine recommended operating parameters for its ESP in a full ESP Optimization Plan. The
18 full ESP Optimization plan must comply with the Compliance Assurance Monitoring provisions
19 under 40 C.F.R. Part 64. Therefore, the ESP Optimization Plan must include monitoring
20 provisions to obtain and record data in real-time to show its compliance with the operating
21 parameters. Once EPA, in consultation with the District, approves the plan, BLP must comply
22 with it at all times.

23 45. Based on my understanding of the Facility and its ESP, and my engineering experience, I
24 believe that operation of the Facility's ESP in compliance with optimized operating parameters
25 will result in immediate reductions of PM₁₀ emissions from the Facility's stack.

26 *NO_x and CO Emission Controls at the Facility*

27 46. In order to control NO_x and CO emissions from the Facility, the revised Consent Decree
28 requires BLP to install and continuously operate a Selective Non-Catalytic Reduction ("SNCR")

1 system and an improved forced overfire air (“OFA”) system for its boiler. Decree at ¶ 15. This
2 technology has been applied to boilers at biomass facilities. See Exhibit 1, SPI Anderson BACT
3 review at Pages 11-19 and tables therein. Operation of SNCR and improved OFA should reduce
4 emissions of NO_x and CO immediately.

5 47. In my professional judgment and based on my experience, retrofitting new pollution
6 control equipment to this existing boiler will require an engineering analysis to determine the
7 optimal configuration of the new equipment with the boiler and the necessary design
8 requirements for the pollution control equipment. Therefore, it is necessary for BLP to conduct
9 an engineering analysis or study prior to ordering such equipment. As an engineering matter, the
10 Facility must be operating during such an analysis to evaluate and test the equipment to
11 determine optimum design for the equipment retrofit.

12 48. Based on my professional experience, the timelines contained in the Consent Decree for
13 the engineering study and for ordering, designing, fabricating, and installing the SNCR and
14 improved OFA are ambitious but achievable.

15 49. An SNCR system works by injecting urea to react with water vapor in a flue gas stream to
16 produce ammonia and carbon dioxide. The ammonia then reacts with NO_x and oxygen to form
17 nitrogen gas and water vapor, thereby reducing emissions of NO_x. Any ammonia that does not
18 react with NO_x is “ammonia slip” that can be emitted from the stack. Measurements of ammonia
19 from the stack provide indications that the SNCR system is working efficiently to reduce NO_x.

20 50. Based on my understanding of the Facility, SNCR and OFA systems, and my engineering
21 experience, I believe that operation of SNCR and improved OFA systems at all times the boiler is
22 in operation will result in immediate reductions of CO and NO_x emissions from the Facility.

23 *Emission Rates in the Revised Consent Decree*

24 51. When there is uncertainty as to the emission rates a source of air emissions can achieve
25 after installation and optimization of a new control technology, EPA has included in certain
26 settlements some allowance for adjustment of the final emission limit a settling defendant is
27 required to meet. For example, such processes have been utilized in the Consent Decrees
28 resolving actions in *United States and the State of Indiana v. Hoosier Energy Rural Electric*

1 *Cooperative, Inc.*, Case 1:10-cv-00935-LJM-TAB (S.D. Ind. 2010) (Consent Decree entered
2 11/4/2010) and *United States v. ASARCO LLC*, Case No. CV-15-2206-PHX-JZB (D. Az. 2015)
3 (Consent Decree entered 12/30/2015).

4 52. Unlike new boilers which have pollution controls incorporated into their engineering
5 design from the beginning, the efficacy of add-on or updated pollution controls retrofitted on
6 existing boilers can be less certain due to possible operational and/or space constraints.

7 53. In the case of this Facility, based on my professional judgment, it is difficult to
8 definitively predict the achievable emission rates for NO_x, CO, and PM₁₀ from the Facility once
9 the SNCR and improved OFA are installed on the boiler. Given this uncertainty, in my
10 professional judgment, it was appropriate to include a process by which BLP can petition EPA
11 and the District for a less stringent limit in the event that it can demonstrate that the limits in
12 Paragraphs 18 and 19 are technically infeasible to achieve.

13 54. Based on my knowledge of this Facility and my engineering background, I have a high
14 degree of confidence that the Facility will be able to achieve the emission limits set in Paragraphs
15 18 and 19 of the proposed Consent Decree.

16 55. Paragraph 21 of the proposed Consent Decree allows for twelve-month demonstration
17 period, during which BLP will not be subject to stipulated penalties for violations of the emission
18 limits in Paragraphs 18 and 19 of the proposed Consent Decree unless it does not properly
19 operate and maintain the control equipment. This period will allow BLP to optimize its use of
20 the pollution controls, including, among other things, determining the proper levels of ammonia
21 or urea injection for the SNCR.

22 56. Based on my professional experience, should BLP petition EPA and the District for an
23 alternate limit, 12 months of data would allow me to fully evaluate and determine the most
24 stringent emission limit BLP could achieve at the Facility, in part, because it would account for
25 season variation.

26 57. Based on my review of records, BLP is subject to both its current Permit to Operate and
27 the requirements of the New Source Performance Standards, including 40 C.F.R. § 60.13(h)(2).
28 Therefore, BLP can only use emissions from hours when the boiler is operating to calculate the

1 emission average.

2 58. An emission limit calculated using a 24-hour “rolling” average would allow for 24
3 individual compliance determinations in a 24-hour period. Each separate compliance
4 determination would use the emission rate for that hour averaged with the emissions from the
5 prior 23 hours. Unlike a block average where a one hour short term spike in emissions would
6 only appear in the calculation for one 24-hour block average, a one hour short term spike in a 24-
7 hour rolling average would appear in 24 separate compliance determinations. The result of a one
8 hour short term emission spike in a rolling 24-hour average is the potential for an emission unit
9 to be out of compliance for a longer period of time than if the short term spike appeared in a
10 single 24-hour block average.

11 59. The proposed revised Consent Decree requires BLP to meet an annual NOx emission
12 limit of 0.10 lb/MMBtu or, if BLP demonstrates it is technically infeasible to meet that limit and
13 EPA agrees, up to an annual limit of 0.125 lb/MMBtu. Either of these annual limits is lower than
14 the permit limit of 0.15 lb/MMBtu. The lower annual NOx emission limit in the proposed
15 revised Consent Decree will ensure additional emission reductions from the Facility on an annual
16 basis as compared to the permit.

17 *Fugitive Dust and Fuel Management Plan*

18 60. The Fuel Management Plan will require BLP to minimize and monitor the moisture
19 content of its fuel, because combustion of wood with a high moisture content is inefficient
20 combustion and a source of higher CO emissions from the boiler. In addition, compliance with
21 the Fuel Management Plan will minimize fugitive dust from other fuel handling activities such as
22 truck unloading, fuel pile handling, fuel transfer operations, and grinding and chipping
23 operations. The Fugitive Road Dust Plan will minimize fugitive dust emissions from vehicle
24 traffic on paved and unpaved roads, an issue raised by a number of commenters on the Consent
25 Decree.

26 61. Among other things, the current Fuel Management Plan includes measures to ensure
27 optimum wood chip size and moisture content for efficient combustion, procedures and schedule
28 for application of water to fuel storage piles, truck loading and unloading procedures, procedures

1 for grinding and chipping, and procedures for handling high wind events. All of these measures
2 and procedures will reduce emissions of particulate matter.

3 62. The Fugitive Road Dust Plan requires BLP to remove track-out of dirt and pulverized
4 gravel from trucks exiting the Facility, operate a motorized road sweeper at the Facility whenever
5 track-out or pulverized material is observed, operate water sprinkler systems on all unpaved
6 roads on the Facility at least twice per day during the dry season, and perform daily inspections
7 of paved and unpaved roads on the Facility.

8 63. It is my professional belief that the implementation of the Fuel Management Plan, the
9 Fugitive Road Dust Plan, and the Ash Handling Procedures in Paragraphs 27 of the Consent
10 Decree will lead to a decrease in fugitive dust and ash from the Facility.

11 *Monitoring Requirements and Equipment*

12 64. Based on my professional experience, annual stack testing is the standard requirement for
13 PM testing under most Clean Air Act permits.

14 65. Based on my review of records related to the Facility, including its current Title V Permit
15 to Operate, and discussions with District staff, I understand that the Facility is currently equipped
16 with a Continuous Opacity Monitoring System (“COMS”).

17 66. Based on my knowledge of COMS and opacity requirements under the Clean Air Act,
18 opacity measures how much particulate matter in a gas stream “obscures,” either through
19 absorption, reflection, or scattering, a beam of light which passes through the gas stream. Thus,
20 the higher measured opacity, the higher the particulate matter emissions from the stack
21 (including, but not solely, PM₁₀).

22 67. Based on my experience and engineering knowledge, review of opacity measurements
23 from the Facility’s COMS data can provide an indication of whether the Facility’s ESP is
24 operating properly.

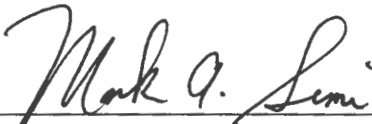
25 68. In my experience, the real-time monitoring of BLP’s ESP operating parameters required
26 under the ESP Optimization Plan and the PM₁₀ stack testing requirements in the Consent Decree
27 will provide sufficient data to assess BLP’s compliance with its PM₁₀ emission limits at all times
28 that its boiler is in operation.

1 69. The requirements to monitor ammonia contained in Paragraphs 30-32 of the Consent
2 Decree pertain to a determination as to whether the SNCR system is working properly.

3 70. I have participated in the preparation of the United States' Response to Comments on the
4 proposed Consent Decree and, to my knowledge, everything stated therein is true and accurate.

5 I declare, under penalty of perjury, that the foregoing is true and correct.

6 Executed this 22ND day of September, 2016, in San Francisco, California.

7 
8 _____
9 Mark Sims

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Exhibit 1

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION IX**



**STATEMENT OF BASIS AND
AMBIENT AIR QUALITY IMPACT REPORT**

**For a Clean Air Act
Prevention of Significant Deterioration Permit**

**Sierra Pacific Industries-Anderson
PSD Permit Number SAC 12-01**

September 2012

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**PROPOSED PREVENTION OF SIGNIFICANT DETERIORATION
PERMIT**

SPI - Anderson

**Statement of Basis and Ambient Air Quality Impact Report
(PSD Permit SAC 12-01)**

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Acronyms & Abbreviations

AAQIR	Ambient Air Quality Impact Report
ACC	Air Cooled Condenser
Act	Clean Air Act [42 U.S.C. Section 7401 et seq.]
Agency	U.S. Environmental protection Agency
AQRV	Air Quality Related Value
BACT	Best Available Control Technology
BDT	Bone Dry Tons
BTU	British thermal units
CAA	Clean Air Act [42 U.S.C. Section 7401 et seq.]
CBI	Confidential Business Information
CEMS	Continuous Emissions Monitoring System
CFR	Code of Federal Regulations
CO	Carbon Monoxide
EPA	U.S. Environmental protection Agency
ESA	Endangered Species Act
FLM	Federal Land Manager
FWS	U.S. Fish and Wildlife Service
GAQM	40 CFR part 51, Appendix W- <i>Guideline on Air Quality Models</i>
GEP	Good engineering practice
hp	Horsepower
HRSR	Heat Recovery Steam Generator
kW	kilowatt
m	meter
MMBTU	Million British thermal units
MW	Megawatts of electrical power
NAAQS	National Ambient Air Quality Standards
NLCD92	USGS 1992 National Land Cover
NO	Nitrogen oxide or nitric oxide
NO ₂	Nitrogen dioxide
NO _x	Oxides of Nitrogen (NO + NO ₂)
NP	National park
NSPS	New Source performance Standards, 40 CFR part 60
NSR	New Source Review
PM	Total particulate Matter
PM _{2.5}	Particulate Matter less than 2.5 micrometers (µm) in diameter
PM ₁₀	Particulate Matter less than 10 micrometers (µm) in diameter
ppb	parts per billion
ppm	parts per million
PSD	Prevention of Significant Deterioration
PTE	potential to emit
RBLC	U.S. EPA RACT/BACT/LAER Information Clearinghouse
SCAQMD	Shasta County Air Quality Management District

SCFM	Standard Cubic Feet per Minute
SIA	Significant Impact Area
SIL	Significant Impact Level
SO ₂	Sulfur Dioxide
SO _x	Oxides of Sulfur
SPI	Sierra Pacific Industries
tpy	tons per year
USGS	United States Geological Survey
WA	Wilderness Area

Proposed Prevention of Significant Deterioration (PSD) Permit Statement of Basis and Ambient Air Quality Impact Report

SPI- Anderson

Executive Summary

Sierra Pacific Industries (SPI) has applied for an approval to construct a new cogeneration unit capable of generating approximately 31 megawatts (MW) of electricity by combusting clean cellulosic biomass during normal operation and natural gas for startup and shutdown. The cogeneration unit will be constructed within the physical boundaries of the current SPI- Anderson Division facility location. The facility is located at 19758 Riverside Avenue in Anderson, California 96007 (Assessor's parcel No. 050-110-025). The proposed major Prevention of Significant Deterioration (PSD) permit modification is consistent with the requirements of the PSD program for the following reasons:

- The proposed permit requires the Best Available Control Technology (BACT) for Oxides of Nitrogen (NO_x), Carbon Monoxide (CO), Total Particulate Matter (PM), Particulate Matter under 10 micrometers (µm) in diameter (PM₁₀) and Particulate Matter under 2.5 µm in diameter (PM_{2.5});
- The proposed emission limits will protect the National Ambient Air Quality Standards (NAAQS) for NO₂, CO, PM₁₀ and PM_{2.5}. There is no NAAQS set for Total Particulate Matter (PM);
- The facility will not adversely impact soils and vegetation, or air quality, visibility, and deposition in Class I areas, which are parks or wilderness areas given special protection under the Clean Air Act (CAA);
- After informal consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act, EPA has concluded that the proposed modification will have no likely adverse effect on any Federally-listed endangered or threatened species or designated critical habitat in the project's impact area.

1. Purpose of this Document

This document serves as the Statement of Basis and Ambient Air Quality Impact Report for the proposed PSD permit modification for the SPI- Anderson facility. This document describes the legal and factual basis for the proposed permit, including requirements under the PSD regulations at Title 40 of the Code of Federal Regulations (CFR) §52.21. This document also serves as the fact sheet to meet the requirements of 40 CFR Part 124.7 and 124.8.

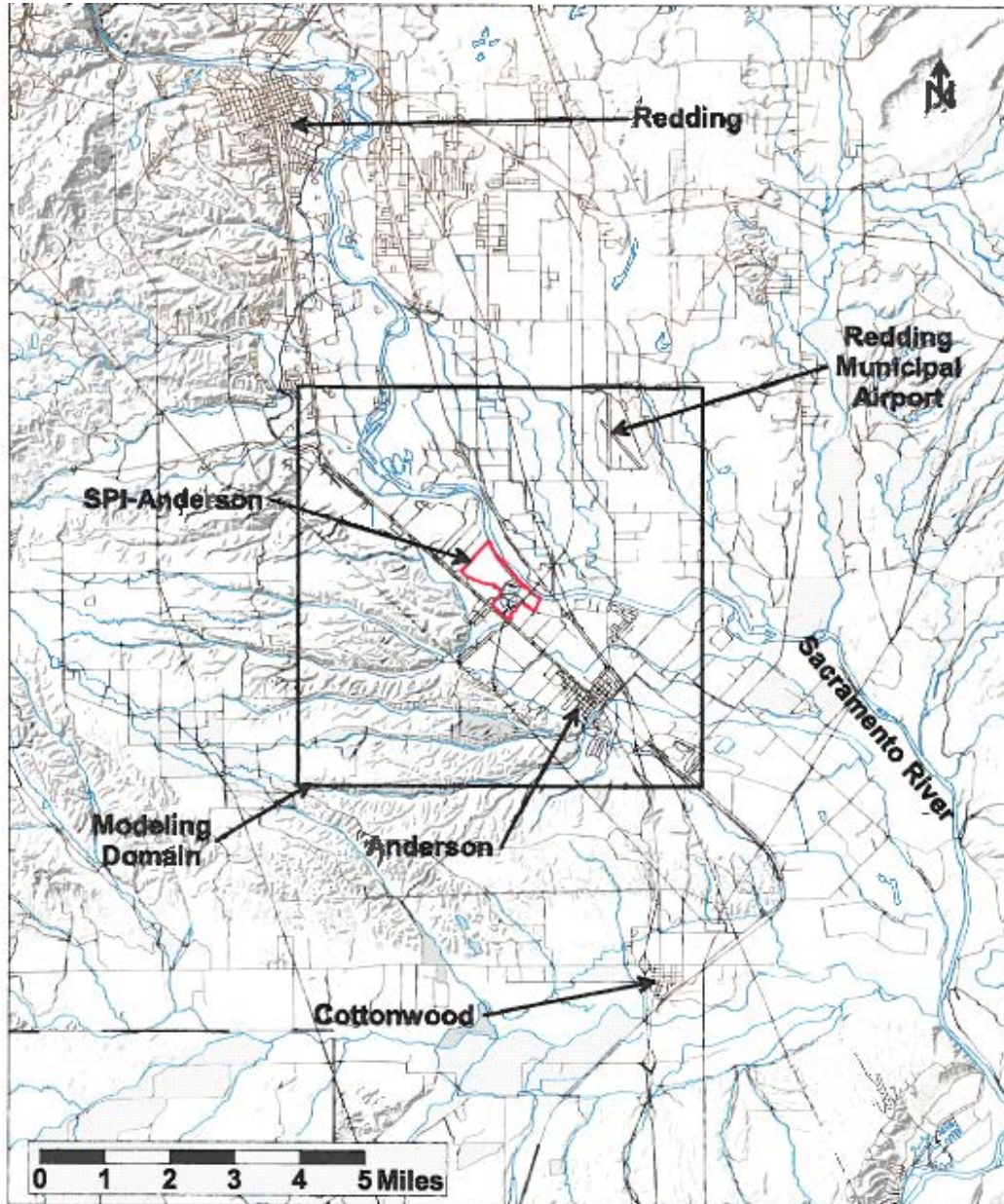
2. Applicant

Sierra Pacific Industries
P.O. Box 496028
Redding, CA 96049-6028

3. Project Location

The proposed location for the modification of the SPI- Anderson facility will be within the physical footprint of the current facility location. The facility is located at 19758 Riverside Avenue in Anderson, California 96007 (Assessor's parcel No. 050-110-025). The site is approximately 0.5 mile west of Interstate 5, and approximately 2 miles north of the city of Anderson. The facility is bordered on the northeast by the Sacramento River, on the northwest by a private parcel, on the southwest by Union Pacific Railroad tracks and State Route (SR) 273, and on the southeast by private parcels. The city of Anderson is located within the jurisdiction of the Shasta County Air Quality Management District (SCAQMD).

The map on the following page shows the approximate location of SPI- Anderson.



4. Project Description

SPI has applied for an approval to construct and operate a new cogeneration unit capable of generating 31 MW of gross electrical output from the combustion of clean cellulosic biomass and natural gas.

The original PSD permit for this lumber manufacturing facility was issued in 1994 by the Shasta County Air Quality Management District (SCAQMD). The site currently contains a wood-fired boiler with associated air pollution control equipment and conveyance systems that produces steam to dry lumber in existing kilns. On March 3, 2003 USEPA revoked and rescinded SCAQMD's authority to issue and modify federal PSD permits for

new and modified major sources of attainment pollutants in Shasta County. Therefore, EPA is modifying the PSD permit issued by SCAQMD to incorporate the proposed modifications.

A new cogeneration unit equipped with a stoker boiler is being proposed in order to burn additional clean cellulosic biomass fuel. Fuel will be generated on site from the lumber operations and delivered from other fuel sources to produce roughly 250,000 pounds per hour of steam. This steam be used to dry lumber in existing kilns for the lumber operation, as well as feed a turbine that will drive a generator to produce electricity for use on site or for sale to the electrical grid. A closed-loop two-cell cooling tower will be used to dispose of waste heat from the steam turbine.

Currently, the Anderson lumber operation produces approximately 160,000 bone dry tons (BDT) of wood waste per year. Approximately 60,000 BDT are consumed by the existing cogeneration unit, 20,000 BDT are trucked to other biomass power plants, and the roughly 80,000 BDT balance is trucked to other markets (e.g. wood chips to pulp mills). The new proposed boiler will have the capacity to consume a maximum of 219,000 BDT per year. Roughly 80,000 BDT will be generated by the facility's existing lumber operations at its current output, additional wood fuel will be transported by truck to the facility from SPI's other lumber operations in California.

The following page contains a design draft and a simplified process flow diagram for the proposed boiler.

Permitted Equipment

Table 4-1 lists the proposed new equipment that will be regulated by this PSD permit:

Table 4-1: Proposed New Equipment List

Stoker Boiler with Vibrating Grate	<ul style="list-style-type: none"> • Biomass-fired with natural gas burners for start-up and shutdown • Maximum annual average heat input of 468 MMBtu/hr and steam generation rate of 250,000 lbs/hr • Equipped with two natural gas burners, each with a maximum rated heat input of 62.5 MMBtu/hr • Equipped with SNCR system to reduce nitrogen oxides, and multiclone with ESP to control PM emissions
Emergency Engine	<ul style="list-style-type: none"> • 256 hp at 1,800 rpm • Used to run the emergency boiler recirculation pump • Natural-gas fired
Cooling Tower	<ul style="list-style-type: none"> • Composed of two-cells with an expected water load of 4.24 gallons per minute per square foot.

Table 4-2 lists the existing equipment that is not included in this PSD permit. The equipment listed below is permitted by SCAQMD, and Table 4-2 is provided for reference purposes only.

Table 4-2: Existing Equipment List

Wellons Stoker Boiler	<ul style="list-style-type: none"> • Biomass-fired with natural gas burners for start-up • Maximum annual average heat input of approximately 116.4 MMBtu/hr • Equipped with SNCR system to reduce nitrogen oxides, and multiclone with ESP to control PM emissions • Equipped with one 30,400 ft³ fuel storage bin, 2 hog fuel bins, 2 wood chip fuel bins
Conveyance System	<ul style="list-style-type: none"> • 2 Cyclones with combined flow rate of 51.004 scfm • 1 7,118 ft² MAC pulse Jet Baghouse with 300hp Blower • 1 35" x 45" Rotary Airlock • 1 Buhler en-masse, 19", 22tph Conveyor • 2 Overhead Storage Bins with enclosed sides
Spray Unit	<ul style="list-style-type: none"> • Closed loop unit equipped with integrated, negative pressure, mist collection system and 65' exhaust stack
Wood Chip Loading Facility	<ul style="list-style-type: none"> • 1 platform truck dumper • 1 Wood chip conveying system with dust containment hood • 1 200 hp Rader blower
7 De-greasing Tanks	<ul style="list-style-type: none"> • Non-solvent based
Gasoline Storage Tank	<ul style="list-style-type: none"> • Above ground with 10,000 gallon capacity
Painting Operation	

5. Emissions from the Proposed Project

The PSD program is intended to protect air quality in "attainment areas", which are areas that meet the National Ambient Air Quality Standards (NAAQS). Table 5-1 describes which pollutants are covered by the PSD program within the SCAQMD. The U.S. EPA is responsible for issuing PSD permits for pollutants in attainment with the NAAQS in the SCAQMD. As illustrated in Table 5-1, SCAQMD is attainment/ unclassifiable for each NAAQS,

Table 5-1: NAAQS Attainment Status for SCAQMD

Pollutant	Attainment Status	Permit program
Lead (Pb)	Attainment	PSD
Nitrogen Dioxide (NO ₂)	Attainment	PSD
Sulfur Dioxide (SO ₂)	Attainment	PSD
Carbon Monoxide (CO)	Attainment	PSD
Sulfuric Acid Mist (H ₂ SO ₄)	n/a ¹	PSD
Particulate Matter (PM)	n/a ¹	PSD
Particulate Matter under 2.5 micrometers diameter (PM _{2.5})	Attainment	PSD
Particulate matter under 10 micrometers diameter (PM ₁₀)	Attainment	PSD
Ozone	Attainment	PSD
Greenhouse Gases (GHG)	n/a ¹	PSD

The PSD program (40 CFR 52.21) applies to "major" new sources of attainment pollutants or "major modifications" at existing major sources of attainment pollutants. SPI- Anderson is an existing PSD major source proposing to modify its existing PSD permit in order to construct the equipment detailed in Table 4-1.

6. Applicability of the Prevention of Significant Deterioration Regulations

The estimated emissions in Table 4 shows that the proposed construction will be a major modification for NO_x, CO, PM, PM₁₀ and PM_{2.5}. The annual emission data in Table 6-1 are based on the applicant's maximum expected emissions, including emissions from startup and shutdown cycles. The applicant assumes that all emissions of PM are of diameter less than 2.5 microns (PM_{2.5}), which is a conservative estimate as some particulate emissions may be much larger than 2.5 micrometers in diameter.

Once a modification to an existing major stationary source is considered a major modification for a PSD pollutant, PSD also applies to any other regulated pollutant that is emitted in a significant amount. For our PSD applicability determination we are conservatively assuming that all sulfur oxide emissions are sulfur dioxide (SO₂). The data in Table 6-1 show that emissions of SO₂, volatile organic compounds (VOC), sulfuric acid (H₂SO₄) and lead (Pb) will be less than the significant emission rate. Therefore, PSD does not apply for SO₂, VOC, H₂SO₄ and Pb. Total estimated emissions of the PSD-regulated pollutants resulting from the emission units in this modification are listed in Table 6-1.

¹ There is no national ambient air quality standard (NAAQS) for PM, H₂SO₄ or GHG. However, in addition to other pollutants for which no NAAQS have been set, PM, H₂SO₄ and GHG are listed as regulated pollutants with a defined applicability threshold under the PSD regulations (40 CFR 52.21).

Table 6-1: Estimated Emissions and BACT Applicability²

Pollutant	Estimated Annual Emissions (tpy)	Significant Emission Rate (tpy)	Does BACT apply?
CO	472	100	Yes
NO _x	267	40	Yes
PM	42.1	25	Yes
PM ₁₀	42.1	15	Yes
PM _{2.5}	42.1	10	Yes
VOC	34.9	40	No
SO ₂	10.3	40	No
H ₂ SO ₄	4.2	7	No
Lead	0.03	0.6	No
CO ₂ e	420,137 (Total) 38,379 (nondeferred)	CO ₂ e: 75,000 (subject to regulation) Mass: 0 (significant)	No ³

7. Best Available Control Technology

This chapter describes the Best Available Control Technology (BACT) for the control of CO, NO_x, PM, PM₁₀ and PM_{2.5} emissions from this facility. Section 169(3) of the CAA defines BACT as follows:

"The term 'best available control technology' means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under the Clean Air Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 111 (NSPS) or 112 (NESHAPS) of the Clean Air Act."

² Annual emissions estimates differ from the PSD Application submission by SPI and Environ. EPA calculated annual emissions estimates at worst case annual heat input of 468 MMBtu/hr, not 425 MMBtu/hr, and the CO BACT limit was revised to 0.23 lb/MMBtu. (See SPI Annual Emissions Memo to file)

³ Although the proposed modification identifies an increase in GHG emissions that exceeds the "subject to regulation" threshold of 75,000 tpy CO₂e and GHG significance rate of 0 tpy, EPA's *Deferral for CO₂ emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration and Title V programs* (76 FR 43490 July 20, 2011) applies to this project. Since the non-deferred GHG emissions for this project are 38,252 tpy CO₂e, the modification is not subject to BACT for GHG. See Appendix A for relevant emissions calculations and further discussion.

In accordance with 40 CFR 52.21(j), a new major stationary source is required to apply BACT for each regulated NSR pollutant for which its PTE exceeds significance thresholds. BACT is defined as “an emission limitation (including a visible emission standard) based on the maximum degree of reduction of each pollutant subject to regulation under the Act ... which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts, and other costs, determines is achievable for such source.” BACT must be at least as stringent as any applicable New Source Performance Standards (NSPS) under 40 CFR Part 60 or National Emission Standard for Hazardous Air Pollutants (NESHAP) under 40 CFR Part 61. EPA outlines the process it will use to do this case-by-case analysis (referred to as “top-down” BACT analysis) in a June 13, 1989 memorandum. The top-down BACT analysis is a well established procedure that the Environmental Appeals Board (EAB) has consistently followed in adjudicating PSD permit appeals. See, e.g., *In re Knauf*, 8 E.A.D. 121, 129-31 (EAB 1999); *In re Maui Electric*, 8 E.A.D. 1, 5-6 (EAB 1998).

In brief, the top-down process requires that all available control technologies be ranked in descending order of control effectiveness. The PSD applicant first examines the most stringent technology. That technology is established as BACT unless it is demonstrated that technical considerations, or energy, environmental, or economic impacts justify a conclusion that the most stringent technology is not achievable for the case at hand. If the most stringent technology is eliminated, then the next most stringent option is evaluated until BACT is determined. The top-down BACT analysis is a case-by-case exercise for the particular source under evaluation. In summary, the five steps involved in a top-down BACT evaluation are:

1. Identify all available control options with practical potential for application to the specific emission unit for the regulated pollutant under evaluation;
2. Eliminate technically infeasible technology options;
3. Rank remaining control technologies by control effectiveness;
4. Evaluate the most effective control alternative and document results; if top option is not selected as BACT, evaluate next most effective control option; and
5. Select BACT, which will be the most stringent technology not rejected based on technical, energy, environmental, and economic considerations.

BACT is required for NO_x, CO, PM, PM₁₀, and PM_{2.5} for the new proposed emission units. Table 7-1 lists the BACT determinations for NO_x, CO, PM, PM₁₀, and PM_{2.5} from the proposed boiler and emergency engine, and PM, PM₁₀, and PM_{2.5} from the cooling tower. For the purposes of this determination, all NO_x emissions will be treated as NO₂.

Table 7-1: Summary of BACT Limits⁴

Unit	NO _x	CO	PM	PM ₁₀	PM _{2.5}
Boiler (468 MMBtu/hr)	0.15 lb/MMBtu (3-hour block average)	0.23lb/MMBtu (3-hour block average)	0.02 lb/MMBtu (3-hour block average)	0.02 lb/MMBtu (3-hour block average)	0.02 lb/MMBtu (3-hour block average)
	0.13 lb/MMBtu (12- month rolling average)				
Emergency Engine (256 hp)	0.8 lb/hr (hourly average)	6.11 lb/hr (hourly average)	0.03 lb/hr (hourly average)	0.03 lb/hr (hourly average)	0.03 lb/hr (hourly average)
Cooling tower	n/a	n/a	0.251 lb/hr, (hourly average)	0.251 lb/hr, (hourly average)	0.251 lb/hr (hourly average)

7.1. BACT for a New Boiler at a Lumber Facility

The SPI- Anderson facility will install and operate a new boiler to support lumber operations at the sawmill and to sell electricity to the grid. The new boiler will have a maximum heat input capacity of 468 MMBtu/hr. The boiler is subject to BACT for NO_x, CO, PM, PM₁₀, and PM_{2.5}. A top-down BACT analysis for each pollutant has been performed and is summarized below.

7.1.1. Oxides of Nitrogen

NO_x is formed at high temperatures during combustion when nitrogen in the combustion air or bound in the fuel combines with oxygen to form NO. Depending on conditions in the exhaust stream, some portion of the NO will react to form NO₂. For the purposes of this analysis and the permit, all NO_x is assumed to form NO₂.

Step 1 - Identify All Control Technologies

A number of existing boiler designs support the combustion of biomass for purpose of electricity generation of this megawatt capacity. Therefore, in identifying all possible control technologies, the BACT analysis will initially begin with the discussion of two boiler design alternatives.

A significant distinction in boiler design for this purpose can be characterized by the biomass combustion process that occurs within the boiler's combustion chamber. Biomass boilers can be classified as either being stoker or fluidized bed. *Stoker boiler* means a boiler unit consisting of a mechanically operated fuel-feeding mechanism which includes a stationary or moving grate to support the burning of fuel and admit under-grate air to the fuel, an overfire air system to complete combustion, and an ash discharge system. This definition of stoker includes air swept stokers. *Fluidized bed boiler* means a boiler utilizing a fluidized bed combustion process that is not a pulverized coal boiler. *Fluidized bed combustion* means a process where a fuel is burned in a bed of granulated particles, which are maintained in a mobile suspension by the forward flow of air and combustion products.

Boiler design technologies include, but are not limited to, the following:

⁴ SPI- Anderson must keep all records of all testing, fuel use, and fuel testing requirements for a period of five (5) years and must report excess emissions to EPA on a semiannual basis.

- Stoker- including vibrating, traveling grate, etc.
- Fluidized bed- including pressurized or atmospheric, such as bubbling bed, circulating, etc.

In addition to the boiler design, the available inherent NO_x control technology includes:

- Good combustion practices

In addition to the inherent available control technology, the add-on NO_x control technologies include:

- Dry Low-NO_x burner (DLN)
- Selective non-catalytic reduction (SNCR)
- Selective Catalytic Reduction (SCR)
- Regenerative SCR (RSCR)
- SCR Variants
- EM_X™ system (formerly SCONOX)

Step 2 – Eliminate Technically Infeasible Options

Boiler Design Alternatives

For the proposed boiler to service SPI- Anderson's existing primary lumber business and consume the wood from SPI's other locations, the proposed boiler design must be able to reliably operate under various conditions. Furthermore, SPI has not entered a binding power purchasing agreement with consistent base load electricity demand. With daily variations in renewable energy demand and the sawmill's steam requirements, the new boiler at the Anderson facility may have to vary steam production between 20% and 100% of full load capacity. If electricity demand decreases or the turbine and/or generator malfunction, the boiler may need to significantly reduce the amount of steam it generates.

However, periods of reduced steam demand do not necessarily coincide with reduced sawmill requirements. If other pieces of the cogeneration unit are not operating, and the boiler cannot reduce steam output, then the boiler must be shut down, rendering some of the lumber-drying kilns inoperable. If the kilns are unable to operate, lumber cannot be dried and the existing lumber facility may be unable to function normally. Moreover, as the modification will not expand beyond the current physical footprint of the SPI- Anderson facility, the space for stockpiling wood may be exhausted while the kilns are inoperable, thus causing portions of the sawmill to be shut down. Therefore, any boiler chosen for the proposed modification must reliably function at low steam-load conditions in order to accommodate SPI- Anderson's existing lumber operation.

The proposed boiler at the SPI- Anderson facility must be guaranteed to reliably operate at steam loads ranging from 50,000 lbs/hr to 250,000 lbs/hr. This variability in projected steam output is also caused by uncertainty in biomass fuel moisture and the variety of wood products and trimmings produced by SPI's other nearby facilities. As Environ, SPI's project consultant, stated in its January 23, 2012 letter⁵, "...several examples of

⁵ Albright, Eric "Supplemental Control Technology Analysis Sierra Pacific Industries Biomass-Fired Cogeneration Project Anderson, California" Letter to Gerardo Rios. 23 Jan. 2012

biomass-fired fluidized-bed boilers [are] in operation. However, most, if not all, produce steam solely for power generation, and do not provide process steam. Steam used to heat industrial processes is often subject to varying demand, especially for batch processes (e.g., lumber dry kilns). The primary reason for fluidized bed boiler designs lack of representation among biomass-fired process steam generators is the inability to operate in a turndown mode.” The process steam flexibility that SPI desires for its sawmill operations cannot reliably or effectively be accommodated by a fluidized bed boiler. Therefore, a fluidized bed boiler is technically infeasible for this project.

EM_x™

To date, EM_x™ has been designed and used only on small to medium sized natural gas-fired stationary turbines for demonstration purposes. We are not aware of any biomass boiler applications currently operating with EM_x, or any permit application for a biomass boiler that proposes to use the EM_x to control NO_x emissions.

The EM_x™ system is sensitive to sulfur in the exhaust, which can degrade the performance of the system. While wood fuels are not generally considered high-sulfur fuels, the AP-42 SO₂ emission factor for wood-fired boilers is 0.025 lb/MMBtu, which is equivalent to about 7.2 lb/hr of SO₂. Natural gas, the combustion fuel most commonly associated with EM_x™ applications, has maximum sulfur limit of one grain per 100 standard cubic feet (gr/scf) of gas in California, where EM_x™ has been applied. On a heat input basis, this is equivalent to an SO₂ emission rate of 0.43 lb/hr.

The lack EM_x implementation for biomass boilers, combined with the sensitivity to sulfur suggest that EM_x™ is technologically infeasible as a control technology for controlling NO_x emissions from a biomass-fired boiler. Therefore we do not consider this technology achievable for biomass-fired boilers at this time.

DLN Burner

With two or more DLN burners, the biomass combustion fuel would need to be pulverized and burned in suspension using wall-mounted burners. This presents a significant departure from SPI’s proposed boiler design where combustion occurs on a moving grate. DLN burners are designed to limit the amount of fuel-bound nitrogen that is converted to NO_x during combustion, and are generally suited to boilers that burn wood waste containing a high percentage of resins, such as the waste from medium density fiberboard, plywood, or veneer operations. The emission rate with DLN burners is projected to be 0.35 lb/MMBtu.

Good combustion practices

A modern biomass-fired boiler furnace, operated with computerized controls to ensure good combustion practices would result in a NO_x emission limit between 0.20 lb/MMBtu and 0.26 lb/MMBtu. The boiler design proposed by SPI would emit 0.20 lb/MMBtu when utilizing only good combustion practices to reduce NO_x emissions. Good combustion practices are the result of proper boiler maintenance and design.

All of the listed add-on technologies described below are technically feasible for the proposed project.

SNCR (Selective Non-Catalytic Reduction)

With SNCR, ammonia is injected through ammonia-injection nozzles which are positioned in the furnace and used at relatively high temperatures to promote the reaction of NO_x with ammonia. SNCR systems are often incorporated into the overall boiler design, and can be located at the furnace exit because they do not rely on a catalyst. Catalysts may be problematic for biomass stokers because catalyst beds are susceptible to plugging from PM in the flue gases. SNCR is a commonly-employed add-on NO_x control technology for biomass-fired boilers. Over a long term basis the emission rate from a design utilizing an SNCR system is projected to be 0.13 lb/MMBtu of NO_x.

SCR (Selective Catalytic Reduction), RSCR (Regenerative Selective Catalytic Reduction) and other catalyst variants

An SCR system is similar to SNCR in that a reagent reacts with NO_x to form nitrogen and water; however a catalyst matrix is used to allow the reduction reaction to take place at lower temperatures. There are several SCR and SCR variant systems that have been permitted for use on biomass boilers in various configurations along the exhaust stream. Although many biomass boilers have begun to be permitted with SCR and SCR variant systems, the verifiable data and the demonstrated effectiveness of SCR systems at constructed biomass facilities remains limited. Moreover, the projected NO_x emissions from those facilities permitted with SCR vary considerably.

The RBLC contains references to permitted RSCR and SCR systems with emission limits as low as 0.03 lb/MMBtu of NO_x on a 12-month rolling basis as seen in Table 7.1-1. The lowest referenced NO_x emissions limit that EPA has discovered in its review from constructed biomass power plants is McNeil Generating Station with a verified 2010 quarterly calendar emission rate of 0.75 lb/MMBtu of NO_x. However, the short term emission limit for the main boiler at McNeil while burning wood shall not exceed 0.23 lb/MMBtu. The installation of that SCR system was permitted through a permit amendment. The facility “proposed to install and operate a selective catalytic reduction (SCR) system in order to reduce the facility’s emissions of NO_x. The reduced NO_x emissions are required for the Facility to qualify for Class 1 renewable energy credits (RECs) in New England.”⁶ Aspen Power’s Lufkin Generating Station in Texas has constructed, however, EPA has not been able to verify if this NO_x emissions limit has been demonstrated in practice over the shorter averaging period.

Step 3 – Rank Control Technologies

A summary of recent NO_x BACT determinations for biomass-fired boilers is provided in Table 7.1-1. The applicant has proposed a NO_x limit of 0.13 lb/MMBtu, based on a 12-month rolling average and 0.15 lb/MMBtu, based on a 3-hour block average.

Table 7.1-1: Summary of Recent NO_x BACT Determinations for Similar Units

Facility Name	State	Permit #	Permit Date	Control Method	Limit	Average	Status
Beaver Wood Energy Fair Haven	VT	AP-11-015	10-Feb-12	SCR	0.03 lb/MMBtu	12 month rolling	Not Constructed
Berlin Biopower	NH	TP-0054	26-Jul-10	SCR	0.06 lb/MMBtu	30 day rolling	Project Canceled
Montville Power	CT	107-0056	6-Apr-10	RSCR	0.06 lb/MMBtu	24 hour block	Not Constructed
Clean Power Berlin	NH	TP-0033	25-Sep-09	SCR	0.065 lb/MMBtu	30 day rolling	Not Constructed
Concord Steam	NH	TP-0014	12-Aug-11	SCR	0.065 lb/MMBtu	30 day rolling	Not Constructed
McNeil Generating Station *	VT	AOP-07-02a	2-Feb-09	RSCR	0.075 lb/MMBtu	Quarterly	Verified
Lufkin Generating Plant	TX	81706	26-Oct-09	SCR	0.075 lb/MMBtu	30-day rolling	Constructed
Warren County Biomass	GA	4911-301-0016-P-01-0	17-Dec-10	SNCR	0.1 lb/MMBtu	30 day rolling	Not Constructed
Darrington Energy Cogeneration	WA	PSD 03-04	11-Feb-05	SNCR	0.12 lb/MMBtu	24 hour block	Not Constructed
SPI-Anderson	CA	SAC 12-01	Proposed	SNCR	0.13 lb/MMBtu	12 month rolling	
SPI- Skagit County Lumber Mill	WA	PSD 05-04	11-Jun-09	SNCR	0.13 lb/MMBtu	24 hr block	
Clewiston Sugar Mill	FL	PSD-FL-333	18-Nov-03	SNCR	0.14 lb/MMBtu	30 day rolling	
SPI-Anderson	CA	SAC 12-01	Proposed	SNCR	0.15 lb/MMBtu	3 hour block	
SPI Aberdeen	WA	PSD-02-02	17-Oct-02	SNCR	0.15 lb/MMBtu	24 hour block	
Lindale Renewable Energy	TX	PSDTX1184	8-Jan-10	SNCR	0.15 lb/MMBtu	30 day rolling	
Fibrominn Biomass Power	MN	15100038-001	23-Oct-02	SNCR	0.16 lb/MMBtu	30 day rolling	
Koda Energy	MN	13900114	23-Aug-07	SNCR	0.25 lb/MMBtu	Not specified	

* McNeil Station is not the result of a BACT Determination as discussed in NO_x Step 4 below.

The remaining technologically feasible control technologies ranked in decreasing order of effectiveness are:

Table 7.1-2: Ranking of NO_x control technologies

NO _x control technology	Emission Rate (lb NO _x /MMBtu)
SCR, RSCR and variants	0.06
SNCR	0.13
Good combustion practices	0.20
DLN burner	0.35

Step 4 – Economic, Energy and Environmental Impacts

SPI has submitted cost-effectiveness estimates comparing SCR and SNCR with their projected NO_x emission rates and the cost of installation and operation of the respective control technologies. SPI assumed that the new boiler's emission rate with the use of SCR for the cost-effectiveness estimates would be lower than any emissions level that EPA has found to be demonstrated in practice. SPI presumes that the rate of NO_x emissions with SCR and SNCR are 0.06 lb/MMBtu and 0.13 lb/MMBtu respectively.

The average cost per ton controlled from SCR and SNCR technologies at the proposed emission levels are \$4,596 and \$1,417 respectively. However, the incremental cost-effectiveness separating the two technologies reveals that the cost of each additional ton of NO_x removed by the implementation of SCR at the projected cost and emission rate is \$9,191. EPA reviewed the cost estimates provided in the PSD permit modification application and determined that it considered the appropriate operation and capital costs but calculated improper potential to emit emissions estimates. The additional expense of the SCR equipment is due to a higher capital cost in primary equipment along with higher operational, maintenance and lost revenue costs.

Although the McNeil Generating Station has demonstrated a lower NO_x emission limit on a calendar quarterly basis, it has a short term NO_x emission limit of 0.23 lb/MMBtu. Moreover, the possible economic incentives of the Class 1 Renewable Energy Credits in New England are difficult to quantify and not available to SPI- Anderson. This may allow SCR system to be more economically feasible for McNeil Generating Station and other proposed systems in the New England area than for SPI- Anderson in California.

EPA does not anticipate additional significant environmental or energy impacts from employing the SNCR or SCR technology. Both systems use ammonia as a reagent: anhydrous ammonia, aqueous ammonia, or urea mixed with water (which hydrolyzes in the hot exhaust to form ammonia). In the case of aqueous ammonia or urea mixed with water, additional fuel must be combusted to evaporate the water associated with the reagent. Moreover, energy is required to operate the injectors used by either technology to introduce the reagent into the exhaust. With either technology, the exhaust leaving the boiler stack will contain some small quantity of ammonia.

Step 5 – Select BACT

SPI has proposed the most stringent NO_x emissions limit for stoker boilers with SNCR demonstrated in practice. Although additional tons of possible NO_x emissions may be controlled by the installation of an SCR system, the increased annual costs of an SCR system or other variants versus the SNCR system is cost prohibitive at this existing sawmill facility.

Based on a review of the available control technologies for NO_x emissions from biomass boilers selected for this operation, we have concluded that BACT for the stoker boiler to perform this purpose is 0.15 lb/MMBtu (3-hour block average) and 0.13 lb/MMBtu (12-month rolling average) employing SNCR. We are also requiring a lb/hr mass emission rate of 60.8 lb/hr (3-hour block average) during normal operations.

7.1.2. Carbon Monoxide

Carbon monoxide (CO) occurs due to incomplete combustion of fuel in the boiler's combustion chamber, and in the Low-NO_x burners when they are operated.

Step 1 - Identify All Control Technologies

A number of existing boiler design alternatives support the combustion of biomass at this megawatt capacity. Therefore, in identifying all possible control technologies, the BACT analysis should begin with a discussion of boiler design alternatives.

In addition to the boiler design, the available inherent CO control technology includes:

- Good combustion practices

In addition to the inherent available control technology, the add-on CO control technologies include:

- EM_XTM
- Catalytic oxidation

Step 2 – Eliminate Technically Infeasible Options

Boiler Design Alternatives

As discussed in the BACT analysis for NO_x in Section 7.1.1 of this document, fluidized bed boiler designs were found to be infeasible for this project.

EM_xTM

As discussed in the BACT analysis for NO_x in Section 7.1.1 of this document, EM_x has been designed and used only on small to medium sized natural gas-fired stationary turbines for demonstration purposes. EM_x has not been demonstrated in practice for biomass boilers and we do not consider this technology achievable for biomass boilers at this time.

Good combustion practices

A modern biomass-fired boiler furnace, operated with computerized controls to ensure good combustion practices would result in a CO emission limit of between 0.23 and 0.35 lb/MMBtu. The boiler design proposed by SPI would emit 0.23 lb/MMBtu of CO when utilizing only good combustion practices to reduce CO emissions. Good combustion practices are a technically feasible technology for controlling CO emissions from biomass-fired boilers.

The add-on technology described below is technically feasible for this project.

Catalytic Oxidation

Catalytic oxidation can be used to control CO when a matrix coated with noble metals facilitates the conversion of a pollutant, such as CO to CO₂. Catalytic oxidizers operate in a temperature range of approximately 650°F to 1,000°F. At lower temperature the CO conversion efficiency falls off rapidly. Although technically feasible, catalytic oxidation has not been reliably demonstrated for biomass boilers. SPI projects that with successful implementation of a catalytic oxidizer the facility may be able to emit 0.1 lb/MMBtu of CO. Other permitted facilities that have not constructed have been permitted at CO emission levels as low as 0.075 lb/MMBtu of CO.

Step 3 – Rank Control Technologies

A summary of recent BACT determinations for biomass-fired stoker boilers with CO emission limits is provided below. The applicant has proposed a CO limit of 0.23 lb/MMBtu (3 hour block average). SPI has proposed the most stringent emission limit of constructed biomass stoker boilers that EPA was able to find in its control technology review.

Table 7.1-3: Summary of Recent CO BACT Determinations for Similar Units

Facility Name	State	Permit #	Permit Date	Control Method	Limit	Averaging time	Status
Beaver Wood Energy	VT	AP-11-015	10-Feb-12	Oxidation Catalyst	0.075 lb/MMBtu	24 hour rolling	Not Constructed
Berlin Biopower	NH	TP-0054	26-Jul-10	Good combustion	0.075 lb/MMBtu	24 hour block	Project Canceled
Warren County Biomass	GA	4911-301-0016	17-Dec-10	Good combustion	0.08 lb/MMBtu	30 day rolling	Not Constructed
South Point	OH	07-00534	4-Apr-06	Oxidation Catalyst	0.1 lb/MMBtu	No information	Not Constructed
Montville Power LLC	CT	107-0056	6-Apr-10	Oxidation Catalyst	0.1 lb/MMBtu	8 hour block	Not Constructed
International Biofuels	VA	52125	13-Dec-05	Good combustion	0.19 lb/MMBtu	No information	Not Constructed
SPI-Anderson	CA	SAC 12-01	Proposed	Good combustion	0.23 lb/MMBtu	3 hour block	
Fibrominn Biomass	MN	15100038-001	23-Oct-02	Good combustion	0.24 lb/MMBtu	24 hour	
Lindale Renewable Energy	TX	PSDTX1184	8-Jan-10	Good combustion	0.31 lb/MMBtu	30 day rolling	
Lufkin Generating	TX	81706	26-Oct-09	Good combustion	0.31 lb/MMBtu	30 day rolling	
SPI-Aberdeen	WA	PSD-02-02	17-Oct-02	Good combustion	0.35 lb/MMBtu	hourly average	
Beaver Wood Energy Fair Haven	VT	AP-11-015	10-Feb-12	Good combustion	0.35 lb/MMBtu	hourly average	
Darrington Energy	WA	PSD 03-04	11-Feb-05	Good combustion	0.35 lb/MMBtu	24-HR	
Simpson Tacoma Kraft Company	WA	PSD-06-02	22-May-07	Good combustion	0.35 lb/MMBtu	30 day rolling	
Clewiston Sugar Mill And Refinery	FL	PSD-FL-333	18-Nov-03	Good combustion	0.38 lb/MMBtu	12 month rolling	
Koda Energy	MN	13900114	23-Aug-07	Good combustion	0.43 lb/MMBtu	30 day rolling	

However, the new biomass boiler SPI- Anderson has not begun construction at this time. Based on this information, oxidation catalyst is being evaluated as the most stringent control. The remaining feasible control technologies ranked in decreasing order of effectiveness are:

Table 7.1-4: Ranking of CO control technologies

CO control technology	Emission Rate (lb CO /MMBtu)
Catalytic Oxidation	0.10
Good combustion practices	0.23

Step 4 – Economic, Energy and Environmental Impacts

SPI has submitted cost-effectiveness estimates comparing catalytic oxidation and good combustion practices with their projected CO emission rates and the cost of installation and operation of the respective control technologies. SPI assumed that the new boiler's emission rate with the use of an oxidation catalyst for the cost-effectiveness estimates would be lower than any emissions level that EPA has found to be demonstrated in practice. SPI has presumed that the rate of CO emissions with catalytic oxidation and good combustion practices are 0.1 lb/MMBtu and 0.23 lb/MMBtu respectively.

As good combustion practices are the result of proper boiler maintenance and the boiler design, SPI only assessed the incremental cost-effectiveness separating the two technologies. The cost of each additional ton of CO removed by the implementation of catalytic oxidation at the projected cost and emission rate is \$8,930. EPA reviewed the cost estimates provided in the PSD permit modification application and determined that it considered the appropriate costs but calculated improper potential to emit emissions estimates. The additional expense of the catalytic oxidizer is due to a higher capital cost in primary equipment along with higher operational, maintenance and lost revenue costs.

Step 5 – Select BACT

SPI has proposed the most stringent CO emissions limit for stoker boilers demonstrated in practice. Although additional tons of possible CO emissions may be controlled by the

installation of an oxidation catalyst, SPI has expressed significant doubts that the catalyst will be able to reliably and effectively control CO given its fuel type and operation. In addition, the increased annual costs of an oxidation catalyst present a significant financial burden at this existing sawmill facility.

Based on a review of the available control technologies for CO emissions from biomass boilers selected for this purpose, we have concluded that BACT for the stoker boiler to perform this operation is 0.23 lb/MMBtu (3-hour block average) employing good combustion practices. We are also requiring a lb/hr mass emission rate of 108 lb/hr (3-hour block average) during normal operations.

7.1.3. Particulate Matter- PM, PM₁₀, PM_{2.5}

Particulate emissions are the result of unburned solid carbon (soot), unburned vapors or gases that subsequently condense, and unburned portions of fuel (ash). Because the applicant has assumed that all particulate emissions from the boiler are PM_{2.5}, the BACT analyses for PM, PM₁₀ and PM_{2.5} have been combined. Additionally, the analysis evaluates total particulate emissions – condensable and filterable.

Step 1 – Identify All Control Technologies

The following inherent control options for PM, PM₁₀ and PM_{2.5} emissions include:

- Low sulfur fuels for normal operation, and/or pipeline natural gas for startup and shutdown
- Good combustion practices

The available add-on PM, PM₁₀, PM_{2.5} control technologies include:

- Cyclones (including multiclones)
- Venturi scrubber
- Electrostatic precipitator (ESP)
- Baghouse/ Fabric filter.

Low sulfur fuels

The wood fuels to be used predominantly during normal operation along with the pipeline natural gas to be used during startup and shutdown are not generally considered high-sulfur fuels.

Good combustion practices

A modern biomass-fired boiler furnace, operated with computerized controls to ensure good combustion practices, would result in a PM, PM₁₀ and PM_{2.5} emission limit between 0.33 lb/MMBtu and 0.56 lb/MMBtu, based on U.S. EPA's AP-42 Compilation of Air Pollutant Emission Factors for wood residue combustion in boilers.

The add-on technologies described below are technically feasible for this project.

Cyclones or Multiclones

Cyclones or multiclones, a series of single cyclone particulate matter separators, operate in a similar manner. An inlet gas stream enters the cyclone or multiclone at an angle causing the gas stream to spin rapidly. The resulting centrifugal forces push the larger particulate into and down along the cyclone walls for collection.

Venturi Scrubbers

Venturi scrubbers reduce particulate by introducing liquid into a converging section of a gas stream. The particulate in the gas stream is removed when it mixes with the liquid and forms tiny droplets that are collected and removed. With gas-side pressure drops exceeding 15 inches of water, particulate collection efficiencies of 85% or greater have been reported for venturi scrubbers operating on wood-fired boilers.

Electrostatic precipitator (ESP)

Electrostatic precipitators use electrostatic forces to separate particulate from the gas stream. When applied to wood-fired boilers, ESPs are often used downstream of mechanical collector pre-cleaners which remove larger-sized particles. Collection efficiencies of 90-99% for particulate have been observed for ESPs operating on wood-fired boilers.

Baghouse/ Fabric filter

Baghouses or fabric filters have had limited applications to wood-fired boilers. The principal drawback to fabric filtration is a fire danger arising from the collection of combustible carbonaceous fly ash. Although some fabric filters have demonstrated lower collection efficiencies, most fabric filter particle collection efficiencies are 90-99%, equivalent to ESPs.

Step 2 – Eliminate Technically Infeasible Options

All of the available control options identified in Step 1 are technically feasible. Cyclones are often used in conjunction with the other control technologies listed above.

Step 3 – Rank Control Technologies

A summary of recent BACT determinations for biomass-fired stoker boilers with PM, PM₁₀, and PM_{2.5} emission limits is provided below. The applicant has proposed a total PM, including filterable and condensable particulate, emission limit of 0.02 lb/MMBtu (3 hour block average) utilizing an ESP preceded by a multiclone. SPI has proposed the most stringent PM, PM₁₀, and PM_{2.5} emission limit of biomass stoker boilers that have constructed.

Table 7.1-5: Recent PM, PM₁₀, PM_{2.5} BACT Determinations for Similar Units

Facility Name	State	Permit #	Permit Date	Control Method	Limit	Status
Berlin Biopower*	NH	TP-0054	07/26/2010	Baghouse	0.01 lb/MMBtu	Project Canceled
Warren County Biomass	GA	4911-301-0016-P-01-0	12/17/2010	Baghouse	0.018 lb/MMBtu	Not Constructed
Beaver Wood Energy Fair Haven	VT	AP-11-015	02/10/2012	ESP	0.019 lb/MMBtu	Not Constructed
SPI-Anderson	CA	SAC 12-01	Proposed	ESP	0.02 lb/MMBtu	
SPI- Skagit County Lumber Mill	WA	PSD 05-04	01/25/2006	ESP	0.02 lb/MMBtu	
Darrington Energy Cogeneration	WA	PSD 03-04	02/11/2005	DRY ESP	0.02 lb/MMBtu	
Fibrominn Biomass	MN	15100038-001	10/23/2002	Baghouse	0.02 lb/MMBtu	
Simpson Tacoma Kraft Company	WA	PSD-06-02	05/22/2007	ESP	0.02 lb/MMBtu	
Rome Linerboard Mill	GA	2631-115-0021-V-01-4	10/13/2004	ESP	0.025 lb/MMBtu	
Lufkin Generating Plant	TX	81706	26-Oct-09	ESP	0.025 lb/MMBtu	

*Filterable only

SPI has estimated that the use of a multiclone followed by an ESP or baghouse will be equally effective in the control of particulate matter from the proposed boiler. The feasible control technologies ranked in decreasing order of effectiveness are:

Table 7.1-6: Ranking of PM/ PM₁₀/ PM_{2.5} control technologies

PM/ PM ₁₀ / PM _{2.5} control technology	Emission Rate (lb PM/ PM ₁₀ / PM _{2.5} per MMBtu)
ESP with multiclone	0.02
Baghouse with multiclone	0.02
Venturi Scrubber	0.30
Low sulfur fuels	0.33
Good Combustion practices	0.33-0.56

Step 4 – Economic, Energy and Environmental Impacts

In EPA's review, three biomass stoker facilities have proposed lower rates of total particulate emissions than SPI- Anderson. The 0.01 lb/MMBTu particulate emissions limit for Laidlaw Berlin Biopower was only for filterable particulate, not total particulate, and the project has been canceled. The succeeding total particulate emission levels in Table 7.1-5 for 0.18 lb/MMBTu and 0.19 lb/MMBTu of total particulate have been proposed but have not been demonstrated in practice. Moreover, the increased levels of control for total particulate in both of cases were proposed with different control technologies.

In our review, EPA found that the lowest achievable total particulate emissions demonstrated in practice from biomass stoker boilers have been achieved with fabric filters or ESPs. With equivalent levels of control, SPI considered the potential economic, energy and environmental impacts from each control system. Baghouses require additional energy to overcome increased pressure drops that occur during the control of particulate. ESP systems use electricity to create an electric field, but typically have lower overall energy requirements than baghouses. As stated earlier, fabric filters may also have an increased fire danger at biomass facilities due to the carbonaceous fly ash.

Step 5 – Select BACT

Based on a review of the available control technologies for PM, PM₁₀ and PM_{2.5} emissions from biomass boilers selected for this purpose, we have concluded that BACT

for the stoker boiler to perform this operation is 0.02 lb/MMBtu (3-hour block average) using a multiclone and ESP. We are also requiring a lb/hr mass emission rate of 9.4 lb/hr (3-hour block average) during normal operations.

7.1.3. Startup and Shutdown BACT Limits

The boiler startup process begins by igniting a pile of biomass fuel on the grate and firing two 62.5 MMBtu/hr natural gas burners located near the steam tubes. After approximately 12 hours, the boiler will be at about 50 % of full load and attain a sufficient steady state temperature supporting the activation of the SNCR system. Once the boiler has reached normal operating temperature, as specified by the boiler manufacturer, startup has concluded and the boiler will operate under normal conditions. Shutdown begins when the fuel feed is curtailed and the unit begins cooling. Shutdown ends when the recorded temperature at the superheater outlet reaches 150°F and remains so for at least one hour, or 24 hours has elapsed since the shutdown process began. Add-on particulate controls will be operating during all phases of startup and shutdown. The SNCR will be operating at all appropriate temperature ranges, as specified by the SNCR manufacturer. During startup and shutdown, the generator shall be disconnected from the electrical grid.

Table 7.1-7 lists the startup and shutdown BACT emission and averaging times. Table 7.1-7 also lists the maximum amount of time for a startup and shutdown event.

Table 7.1-7: BACT for Startup and Shutdown

Pollution and Duration Limits	
NO_x (hourly average)	70.2 lb/hr
CO (hourly average)	108 lb/hr
PM, PM₁₀, PM_{2.5} (24 hour average)	8.93 lb/hr
SO₂ (hourly average)	2.34 lb/hr
Maximum Duration	24 hours

7.2 BACT for Emergency Engine

The project includes a 256hp (190kW) natural gas-fired emergency engine to run the emergency boiler recirculation pump. The limited operation of this unit results in minimal annual emission rates. This equipment is subject to BACT for NO_x, CO, PM, PM₁₀, PM_{2.5}. A top-down BACT analysis has been performed and is summarized below.

7.2.1 NO_x, CO, PM, PM₁₀, PM_{2.5} Emissions

Step 1 -- Identify all control technologies

The control options for NO_x emissions from engines include SCR, NO_x reducing catalyst, NO_x adsorber, catalyzed diesel particulate filter, catalytic converter, and oxidation catalyst. A catalytic converter and oxidation catalyst are also control options for CO

emissions. A particulate filter/trap can be added for the control of PM, PM₁₀, and PM_{2.5} emissions,

Unlike the main biomass boiler, the emergency engine will be limited in operation and is required to be certified in compliance with NSPS requirements, including emission limits, upon purchase. A review of other BACT determinations was not performed because it is very unlikely that a more detailed review would change the final determination due to the limited use and annual emission rates associated with the proposed limits. The potential to emit for all criteria pollutants subject to BACT review is less than 200 lbs/yr.

Different types of engines have different emission requirements based on the type of engine being purchased. Engine manufacturers may need to employ some of the control technologies identified above in order to comply with the NSPS emission limits, depending on the type of engine and the applicable limits. The applicant is proposing to install an emergency engine for infrequent recirculation pump needs. As a result, SPI must purchase engines that comply with the NSPS and meet the emission requirements for emergency engines. However, we note that the applicant could purchase engines that meet the NSPS standards for non-emergency engines, which have more stringent limits, and operate them as emergency engines. As a result, this review identifies the control technologies to be:

- NSPS-compliant emergency engine
- Engine that meets NSPS for non-emergency engines
- Limiting use (limits on the hours of operation)

Step 2 – Eliminate technically infeasible control options

All of the control technologies identified are assumed to be technically feasible.

Step 3 – Rank remaining control technologies

The available control technologies are ranked according to control effectiveness in Table 7.2-1.

Table 7.2-1: NSPS Limits for Engines

Engine Type (190kW)	NO_x +NMHC (g/kW-hr)	CO (g/kW-hr)	PM (g/kW-hr)
Non-emergency engine	0.59	3.5	0.02
Emergency engine	4.0	3.5	0.20

Step 4 – Economic, Energy and Environmental Impacts

Due to economic impacts and limited environmental benefit, the use of add-on controls for the emergency engine and purchasing an engine that meet NSPS standards for a non-emergency engine and operating it as an emergency engine would be impractical in this case. This is illustrated in Table 7.2-2 by the potential emissions from the emergency engine (based on 100 hours of operation per year and complying with the NSPS for emergency engines). Requiring the additional reductions in emissions that would be

gained by use of engines that meet NSPS standards for non-emergency engines would have very little environmental benefit and not justify the cost.

Table 7.2-2: Summary of PTE for 190 kW Emergency Engine

Pollutant	Emergency Engine (tpy)
NO _x	0.039
CO	0.306
PM, PM ₁₀ , PM _{2.5}	0.0011

Step 5 – Select BACT

Based on a review of the available control technologies, we have concluded that BACT is limiting the hours of operation and the emission limits listed in Table 7.2-3 based on a 3-hour average. It is assumed that newly purchased engines would be the most energy efficient available and that operating in compliance with NSPS requirements will ensure that each engine is properly maintained and as efficient as possible.

Table 7.2-3: Summary of BACT for 190 kW Emergency Engine

Engine Type	NO _x +NMHC (g/kW-hr)	CO (g/kW-hr)	PM (g/kW-hr)
Emergency engine	4.0	3.5	0.20

7.3. BACT for Cooling Towers

The proposed project also requires a cooling tower system to dissipate the heat load into the atmosphere. The cooling tower system is subject to BACT for PM, PM₁₀, and PM_{2.5}. A top-down BACT analysis has been performed and is summarized below. The applicant conservatively assumed PM, PM₁₀ and PM_{2.5} emissions from the cooling tower were equivalent.

Step 1 - Identify All Control Technologies

The following inherent control options for PM, PM₁₀, and PM_{2.5} emissions include:

- Wet cooling
- Dry cooling
- Wet-Dry Hybrid cooling

Wet cooling

Cooling towers are heat exchangers that are used to dissipate large heat loads to the atmosphere. They are used as an important component in many industrial and commercial processes needing to dissipate heat. Wet cooling towers rely on the latent heat of water evaporation to exchange heat between the process and the air passing through the cooling tower.

A two-cell evaporative cooling tower for this project would require a water load 4.24 gallons per minute per square foot. The expected air velocity is 503 feet per minute. Fugitive particulate emissions would be generated from the cooling tower due to the total dissolved solids (TDS) in the water.

Dry cooling

Dry cooling uses an air cooled condenser (ACC) that cools the steam turbine generators' exhaust steam using a large array of fans that force air over finned tube heat exchangers. The exhaust from the steam turbine flows through a large diameter duct to the ACC where it is condensed inside the tubes through indirect contact with the ambient air. The heat is then released directly to the atmosphere.

Wet-Dry Hybrid cooling

Wet-Dry Hybrid cooling uses wet and dry cooling technologies in parallel, and uses all of the equipment involved in both wet and dry cooling. Hybrid cooling technology divides the cooling function between the wet and dry systems depending on the capabilities of each system under different environmental and operational conditions.

The available add-on PM, PM₁₀, and PM_{2.5} control technologies include:

- Drift eliminators

Drift Eliminators

Drift eliminators are usually incorporated into the tower design to remove as many droplets as practical from the air stream before exiting the tower. The drift eliminators used in cooling towers rely on inertial separation caused by direction changes while passing through the eliminators. Types of drift eliminators include many different configurations and various materials. The materials may include other features, such as corrugations and water removal channels, to enhance the drift removal further.

Step 2 – Eliminate Technically Infeasible Options

All of the available control options identified in Step 1 are technically feasible.

Step 3 – Rank Control Technologies

The remaining feasible control technologies ranked in decreasing order of effectiveness are:

Table 7.3-1: Ranking of PM/ PM₁₀/ PM_{2.5} control technologies

PM/ PM₁₀/ PM_{2.5} control technology	Emission Rate (tpy of PM, PM₁₀, PM_{2.5})
Dry cooling	0
Wet-Dry Hybrid cooling	0.55 ⁷
Wet cooling with 0.0005% Drift Eliminators	1.10

The applicant has proposed to use wet cooling with DRU-1.5 high-efficiency mist eliminators with a drift loss of less than 0.0005%. This is the equal to the lowest proposed amount of drift that EPA has found in its review of similar facilities.

⁷ The applicant did not estimate potential emissions from a wet-dry hybrid system. We have approximated emissions from such a system to be one-half of those from a wet cooling system.

EPA did not find any sawmill facilities or biomass boilers that use dry cooling or wet-dry hybrid cooling as an alternative to wet cooling. As shown in Table 7.3-1 the potential impact from the various control options will have a limited effect on the total PM emissions from the project. The difference in potential to emit resulting from the cooling tower options is 1.10 tpy of total PM.

Step 4 – Economic, Energy and Environmental Impacts

The use of a dry or hybrid wet-dry system would reduce the overall efficiency of the facility, due to the additional energy requirements for the wet and hybrid systems. Moreover, dry and wet-dry cooling systems are typically more costly than a more conventional wet cooling tower system. On the other hand, the use of wet cooling has a potential environmental impact associated with additional consumption of water resources.

Step 5 – Select BACT

Based on a review of the available control technologies for PM, PM₁₀, PM_{2.5} emissions from cooling towers selected for this operation, and the limited amount of total particulate resulting from the cooling tower operation, we have concluded that the proposed boiler can utilize wet cooling.

Utilizing the wet cooling tower option, SPI has elected to use the most stringent control option available, by limiting drift to 0.0005%. Therefore, BACT for the cooling tower in the proposed modification will be the use of a wet cooling tower with a drift loss of less than 0.0005%.

8. Air Quality Impacts

CAA Section 165 and EPA's PSD regulations at 40 CFR § 52.21 require an examination of the impacts of the proposed SPI- Anderson project on ambient air quality. The applicant must demonstrate, using air quality models, that the facility's emissions of PSD-regulated air pollutants would not cause or contribute to a violation of (1) the applicable NAAQS, or (2) the applicable PSD increments (explained below in Sections 8.4 and 8.5). These sections of the AAQIR include a discussion of the relevant background data and air quality modeling, and EPA's conclusion that the project will not cause or contribute to an exceedance of the applicable NAAQS or applicable PSD increments and is otherwise consistent with PSD requirements governing air quality.

8.1 Introduction

8.1.1 Overview of PSD Air Impact Requirements

Under the PSD regulations, permit applications for major sources must include an air quality analysis demonstrating that the facility's emissions of the PSD-regulated air pollutants will not cause or contribute to a violation of the applicable NAAQS or applicable PSD increments. (A PSD increment for a pollutant applies only to areas that meet the corresponding NAAQS.) The applicant provides separate modeling analyses for

each criteria pollutant emitted above the applicable significant emission rate. If a preliminary analysis shows that the ambient concentration impact of the project by itself is greater than the Significant Impact Level (SIL), then a full or cumulative impact analysis is required for that pollutant. The cumulative impact analysis includes nearby pollution sources in the modeling, and adds a monitored background concentration to account for sources not explicitly included in the model. The cumulative impact analysis must demonstrate that the modification will not cause or contribute to a NAAQS or increment violation. If a preliminary analysis shows that the ambient concentration impact of the project by itself is less than the SIL, then further analysis is generally not required. Required model inputs characterize the various emitting units, meteorology, and the land surface, and define a set of receptors (spatial locations at which to estimate concentrations, typically out to 50 km from the facility). Modeling should be performed in accordance with 40 CFR § 51, Appendix W- *Guideline on Air Quality Models* (GAQM). AERMOD with its default settings is the standard model choice, with CALPUFF available for complex wind situations.

A PSD permit application typically includes a Good Engineering Practice (GEP) stack height analysis, to ensure that downwash is properly considered in the modeling, and stack heights used as inputs to the modeling are no greater than GEP height, so as to disallow artificial dispersion from the use of overly tall stacks. The application may also include initial “load screening,” in which a variety of source operating loads and ambient temperatures are modeled, to determine the worst-case scenario for use in the rest of the modeling.

The PSD regulations also require an analysis of the impact on nearby Class I areas, generally those within 100 km, though the relevant Federal Land Manager (FLM) may specify additional or fewer areas. This analysis includes the NAAQS, PSD increments, and Air Quality Related Values (AQRVs). AQRVs are defined by the FLM, and typically limit visibility degradation and the deposition of sulfur and nitrogen. Generally, CALPUFF is the standard model choice for Class I analyses because it can handle visibility chemistry as well as the typically large distances (over 50 km) to Class I areas.

Finally, the PSD regulations require an additional impact analysis, showing the project's effect on visibility, soils, vegetation, and growth. This visibility analysis is independent of the Class I visibility AQRV analysis. The additional impact analysis for the SPI-Anderson project is discussed in Section 9.

8.1.2 Identification of SPI- Anderson Modeling Documentation

The applicant, SPI, submitted numerous documents and materials which comprise the entire modeling analysis. *PSD and ATC permit Application* (May 2007) contains the results of the original modeling and most of the Class I analyses. The updated *PSD and ATC Application* and associated compact disc (March 2010) contain updated modeling results. *Response to Incompleteness Determination #1* (July 2010), containing a full impact analysis for compliance with the 1-hour NO₂ NAAQS and a partial Additional Impacts Analysis. *Response to Incompleteness Determination #2* (September 2010) revisits the 1-hour NO₂ NAAQS compliance analysis and provides monitoring and

meteorology background information. *Startup/Shutdown Information* (December 2010) contains proposed limits on the number of annual startups and shutdowns. *Response to Additional Information Request* (June 2011) provides further information on proposed startup and shutdown emission limits. *Updated Air Dispersion Modeling Analysis* (May 2012) contains modeling files and an updated modeling analysis that reflects project changes since the March 2010 submittal. *Surface Characteristics* (June 2012) describes the surface characteristics between the meteorology site and the project site as well as modeling receptor network. *Background Concentration Information* (June 2012) supplies information regarding the monitoring background concentrations. *CALPUFF Modeling Files* (June 2012) contains archived CALPUFF modeling files developed for the original May 2007 PSD application and used in subsequent submittals.

8.2. Background Ambient Air Quality

The PSD regulations require the air quality analysis to contain air quality monitoring data as needed to assess ambient air quality in the area for the PSD-regulated pollutants for which there are NAAQS that may be affected by the source. In addition, for demonstrating compliance with the NAAQS, a background concentration is added to represent those sources not explicitly included in the modeling, so that the total accounts for all contributions to current air quality.

The applicant used ambient air concentrations of NO₂, which were recorded at Manzanita Avenue in Chico 55.5 miles (90 km) south of the facility's current location. This was the closest and most representative NO₂ monitor to the site. For PM_{2.5} background concentrations, the applicant used data from a monitor at the Redding Department of Health which is approximately 6.5 miles (10.5 km) northeast from the facility. The applicant took PM₁₀ background concentrations from Anderson, which is around 6.5 miles southeast from the facility site.

Table 8.2-1 describes the maximum background concentrations (from 2011) of the PSD-regulated pollutants for which there are NAAQS that may be affected by the project's emissions, and the corresponding NAAQS.

Table 8.2-1: Maximum Background Concentrations and NAAQS

Pollutant, Averaging Time	Background Concentration (µg/m ³)	NAAQS (µg/m ³)
NO ₂ , 1-hour	62.7 (33 ppb)	188 (100 ppb)
NO ₂ , annual	33.1 (17 ppb)	100 (53 ppb)
PM ₁₀ , 24-hour	42	150
PM _{2.5} , 24-hour	15.3	35
PM _{2.5} , annual	5.3	15
CO, 1-hour	2,976 (2.6 ppm)	40,000 (35 ppm)
CO, 8-hour	2,404 (2.1 ppm)	10,000 (9 ppm)
Ozone, 8-hour	71 ppb	75 ppb

Note: The PM_{2.5} 24-hr value is 98th percentile averaged over three years rather than maximum
 The NO₂ 1-hr value is 98th percentile averaged over three years rather than maximum
 The Ozone 8-hour value is the fourth highest 8-hour concentration averaged over three years

8.3 Modeling Methodology for Class II areas

The applicant modeled the impact of SPI- Anderson on the NAAQS and PSD Class II increments using AERMOD in accordance with GAQM. The modeling analyses included the maximum air quality impacts during normal operations and startups and shutdowns, as well as a variety of conditions to determine worst case, short-term air impacts.

8.3.1 Model selection

As discussed in the PSD Application (Updated PSD Application, March 2010, p.11pdf15), the model that the applicant selected for analyzing air quality impacts in Class II areas is AERMOD, along with AERMAP for terrain processing and AERMET for meteorological data processing. This is in accordance with the default recommendations in Section 4.2.2 on Refined Analytical Techniques in GAQM.

8.3.2 Meteorology model inputs

AERMOD requires representative meteorological data in order to accurately simulate air quality impacts. The applicant used surface meteorological data collected for a five consecutive-year period (2004-2008) at the Redding Municipal Airport meteorological station. This station is located approximately 2.8 (4.5 km) miles from the project site. The applicant processed these data using EPA's AERMET data processor. EPA concurs that the chosen 2004-2008 Redding data is the most representative for the SPI- Anderson analysis.

For upper air data, the applicant obtained data from the 2004-2008 Medford, Oregon upper air site located approximately 134 miles (215 km) northwest of the project site as being the most representative site available that had data complete enough to use. No other upper air meteorological monitoring stations are located closer to the project site. (Updated PSD Application, p.13pdf.17). EPA agrees that it is appropriate to use Medford, Oregon upper air data for the SPI- Anderson analysis.

8.3.3 Land characteristics model inputs

Land characteristics are used in the AERMOD modeling system in three ways: 1) via elevation within AERMOD to assess plume interaction with the ground; 2) via a choice of rural versus urban algorithm within AERMOD; and 3) via specific values of AERMET parameters that affect turbulence and dispersion, namely surface roughness length, Bowen ratio, and albedo. The surface roughness length is related to the height of obstacles to the wind flow and is an important factor in determining the magnitude of mechanical turbulence. The Bowen ratio is an indicator of surface moisture. The albedo is the fraction of total incident solar radiation reflected by the surface back to space without absorption.

Terrain elevations for receptors and emission sources were prepared using 1/3rd arc-second National Elevation Dataset data developed by the United States Geological Survey (USGS), and available on the internet from the USGS Seamless Data Server (<http://seamless.usgs.gov/index.php>). These data have a horizontal spatial resolution of approximately 10 meters. Terrain heights surrounding the facility indicate that some of

the receptors used in the simulations were located in intermediate or complex terrain (above stack or plume height). For determining concentrations in elevated terrain, SPI chose the AERMAP terrain preprocessor receptor-output file option.

SPI determined surface parameters including the surface roughness length, albedo, and Bowen ratio for the area surrounding the Redding Municipal Airport meteorological tower using the AERMET preprocessor, AERSURFACE (Version 08009), and the USGS 1992 National Land Cover (NLCD92) land-use data set. The NLCD92 data set used in the analysis has 30 meter data point spacing and 21 land-use categories. Seasonal surface parameters were determined using AERSURFACE according to EPA's guidance.

EPA requested additional detail characterizing the surface parameters surrounding the SPI-Anderson site for comparison with the airport site. Based on this comparison, the applicant and EPA conclude that the use of Redding meteorological data is adequately representative of the project site.

8.3.4 Model receptors

Receptors in the model are geographic locations at which the model estimates concentrations. The applicant places the receptors such that they have good area coverage and are closely spaced enough so that the maximum model concentrations can be found. At larger distances, spacing between receptors may be greater than it is close to the source, since concentrations vary less with increasing distance. The spatial extent of the receptors is limited by the applicable range of the model (roughly 50 km for AERMOD), and possibly by knowledge of the distance at which impacts fall to negligible levels. Receptors need be placed only in ambient air, that is, locations to which the public has access, and that are not inside the project fence line.

The applicant used Cartesian coordinate receptor grids to provide adequate spatial coverage surrounding the project area and to identify the extent of significant impacts and the maximum impact location. For all analyses except 1-hour average NO₂, receptors were spaced 500 m apart covering the 10 km square simulation domain, with 200 m, 50 m, and 25 m spacing receptors grids covering 5 km, 2.5 km, and 1.25 km nested square areas centered on the facility, respectively. Receptors were also located at 25 m intervals along the facility property boundary. For the 1-hour average NO₂ analysis, the modeling domain was extended to 20 km, and the additional area was covered by receptors placed 500 m apart. (Surface Characteristics, p.1pdf1)

8.3.5 Stack parameter model inputs

The modeling conducted by the applicant used the corresponding stack parameters in Table 8.3-1 for normal operations and during startup and shutdown to provide conservative estimates of SPI- Anderson impacts.

Table 8.3-1: Load Screening and Stack Parameters for Cogeneration Unit

Operating Mode	Stack Height (ft)	Stack Diameter (ft)	Stack Velocity (ft/sec)	Stack Temperature (°F)
SU/SD	85	8.5	36.7	294
Normal	85	8.5	61.1	350

Operating Mode	NO _x (lb/hr)	PM ₁₀ / PM _{2.5} (lb/hr)	CO (lb/hr)
SU/SD	70.2	8.93	432
Normal	70.2	8.93	108

Source for both parts of table 8-3: Updated Air Dispersion Modeling Analysis (May 2012), p.3, Tables 1,2 and 5pdf.3, 7 and 10.

8.3.6 Good Engineering Practice (GEP) Analysis

The applicant performed a Good Engineering practice (GEP) stack height analysis to ensure that downwash is properly considered and that stack heights used as inputs to the modeling are no greater than GEP height. This disallows artificial dispersion from the use of overly tall stacks. As is typical, the GEP analysis was performed with EPA's *Building Profile Input Program* software, which uses building dimensions and stack heights as inputs. Based on the analysis, the applicant shows that the GEP stack height for the boiler stack would have to exceed the maximum creditable GEP height of 65 m in order to ensure protection against downwash. The applicant showed that the GEP stack height for the other equipment was similarly greater than the planned heights. So, for all emitting units, the applicant used the planned actual stack heights for inputs in AERMOD modeling, and included wind direction-specific Equivalent Building Dimensions to properly account for downwash. (PSD Application p.14pdf.18)

8.4 National Ambient Air Quality Standards (NAAQS) and PSD Class II Increment Consumption Analysis

8.4.1 Pollutants with significant emissions

40 CFR § 52.21 requires an air quality impact analysis for each PSD-regulated pollutant (for which there is a NAAQS) that a major source has the PTE in a significant amount, *i.e.*, an amount greater than the Significant Emission Rate (SER) for the pollutant. Applicable SPI- Anderson emissions and the SERs are shown in Table 8.4-1. As shown in Table 8.4-1, EPA does not expect SPI- Anderson to emit Pb, VOC and SO₂ in significant amounts. However, based on the estimates submitted by the applicant, EPA expects SPI- Anderson to emit CO, NO_x, PM₁₀, and PM_{2.5} in significant amounts. Therefore, this project triggers the air impact analyses requirements for CO, NO₂, PM₁₀ and PM_{2.5}.

Table 8.4-1: PSD Applicability to SPI- Anderson: SER

Pollutant	Emissions (tpy)	SER (tpy)	Does PSD Apply?
CO	472	100	Yes
NO _x	267	40	Yes
PM ₁₀	42.1	15	Yes
PM _{2.5}	42.1	10	Yes
SO ₂	10.3	40	No
Pb	0.03	0.6	No
VOC	34.8	40	No

8.4.2 Preliminary analysis: Project-only impacts (Normal Operations and Startup)

EPA has established Significant Impact Levels (SILs) to characterize air quality impacts. A SIL is the ambient concentration resulting from the facility's emissions, for a given pollutant and averaging period, below which the source is considered to have an insignificant impact. For maximum modeled concentrations below the SIL, further air quality analysis for the pollutant is generally not necessary. In some cases it may be appropriate to consider additional information in order to conclude that a source will not be responsible for creating a new NAAQS exceedance, however. For maximum concentrations that exceed the SIL, EPA requires a cumulative modeling analysis, which incorporates the combined impact of nearby sources of air pollution to determine compliance with the NAAQS and PSD increments.

Table 8.4-2 shows the results of the preliminary or project-only analysis based on maximum operations for SPI- Anderson. Startup emissions are used for determining the maximum 1-hour NO₂, 1-hour and 8-hour CO, and 24-hour PM₁₀, PM_{2.5} impacts with maximum project impacts from normal operations included in parentheses. Startup CO emissions are expected to exceed those experienced during normal operating conditions. Startup and normal 1-hour NO₂ and 24-hour PM₁₀, PM_{2.5} emissions are the same; only the flow rates are lower for the startup case. 1-hour NO₂ impacts are based on the assumption that 80% of the NO is converted to NO₂, while the annual average NO₂ concentrations are based on the assumption that 75% of the NO is converted to NO₂. Based on Table 8.4-2, SPI- Anderson's impacts are significant only for annual and 1-hour NO₂, and 24-hour PM_{2.5}, and we have determined that in this case cumulative impacts analyses are required only for these pollutants and averaging periods.

Table 8.4-2: SPI- Anderson Significant Impacts

NAAQS pollutant, Averaging Time	Project-only Modeled Impact ($\mu\text{g}/\text{m}^3$)	Significant Impact Level ($\mu\text{g}/\text{m}^3$)	Significant Impact?
NO ₂ , 1-hour	38.6 (26.3)	7.5 (4 ppb)	Yes
NO ₂ , annual	1.35	1	Yes
PM ₁₀ , 24-hour	3.36 (2.23)	5	No
PM _{2.5} , 24-hour	3.11 (1.84)	1.2	Yes
PM _{2.5} , annual	0.27	0.3	No
CO, 1-hour	307 (122)	2000	No
CO, 8-hour	212 (36)	500	No

Sources: Updated Modeling Analysis (May 2012), Tables 3 and 6pdf8,11

8.4.3 Cumulative impact analysis

A cumulative impact analysis considers impacts from nearby sources in addition to impacts from the project itself. For demonstrating compliance with the NAAQS the applicant also adds a background concentration to represent those sources not explicitly included in the modeling, so that the total accounts for all contributions to current air quality. In this case, the applicant submitted cumulative impact analyses demonstrating compliance with the 24-hour PM_{2.5} NAAQS and the annual and 1-hour NO₂ NAAQS.

PSD increments are limits on cumulative air quality degradation. They are set to prevent air with pollutant concentrations lower than the NAAQS from being degraded to the level of the NAAQS. PSD increments apply in addition to the NAAQS. Increments have been established for some pollutants, such as for this project, specifically for NO₂, PM₁₀ and PM_{2.5}. For demonstrating compliance with the PSD increment, only increment-consuming sources need to be included because the increment concerns only changes occurring since the applicable baseline date.

There is an annual NO₂ PSD increment, but there is no 1-hour NO₂ PSD increment; therefore, only 24-hour PM_{2.5} and annual NO₂ require cumulative PSD increment analyses.

For evaluating NO₂ annual increment in this analysis, the applicant used all of the same sources that were in the NAAQS inventory, which is conservative.

With respect to the PSD increment analysis for PM_{2.5}, the applicable trigger date when the PM_{2.5} increments become effective under the Federal PSD program is October 20, 2011. The SPI- Anderson PSD permit application was determined to be administratively complete by EPA on October 4, 2010. However, EPA is requiring each source that receives its PSD permit after the trigger date, regardless of when the application was submitted, to provide a demonstration that the proposed emissions increase, along with other increment consuming emissions will not cause or contribute to a violation of the PM_{2.5} increments. Also the major source baseline, which precedes the trigger date is the date after which actual emissions increases associated with construction at any major stationary source consume PSD increment. That date is October 20, 2010. With this PSD

permit, SPI-Anderson would begin construction after this date. In general, for PM_{2.5}, the minor source baseline date is the earliest date after the trigger date of a complete PSD permit application for a source with a proposed increase in emissions of PM_{2.5} that is significant. No source has triggered the minor source baseline date in the area at issue. Other than SPI- Anderson's projected construction emissions, there have been no actual emissions changes of PM_{2.5} from any new or modified major stationary source on which construction commenced after October 20, 2010. Therefore, the only source to consume PM_{2.5} increment in the area is SPI- Anderson. The applicant considered only the allowable emissions increase from the SPI- Anderson project in the 24-hour PM_{2.5} increment analysis.

8.4.3.1 Nearby source emission inventory

For both the PSD increment and NAAQS analyses, there may be a large number of sources that could potentially be included. Only sources with a significant concentration gradient in the vicinity of the source need to be included; the number of such sources is expected to be small, except in unusual situations. (GAQM 8.2.3)

Shasta and Tehama Counties provided a list of all stationary sources within their counties and within 55.4 km of the project site (approximate distance to the farthest significant impact plus 50 km) for NO₂ and 51.0 km for PM_{2.5}. A comprehensive procedure was used to determine which sources were included in the emissions inventory to be modeled. This included screening out a source by whether it had a significant impact where the project was predicted to have a significant impact.

We note that short-term maximum emission rates are used rather than annual emission rates to determine the distance over which a facility might have a significant impact for short-term standards (*e.g.*, hourly NO₂). Use of short-term rates results in the greatest impacts at the farthest distance. Thus, the peak rates that occur during startup determine the SPI- Anderson significant impact area (SIA) for hourly NO₂.

SPI identified nine facilities nearby for inclusion in the emission inventory for the 1-hour NO₂ cumulative analysis, based on data from Shasta and Tehama Counties. The following non-SPI- Anderson facilities and their NO_x and PM_{2.5} emissions are included in the cumulative compliance demonstration: Kiara Co Gen project, Wheelabrator Shasta Co-Gen (NO_x only), Wheelabrator Lassen Gas Turbine (NO_x only), City of Redding power plant (NO_x only), Ag Products Asphalt (NO_x only), JF Shea Smith Road Asphalt, Lehigh Cement (NO_x only), North State Asphalt (NO_x only), and Tehama Processing (NO_x only). These facilities are large enough and close enough to the project site to have the potential to directly impact the project's SIA. (Updated Air Dispersion Modeling Analysis, Tables 13-14pdf.20-21).

Current EPA NO₂ guidance recommends that emphasis on determining which nearby sources to include in the nearby source inventory should focus on the area within about 10 km of the project location in most cases. This indicates that the SPI- Anderson inventory is adequate for performing these cumulative analyses (p.16 of "Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour

NO₂ National Ambient Air Quality Standard”, Memorandum from Tyler Fox, EPA Air Quality Modeling Group to EPA Regional Air Division Directors, March 1, 2011).

Considering a focus on sources within 10 km, EPA concludes that the combination of representative background monitored concentrations and the additional consideration of sources out to 50 km provide sufficient justification for the inventories used in the cumulative analysis.

8.4.3.2 Discussion of Certain PM_{2.5}-Specific Considerations

EPA has issued guidance on how to combine modeled results with monitored background concentrations which the applicant adequately followed. (“Modeling procedures for Demonstrating Compliance with PM_{2.5} NAAQS”, memorandum from Stephen D. Page, Director, EPA OAQPS, March 23, 2010.)

SPI provided a cumulative PM_{2.5} 24-hour analysis. The applicant’s analysis conservatively assumed that all PM₁₀ emissions were comprised of PM_{2.5} emissions, and therefore used PM₁₀ emissions data as input to the modeling. Thus, actual PM_{2.5} impacts are expected to be lower than those indicated in the model results.

PM_{2.5} is either directly emitted from a source (primary emissions) or formed through chemical reactions with pollutants already in the atmosphere (secondary formation). EPA has not developed and recommended a near-field model that includes the necessary chemistry algorithms to estimate secondary impacts in an ambient air analysis.

The SPI- Anderson application does not specifically address secondarily formed PM_{2.5} (as distinguished from directly emitted primary PM_{2.5}). Secondary PM_{2.5} is formed through the emission of non-particulates (*i.e.*, gases) – such as SO₂ and NO_x – that turn into fine particulates in the atmosphere through chemical reactions or condensation. Using the results for PM_{2.5} impacts given in Tables 8.4-2 and 8.4-3 and the projected emission rates of SO₂, NO_x and PM_{2.5}, EPA notes that the SPI- Anderson emissions of 10.3 tpy SO₂ are less than the SO₂ SER of 40 tpy, and would not be expected to result in significant secondary PM_{2.5}. The SPI- Anderson NO_x emissions of 267 tpy are above the NO_x SER of 40 tpy. However, secondary PM_{2.5} formation occurs only as a result of chemical transformations that would affect only a portion of those emissions. Moreover, the formation occurs gradually over time as the plume travels and becomes increasingly diffuse and would be expected to be considerably smaller than the impacts from the 42.1 tpy of directly emitted primary PM_{2.5}. The maximum impact of source primary PM_{2.5} was 3.11 µg/m³ for 24-hour PM_{2.5} and 0.27 µg/m³ for annual PM_{2.5}. The 24-hour PM_{2.5} cumulative impacts analysis which gives a maximum impact of 28.8 ug/m³, with a background concentration of 15.3 ug/m³, indicates that at least 6.2 µg/m³ remains available for the 24-hour averaging time before the NAAQS is challenged (35 µg/m³ – 28.8 µg/m³). For the annual averaging time no cumulative impact analysis was required because the project’s annual impacts were less than the SIL. However, the background concentration was 5.3 µg /m³. Adding this result to the project’s predicted impact of 0.27 µg /m³ yields a concentration of 5.57 µg /m³. This result is less than a third of the NAAQS and leaves about 9 µg /m³ remaining before the NAAQS is challenged. The

monitored background PM_{2.5} concentrations would also conservatively include secondarily formed PM_{2.5} from the surrounding/nearby sources. Because the secondary PM_{2.5} formation from SPI- Anderson's NO_x emissions would be expected to be considerably smaller than the primary PM_{2.5} impacts, they would also be smaller than the additional 6.2 µg/m³ or 9 µg/m³ needed to cause or contribute to a PM_{2.5} NAAQS violation. In addition, most of these chemical transformations in the atmosphere occur slowly (over hours or even days, depending on atmospheric conditions and other variables), causing secondary PM_{2.5} impacts to occur generally at some distance from the source of its gaseous emissions precursors, and are unlikely to overlap with nearby maximum primary PM_{2.5} impacts.

8.4.3.3 Discussion of Certain 1-hour NO₂-Specific Considerations

While the new 1-hour NO₂ NAAQS is defined relative to ambient concentrations of NO₂, the majority of NO_x emissions from stationary sources are in the form of nitric oxide (NO) rather than NO₂. GAQM notes that the impact of an individual source on ambient NO₂ depends in part "on the chemical environment into which the source's plume is to be emitted" (see Section 5.1.j). Because of the role NO_x chemistry plays in determining ambient impact levels of NO₂ based on modeled NO_x emissions, Section 5.2.4 of GAQM recommends a three-tiered screening approach for NO₂ modeling. Later guidance documents issued by EPA expand on this approach. Tier 1 assumes full conversion of NO to NO₂. Tiers 2 and 3 are refinements of the amount of conversion of NO to NO₂. The applicant used the Tier 2 approach, in which the 1-hour NO₂ impacts are based on the assumption that 80% of the NO is converted to NO₂, while the annual average NO₂ concentrations are based on the assumption that 75% of the NO is converted to NO₂.

A. NO₂ monitor representativeness/conservativeness

The applicant chose the Manzanita Avenue monitor in Chico for background NO₂ concentrations. This monitor is approximately 90 km from the SPI- Anderson site and is the closest NO₂ monitor to the project site. No other NO₂ monitor is located within 90 km of the site. Despite its distance from the project site, the monitor from Chico is conservative based on its proximity to a more industrial area at the north end of the Sacramento Valley.

B. Combining modeled and monitored values

SPI used one of the approaches in an EPA March 2011 memo which recommends using the 98th percentile of the annual distribution of daily maximum 1-hour values averaged across the most recent three years of monitored data as a uniform background contribution to the modeled results. This procedure is based on a conservative assumption.

EPA believes that the applicant's overall approach to the 1-hour NO₂ analysis for the SPI- Anderson project, including the emission inventory, background concentrations of NO₂ and the method for combining model results with monitored values, is adequately conservative.

8.4.3.4 Startup and Shutdown Analyses

As stated in Section 8.3.5, the applicant estimated boiler NO_x emissions during startup and shutdown to be the same as those during normal operations, but with lower flow rates, thus the applicant also modeled for startup and shutdown. The stack parameters input into the model such as exit temperature and exhaust velocity were consistent with a flow rate equal to approximately 60% of that associated with a full load, and a reduced exhaust temperature of 250 °F or 394 degrees K (Updated Air Dispersion Modeling Analysis, May 2012). The startup period may last up to 24 hours from a “cold” (ambient temperature) furnace with the initial fire employing natural gas-fired burners combusting pipeline natural gas. SPI- Anderson anticipates only two planned cold startup and shutdown events during the year for maintenance.

8.4.3.5 Results of the Cumulative Impacts Analysis

The results of the PSD cumulative impacts analysis for SPI- Anderson’s normal operations for PM_{2.5} and startup emissions for 1-hour NO₂ are shown in Table 8.4-3. The analysis demonstrates that emissions from SPI- Anderson will not cause or contribute to exceedances of the NAAQS for annual and 1-hour NO₂ or 24-hour PM_{2.5} or for the increments for annual NO₂ or 24-hour PM_{2.5}. The background concentrations were taken from Table 8.2-1.

EPA also considered additional information to ensure that the modification would not be responsible for causing a new NAAQS exceedance outside this modeling area. EPA considered sources in Shasta and Tehama Counties (no sources of interest were located outside of these counties) that were not included, but which had been evaluated for inclusion/exclusion in the cumulative impacts modeling. EPA concluded that these sources are either small enough or distant enough that the project’s expected emissions along with emissions from these sources would not create any new NAAQS exceedance in the modeling area outside of the SIA.

Table 8.4-3: SPI- Anderson Compliance with Class II PSD Increments and NAAQS

Pollutant. Averaging Time	All Sources Modeled Impact	Background Concentration	Cumulative Impact w/ Background	NAAQS (µg/m ³)	PSD Increment Consumption	PSD Increment
NO ₂ , 1-hour	94	62.7	157	188 (100 ppb)	NA	NA
NO ₂ , annual	1.75	33.1	34.8	100 (53)	1.75	25
PM _{2.5} , 24-hour	13.5	15.3	28.8	35	3.36	9

Notes: - There are no PSD increments defined for 1-hour NO₂.

Sources:

NO₂, PM_{2.5} (NAAQS): Updated Air Dispersion Modeling Analysis (May 2012) Tables 15 and 16pdf22-23: PM_{2.5} increment consumption less than all sources modeled impact due to non-increment consuming fugitive source at SPI- Anderson being included in NAAQS analysis.

8.4.3.6 Impact on Ozone Levels

There is a projected 267 tpy increase in NO_x emissions. Shasta County is an attainment area for O₃. There are four O₃ monitors located in the Redding area. The highest design value from these monitors is 71 ppb. The monitor with the highest value is located on the north side of Redding about 25 km from SPI-Anderson. The NAAQS is exceeded if the design value is 75 ppb. As explained further below, there is no evidence in any recent O₃ regional modeling that an increase in 267 tpy of NO_x would result in a 4 ppb O₃ increase and threaten the NAAQS.

The emissions of VOC and NO_x that react to form O₃ come from a variety of local and regional anthropogenic and natural source categories. Anthropogenic VOC emissions are associated with evaporation and combustion processes, especially industrial processes and transportation. Natural VOC emissions from vegetation are much larger than those from anthropogenic sources. Anthropogenic NO_x emissions are associated with combustion processes, especially mobile sources and electric power generation plants. Major natural sources of NO_x include lightning, soils, and wildfires. Given the large number of local and regional VOC and NO_x sources affecting O₃ concentrations in a given area, the impact of any single emission source is generally very small.

Furthermore, given the complex nature of O₃ chemistry, the response of the O₃ system can be rather stiff in certain areas, meaning that it generally takes a substantial change in precursor emissions to produce a discernible change in O₃ concentrations on a single day. For example, modeling performed for the San Joaquin Valley 2007 Ozone Plan for the Hanford site indicates changes in NO_x emissions over the entire air basin on the order of 20% may increase O₃ by approximately 6% to 7%. Another assessment tool used in the San Joaquin Valley scaled the San Joaquin Valley 2007 Ozone Plan's *Arvin 2023 Ozone Response Diagram* to estimate the change in ozone per change in NO_x emissions. Using this information and scaling the 267 tpy of NO_x emissions from the proposed modification would result in O₃ increases well below 1 ppb.

8.5 Class I Area Analysis

8.5.1 Air Quality Related Values

The four nearest Class I areas are all within 100km of the project site and are listed below:

- Yolla Bolly – Middle Eel Wilderness Area (57 km)
- Thousand Lakes Wilderness (62 km)
- Lassen National park (64 km)
- Caribou Wilderness Area (89 km)

There are five additional areas within 200 km: Marble Mountain Wilderness Area (116 km), Redwood National Park (147km), Lava Beds National Monument (148 km) and South Warner Wilderness Area (192km).

Based on the most recent Federal Land Managers' Air Quality Related Values (AQRV) Work Group (FLAG) (2010) published guidance, the following screening approach is used to determine whether a more refined Class I Air Quality Analysis is required. This approach only applies to projects located more than 50 km from a Class I area, and it requires adding all of the visibility-related emissions (SO₂, NO_x, PM₁₀ and sulfuric acid mist) from a project (based on 24-hour maximum allowable emissions expressed in units of tpy), known as Q , and dividing Q by the distance D between the project and Yolla Bolly, the nearest Class I area. If the result (Q/D) is less than 10, the project is presumed to have negligible impacts to Class I AQRVs. Table 8.5-1 shows that the project's Q/D is 5.39, well below the FLAG screening criteria. Therefore, no further Class I AQRV analysis is required.

Table 8.5-1 Summary of Q/D Analysis

Project parameter	Value
NOx Emissions Increase (tpy)	254 (1)
SO2 Emissions Increase (tpy)	9.78 (2)
PM10 Emissions Increase (tpy)	39.1 (3)
H2SO4 Emissions Increase (tpy)	4.12 (4)
Q = project Emissions Increase (tpy) = (1) + (2) + (3) + (4)	307
D= Distance to Closest Class I Area (km)	57
Q/D (tpy/km)	5.39
Q/D Threshold (tpy/km)	10

8.5.2 Class I Increment Consumption Analysis

EPA requires an analysis addressing Class I increment impacts for applicable pollutants, regardless of the results of the Class I AQRV analysis. The analysis for annual NO₂ and PM₁₀ and for PM₁₀ 24-hour was included in the original application submitted in 2007. Based on the results, EPA did not require updated modeling to be submitted with the 2010 PSD application because of the very low predicted impacts. The applicant provided a PM_{2.5} Class I increment analysis in *Updated Air Dispersion Modeling Analysis* (May 2012) for Yolla Bolly, the closest Class I area, because this would provide the most conservative results. The applicant used the original CALPUFF results from the *Original PSD Application* (May 2007) and the CALPUFF post processing programs. To obtain PM_{2.5} concentrations, coarse PM, sulfate, and nitrate fractions were removed from the post-processing originally used to develop PM₁₀ concentrations. The results are presented in Table 8.5-2.

SPI's application was complete on October 4, 2010. There have been no changes in actual emissions of PM_{2.5} from any major stationary source on which construction commenced after October 20, 2010, the major source baseline date for PM_{2.5}, for purposes of analyzing PM_{2.5} increment consumption here. Also, no source has triggered the minor source baseline date in the area at issue. Therefore, for purposes of this Class I PM_{2.5} increment analysis, we consider only SPI- Anderson's increment consumption. Because

SPI- Anderson's impacts are much less than the Class I SILs, and the Class I SILs are much lower than the increments, SPI- Anderson's maximum impacts are well below the PM_{2.5} increments. Therefore, the applicant has demonstrated that the project will not cause or contribute to any Class I PSD increment violation for PM_{2.5}. Additionally, NO₂ and PM₁₀ impacts are well below their respective significant impact levels; therefore, the applicant has demonstrated the project will not cause or contribute to any Class I violation for PM₁₀ or NO₂.

Table 8.5-2: SPI- Anderson Class I Increment Impacts at Two Closest Class I Areas

Class I Area	Pollutant, Averaging Time	Project Impact (µg/m ³)	Significant Impact Level (µg/m ³)	Class I PSD Increment, (µg/m ³)
Yolla Bolly-Middle Eel Wilderness	NO ₂ , annual	0.0006	0.1	2.5
	PM _{2.5} , 24-hour	0.012	0.07	2
	PM _{2.5} , annual	0.0006	0.06	1
	PM ₁₀ , 24-hour	0.06	0.3	8
	PM ₁₀ , annual	0.002	0.2	4
Thousand Lakes Wilderness	NO ₂ , annual	0.0009	0.1	2.5
	PM ₁₀ , 24-hour	0.018	0.3	8
	PM ₁₀ , annual	0.001	0.2	4

Source: For NO₂ and PM₁₀ impacts: Original PSD Application, Table 5-3 pdf.48. For PM_{2.5} impacts: Updated Air Dispersion Modeling Analysis, p.6pdf.6.

9. Additional Impact Analysis

In addition to assessing the ambient air quality impacts expected from a proposed new source, the PSD regulations require that EPA evaluate other potential impacts on 1) soils and vegetation; 2) growth; and 3) visibility impairment. 40 CFR § 52.21(o). The depth of the analysis generally depends on existing air quality, the quantity of emissions, and the sensitivity of local soils, vegetation, and visibility in the source's impact area.

9.1 Soils and Vegetation

The additional impact analysis includes consideration of potential impacts to soils and vegetation associated with the SPI- Anderson emissions. 40 CFR § 52.21(o). This component generally includes:

- a screening analysis to determine if maximum modelled ground-level concentrations of project pollutants could have an impact on plants; and
- a discussion of soils and vegetation that may be affected by proposed project emissions and the potential impacts on such soils and vegetation associated with such emissions.

The proposed project will be within the physical footprint of disturbed land that is part of the existing facility operations of the SPI- Anderson sawmill parcel located in Shasta County, California. The applicant presented its discussion of potential impacts on soils

and vegetation as part of its PSD application and supplemental application information (from 2007 through 2012 submittals) and its biological review information (from 2007 and 2010). This information is further discussed below regarding the modification's potential deposition on soils and the project's modeled impacts compared to EPA's screening concentrations and secondary NAAQS.

The potential impact on soils from air pollutants through deposition is presented in the 2007 application (Section 5.0) as part of the Class I AQRV analysis. Additionally, the applicant reviewed the U.S. Department of Agriculture Natural Resources Conservation Service's Web Soil Survey⁸; soils in the area had pH ratings of between 5.3 and 6.5. A current review of the same area indicates that the same soil types (primarily various types of loam with some cobbly alluvial areas) and pH (5.3 to 6.5) are present. Then, as now, the modeled deposition fluxes of nitrogen and sulfur attributable to the project are unlikely to alter or influence the pH of soils in the area.

With respect to the April 2010 updated biological review, the applicant included an expanded project study area beyond the original 2007 evaluation. Soil characteristics of the habitat of the federally listed plant species, the slender Orcutt grass, are described. Its general habitat includes vernal pools (and similar habitat), reservoir edges of stream floodplains, clay soils with seasonal inundation in valley grassland to coniferous forest or sagebrush scrub. Likewise, it is not expected that the project's emissions will adversely affect the habitat of this species.

The applicant's May 2012 application supplement presents an updated air dispersion modeling analysis from its 2010 application update. Project impacts are presented for normal project-only (refer to May 2012, Table 3) and startup and shutdown project-only (refer to May 2012, Table 6) modeling results.⁹ The project's SO₂, NO₂ and CO concentrations were compared to EPA screening concentrations in EPA's "Screening procedure for the Impacts of Air pollution Sources on plants, Soils and Animals" (1980)¹⁰. The screening procedure is used as a tool to identify if the project could have an impact on plants, soils, and animals. The project's impacts do not exceed the screening concentrations for these pollutants. Table 9.1-1 summarizes this information.

⁸ Web Soil Survey: <http://websoilsurvey.nrcs.usda.gov>

⁹ Tables 4 and 6 of the May 2012 correspondence were not relied upon because these tables refer to the State and local permit process, which rely on the State ambient air standards; Tables 3 and 5 are relevant for the federal PSD permit process.

¹⁰ "Screening Procedure for the Impacts of Air Pollution Sources on Plants, Soils, and Animals," EPA 450/2-81-078, December 1980.

Table 9.1-1: Project Maximum Concentrations and EPA Guidance Levels for Screening Concentrations for Ambient Exposures

Criteria pollutant, Guidance Averaging Time	EPA Screening Concentration ($\mu\text{g}/\text{m}^3$)	Modeled Maximum Concentrations ($\mu\text{g}/\text{m}^3$)	Model Averaging Time
SO ₂ , 1-Hour	917	1.67	1 hour
SO ₂ , 3-Hours	786 (0.30 ppm)	1.55 (0.0006 ppm)	3 hour
SO ₂ , Annual	18	0.07	Annual
NO ₂ , 4-Hours	3,760	40.0	1 hour
NO ₂ , 8-Hours	3,760	40.0	1 hour
NO ₂ , 1-Month	564	40.0	1 hour
NO ₂ , Annual	94 (0.05 ppm)	1.35 (0.0007 ppm)	Annual
CO, Weekly	1,800,000	212	8 hour

The project's impacts were also compared to the secondary NAAQS. For most types of soils and vegetation, ambient concentrations of criteria pollutants below the secondary NAAQS will not result in harmful effects because the secondary NAAQS are set to protect public welfare, including animals, plants, soils, and materials. The modeled maximum concentrations of SO₂, NO₂, PM_{2.5}, and PM₁₀ are also significantly below the secondary NAAQS that have been established by EPA.¹¹

Table 9.1-2: Project Maximum Concentrations and Secondary NAAQS Standards

Pollutant, Averaging Time	Secondary NAAQS ($\mu\text{g}/\text{m}^3$)	Modeled Maximum Concentrations ($\mu\text{g}/\text{m}^3$)
SO ₂ , 3-hour	1,300 (0.5 ppm)	1.55 (0.0006 ppm)
NO ₂ , Annual	100 (0.053 ppm)	1.35 (0.0007 ppm)
PM ₁₀ , 24-hour	150	3.36
PM _{2.5} , 24-hour	35	3.11
PM _{2.5} , Annual	15	0.27

In sum, based on our consideration of the information and analysis provided by the applicant, and other relevant information, we do not believe that emissions associated with the project will generally result in adverse impacts to soils or vegetation.

¹¹ EPA has not promulgated a secondary NAAQS for CO.

9.2 Visibility Impairment

The additional impact analysis also evaluates the potential for visibility impairment (*e.g.*, plume blight) associated with SPI- Anderson. 40 CFR § 52.21(o). Using procedures from EPA’s Workbook for Plume Visual Impact Screening and Analysis¹², the potential for visibility impairment is characterized for:

- Class I areas located within 50 km of the proposed SPI- Anderson modification; and
- Class II areas identified as potentially sensitive state or federal parks, forests, monuments, or recreation areas.

There are no Federal Class I areas located within 50 km of the project site; the nearest Class I area is Yolla Bolly-Middle Eel (57 km away). The next nearest Class I area is Thousand Lakes Wilderness Area (62 km away). For nearby Class II areas or recreation areas, the applicant evaluated visibility impairment for the following within 50 km of the project site:

- Sacramento River National Wildlife Refuge (NWR) 38.8 km at its closest point;
- Whiskeytown National Recreation Area (NRA) 18.3 km at its closest point.

EPA has not yet established a quantitative visibility impairment threshold for Class II areas (similar to what exists for Class I areas). We requested that the applicant conduct a Level 1 VISCREEN analysis, and, if necessary, a Level 2 screening analysis for these two areas.

For Whiskeytown NRA and Sacramento River NWR, the impact of the project on visibility impairment, also known as plume blight, was assessed. The EPA VISCREEN screening model was used to estimate visibility impairment to these two areas from the project’s emissions. Effects of plume blight are assessed as changes in plume perceptibility (ΔE) and plume contrast (C_p) for sky and terrain backgrounds. A Level 1 analysis, using default meteorological data and no site-specific conditions, was conducted. Because the results of the Level 1 screening analyses indicated that some of the screening criteria were exceeded, a Level 2 analysis was conducted for both areas. A detailed discussion of the VISCREEN plume blight impact analysis is presented in the applicant’s Class II Area Visibility analysis submitted by the applicant to EPA in July 2012.

The results of the Level 2 VISCREEN modelling runs are presented below in Tables 9.2-1, 9.2-2, 9.2-3 and 9.2-4. The VISCREEN results are presented for the two default worst case theta angles – theta equal to 10 degrees representing the sun being in front of an observer, and theta equal to 140 degrees representing the sun being behind the observer. A negative plume contrast means the plume has a darker contrast than the background sky.

¹² “Workbook for Plume Visual Impact Screening and Analysis (Revised)”, EPA, EPA-454/R-92-023, 1992.

**Table 9.2-1: Whiskeytown NRA Class II VISCREEN
Modelling Results of Changes in Plume Perceptibility (ΔE)**

Background	Distance (km)	Plume Perceptibility (ΔE)		
		Theta 10	Theta 140	Criteria
Sky	37.1	0.408	0.24	2.00
Terrain	37.1	0.911	0.187	2.00

**Table 9.2-2: Whiskeytown NRA Class II VISCREEN
Modeling Results of Changes in Plume Contrast (C_p)**

Background	Distance (km)	Plume Contrast (C_p)		
		Theta 10	Theta 140	Criteria
Sky	37.1	0.005	-0.003	0.05
Terrain	37.1	0.007	0.001	0.05

**Table 9.2-3: Sacramento River NWR Class II VISCREEN
Modelling Results of Changes in Plume Perceptibility (ΔE)**

Background	Distance (km)	Plume Perceptibility (ΔE)		
		Theta 10	Theta 140	Criteria
Sky	50.0	0.724	0.47	2.00
Terrain	38.9	1.209	0.104	2.00

**Table 9.2-4: Sacramento River NWR Class II VISCREEN
Modelling Results of Changes in Plume Contrast (C_p)**

Background	Distance (km)	Plume Contrast (C_p)		
		Theta 10	Theta 140	Criteria
Sky	50.0	0.01	-0.006	0.05
Terrain	38.9	0.008	0.001	0.05

The results from the VISCREEN model show that changes in plume perceptibility and plume contrast for sky and terrain backgrounds inside these two areas are below the criteria thresholds. Therefore, the plume would not be perceptible against a sky or terrain background.

Consequently, EPA guidance indicates that these results may be used to determine that the project will not contribute to visibility impairment, and no further analysis is required.

9.3 Growth

The growth component of the additional impact analysis involves a discussion of general commercial, residential, industrial, and other growth associated with SPI- Anderson. 40 CFR § 52.21(o). This analysis considers emissions generated by growth that will occur in the area due to the modification. In conducting this review, we focus on residential, commercial and industrial growth that is likely to occur to support the source under review including employment expected during construction and operations and

potential growth impacts associated with this employment, this as impacts to local population and housing needs

EPA does not expect this project to result in any significant growth. Construction of the proposed cogeneration unit would span between 14 and 18 months. Laydown and temporary worker parking areas will be located within the existing facility property boundary. During construction approximately 40 temporary workers would be added, however this demand would be mitigated by the use of existing employees.

Once the cogeneration unit is operational, the facility expects to employ approximately eight additional workers. The project will utilize existing roads and infrastructure, and no additional roads or transportation infrastructures are proposed for construction. We do not expect the new cogeneration unit to cause significant growth in the area.

10. Endangered Species

Pursuant to Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1536, and its implementing regulations at 50 CFR Part 402, EPA is required to ensure that any action authorized, funded, or carried out by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of such species' designated critical habitat. EPA has determined that this PSD permitting action is subject to ESA Section 7 requirements.

The construction activities resulting from the proposed modification will occur on SPI-Anderson's existing facility footprint. All storm water runoff will be contained on the site. Power lines to be constructed between the new transformer and the existing switch yard will be strung overhead. It is anticipated that there will be three sets of suspended wooden poles to span the distance between the existing switch yard and the transformer to be located near the turbine building.

SPI has confirmed that construction activities will not occur within 100 feet of the elderberry shrubs that are in the Pacific Gas and Electric power line Right of Way. The nearest construction activity to the existing elderberry plants will be the erection of the electrical power poles at the existing electrical sub-station which are 137 feet away from the nearest elderberry shrub. The main construction area, where the boiler, turbine building, fuel shed, electrical substation cooling tower, and ESP will be built, is approximately 1,000 feet from the nearest elderberry shrub.

EPA concludes that the project will have no likely adverse effect on any endangered or threatened species or designated critical habitat. Discussions with the United States Fish and Wildlife Service support EPA's conclusion.

11. Environmental Justice Screening Analysis

Executive Order 12898, entitled "Federal Actions To Address Environmental Justice in

Minority populations and Low-Income populations,” states in relevant part that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” Section 1-101 of Exec. Order 12898, 59 Fed. Reg. 7629 (Feb. 16, 1994).

This AAQIR concludes that the proposed modification will not cause or contribute to air quality levels in excess of health standards for the pollutants regulated under EPA’s proposed PSD permit for the proposed modification, and that the project will not result in disproportionately high and adverse human health or environmental effects with respect to these air pollutants on populations residing near the SPI- Anderson site, or on the community as a whole.

12. Clean Air Act Title V (Operating Permit)

The SPI Anderson facility already must comply with a Title V Operating Permit, SCAQMD Permit #94VP18c. After the proposed cogeneration unit is constructed, SCAQMD Permit #94VP18c will need to be revised to appropriately reflect the facility’s current operations. The SCAQMD has jurisdiction to issue the Title V Operating Permit for SPI- Anderson.

13. Comment Period, Procedures for Public Hearing Requests, Final Decision, and EPA Contact

The comment period for EPA’s proposed PSD permit for the project begins on September 12, 2012. Pursuant to 40 CFR 124.12, EPA has discretion to hold a Public Hearing if we determine there is a significant amount of public interest in the proposed permit. Requests for a Public Hearing must state the nature of the issues proposed to be raised in the hearing. If a Public Hearing is to be held, a public notice stating the date, time and place of the hearing will be made at least 30 days prior to the hearing. Reasonable attempts will be made to notify directly any person who has commented on this proposal of any pending Public Hearing, provided contact information has been given to the EPA contact person listed below.

Any interested person may submit written comments or request a Public Hearing regarding EPA’s proposed PSD permit for this modification. All written comments and requests on EPA’s proposed action must be received by EPA via e-mail by October 17, 2012, or postmarked by October 17, 2012. Comments or requests must be sent or delivered in writing to Omer Shalev at one of the following addresses:

E-mail: R9airpermits@epa.gov

U.S. Mail: Omer Shalev (AIR-3)
U.S. EPA Region 9

75 Hawthorne Street
San Francisco, CA 94105-3901
Phone: (415) 972-3538

Comments should address the proposed permit modification and facility, including such matters as:

1. The Best Available Control Technology (BACT) determinations;
2. The effects, if any, on Class I areas;
3. The effect of the proposed facility on ambient air quality; and
4. The attainment and maintenance of the NAAQS.

All information submitted by the applicant is available as part of the administrative record. The proposed air permit, fact sheet/ambient air quality impact report, permit application and other supporting information are available on the EPA Region 9 website at <http://www.epa.gov/region09/air/permit/r9-permits-issued.html#pubcomment>. The administrative record may also be viewed in person, Monday through Friday (excluding federal holidays) from 9:00 AM to 4:00 PM, at the EPA Region 9 address above. Due to building security procedures, please call Omer Shalev at (415) 972-3538 at least 24 hours in advance to arrange a visit. Hard copies of the administrative record can be mailed to individuals upon request in accordance with Freedom of Information Act requirements as described on the EPA Region 9 website at <http://www.epa.gov/region9/foia/>.

EPA's proposed PSD permit for the proposed modification and the accompanying fact sheet/ambient air quality impact report are also available for review at the Shasta County Air Quality Management District at 1855 Placer St., Suite 101 in Redding, CA 96001, and the Redding Public Library at 1100 Parkview Ave. in Redding, CA 96001.

All comments that are received will be included in the public docket without change and will be available to the public, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through e-mail. If you send e-mail directly to the EPA, your e-mail address will be automatically captured and included as part of the public comment. Please note that an e-mail or postal address must be provided with your comments if you wish to receive direct notification of EPA's final decision regarding the permit.

EPA will consider all written and oral comments submitted during the public comment period before taking final action on the PSD permit modification and will send notice of the final decision to each person who submitted comments and contact information during the public comment period or requested notice of the final permit decision. EPA will respond to all substantive comments in a document accompanying EPA's final permit decision.

EPA's final permit decision will become effective 30 days after the service of notice of the decision unless:

1. A later effective date is specified in the decision; or
2. The decision is appealed to EPA's Environmental Appeals Board pursuant to 40 CFR Part 124.19; or
3. There are no comments requesting a change to the proposed permit decision, in which case the final decision shall become effective immediately upon issuance.

If EPA issues a final decision granting the PSD permit for this modification, and there is no appeal, construction of the modification may commence, subject to the conditions of the PSD permit and other applicable permit and legal requirements.

If you have questions, please contact Omer Shalev at (415) 972-3538 or e-mail at R9airpermits@epa.gov. If you would like to be added to our mailing list to receive future information about this proposed permit decision or other PSD permit decisions issued by EPA Region 9, please contact Omer Shalev at (415) 972-3538 or send an e-mail to R9airpermits@epa.gov, or visit EPA Region 9's website at <http://www.epa.gov/region09/air/permit/psd-public-guidelines.html>.

14. Conclusion and Proposed Action

EPA is proposing to modify the PSD permit for SPI-Anderson facility owned and operated by SPI. We believe that the proposed project will comply with PSD requirements including the installation and operation of BACT, and will not cause or contribute to a violation of the NAAQS, or of any PSD increment. We have made this determination based on the information supplied by the applicant and our review of the analyses contained in the permit application. EPA will provide the proposed permit and this AAQIR to the public for review, and make a final decision after considering any public comments on our proposal.

Appendix A- Greenhouse Gas Emissions Estimates**Boiler- Biomass And Natural Gas Emission Rates**

Pollutant	Biomass Emission Factor (Heat Input):		Natural Gas Emission Factor (Heat Input):		Heat Input for Unit (MMBtu/hr)	Biomass Emission Rate (lb/hr)	Natural Gas Emission (lb/hr)
	(kg/MMBtu)	(lb/MMBtu)	(kg/MMBtu)	(lb/MMBtu)			
CO ₂	93.8	207	66.83	147.3	468	96,876	68,952
CH ₄	0.032	0.0705	0.001	0.002205	468	33	1
N ₂ O	0.0042	0.00926	0.0001	0.000220	468	4	0

Discussion: EPA's *Deferral for CO₂ emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration and Title V programs* (76 FR 43490 July 20, 2011) applies to this modification. Therefore, the determination of PSD applicability for GHG will exclude CO₂ emissions from the burning of biomass fuel for this proposed modification. The boiler is allowed to burn natural gas during startup and shutdown, but the proposed PSD permit limits the annual heat input from natural gas to not exceed 10% of total heat input on an annual basis. Assuming 8,760 hours of operation per year, the total maximum non-deferred emissions of GHG from this boiler are:

Boiler Worst-Case Annual Emission Rate

Pollutant	Biomass Emission Rate (lb/hr)	Natural Gas Emission Rate (lb/hr)	Biomass Operation (hours)	Natural Gas Operation (hours)	Biomass Emissions (tpy)	Natural Gas Emissions (tpy)	Global Warming potential	CO ₂ e
CO ₂	96,876	68,952	7,884	876	381,885	30,200.99	1	412,086
CH ₄	33	1	7,884	876	130	0.45	21	2,741
N ₂ O	4	0	7,884	876	17	0.05	310	5,310
Total	-	-	-	-	-	-	-	420,137

Emergency Engine Emission Rate

Pollutant	Natural Gas Emission Rate (lb/hr)	Natural Gas Operation (hours)	Natural Gas Emissions (tpy)	Global Warming potential	CO ₂ e
CO ₂	507	500	126.71	1	127
CH ₄	0.008	500	0.00	21	0
N ₂ O	0.001	500	0.00	310	0
Total	-	-	-	-	127

Total Boiler CO₂e without CO₂ from biomass
= 2,741 (from CH₄) + 5,310 (from N₂O) + 30,201 (from Natural Gas CO₂)
= 38,252 CO₂e

Total Emergency Engine CO₂e from Natural Gas
= 127 CO₂e

Total Project CO₂e
= Boiler CO₂e + Emergency Engine CO₂e
= 38,252 CO₂e + 127 CO₂e
= 38,379 CO₂e

As calculated above, total annual CO₂e emissions excluding CO₂ are 38,379 tpy of CO₂e, which is below the GHG “subject to regulation” threshold of 75,000 tpy. As a result, the modification is not subject to BACT requirements for GHG.

ⁱ The kg/MMBtu emission factors for combustion of wood and wood residual solid biomass fuel, as well as natural gas, are from 40 CFR Part 98, Tables C-1 and C-2; 1kg= 2.2046 lb

ⁱⁱ The emergency engine is limited to 100 hours of nonemergency use per year. The table conservatively assumes 500 hours of use per year.

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Exhibit 2

DG Fairhaven Power LLC (NCU 096-12, July 6, 2016)
EMISSION LIMITATIONS

Table 4.0 Device S-1 (Boiler) – Seasonal Tier Carbon Monoxide Emission Limits

Tier	June 1 st to Oct. 31 st (Dry Season) Lb CO/MMBTU 24 Hour Average	Nov. 1 st to May 31 st (Wet Season) Lb CO/MMBTU 24 Hour Average	Allowable Frequency in Each Tier for Each Month
1	1.8	2.5	CO emissions may not exceed Tier 1 limit except as noted below for Tier 2 and Tier 3
2	$1.8 < x \leq 2.3$	$2.5 < x \leq 3.3$	CO emissions shall not occur in Tier 2 <i>and</i> Tier 3 ranges for more than eight (8) 24 hour averages each month
3	$2.3 < x \leq 3.0$	$3.3 < x \leq 4.0$	CO emissions shall not occur in the Tier 3 range for more than three (3) 24 hour averages each month

Table 4.1 Device S-1 (Boiler) – Seasonal Tier Nitrogen Oxides Emission Limits

Tier	Lb NO _x /MMBTU 24-Hour Average	Allowable Frequency in Each Tier for Each Month
1	0.16	NO _x emissions may not exceed Tier 1 limit except as noted below for Tier 2 and Tier 3
2	$0.16 < x \leq 0.18$	NO _x emissions shall not occur in the Tier 2 <i>and</i> Tier 3 ranges for more than eight (8) 24 hour averages each month
3	$0.18 < x \leq 0.23$	NO _x emissions shall not occur in the Tier 3 range for more than three (3) 24 hour averages each month

Notes:

1. 24 hour averages are block averages
2. PM limit 0.04 lb/MMBTU
3. Hourly CO, NO_x, PM mass emission limits also apply

Humboldt Redwood Company, LLC (NCU 060-12, Jan. 5, 2016)
EMISSION LIMITATIONS

Permit Number – NS-074 (Steam Generator)
Boiler A (Carbon Monoxide)

Tier CO	Limits lbs/MMBTU 24 hour average	Allowable Frequency
1	1.2 Base Limit	Tier 1 – base limit, 24 hour average which is the lower limit, needs to be attained for the highest percentage of time
2	>1.2 - 2.0	The total 24 hourly averages per month of Tier 2, and Tier 3, which are greater than the Base limit may not exceed eight
3	>2.0 - 3.0	In no case shall the total 24 hourly averages per month exceed 3 for Tier 3

Permit Number – NS -074 (Steam Generator)
Boiler A (Nitrogen Oxides)

Tier NOx	Limits lbs/MMBTU 24 hour average	Allowable Frequency
1	0.20 Base Limit	Tier 1 – Base limit, 24 hour average which is the lower limit, needs to be attained for the highest percentage of time
2	0.21-0.22	The total 24 hourly averages per month of Tier 2 and Tier 3 which are greater than the Base limit may not exceed eight
3	0.23-0.26	In no case shall the total 24 hourly averages per month exceed 3 for Tier 3

Notes:

1. 24 hour averages are block averages
2. PM limit 0.04 lb/MMBTU

Humboldt Redwood Company, LLC (NCU 060-12, Jan. 5, 2016)**EMISSION LIMITATIONS****Permit Number – NS-074 (Steam Generator)****Boiler B (Carbon Monoxide)**

Tier CO	Limits lbs/MMBTU 24 hour average	Allowable Frequency
1	1.2 Base Limit	Tier 1 – base limit, 24 hour average which is the lower limit, needs to be attained for the highest percentage of time
2	>1.2 - 2.0	The total 24 hourly averages per month of Tier 2, and Tier 3, which are greater than the Base limit may not exceed eight
3	>2.0 - 3.0	In no case shall the total 24 hourly averages per month exceed 3 for Tier 3

Permit Number – NS -074 (Steam Generator)**Boiler B (Nitrogen Oxides)**

Tier NOx	Limits lbs/MMBTU 24 hour average	Allowable Frequency
1	0.20 Base Limit	Tier 1 – Base limit, 24 hour average which is the lower limit, needs to be attained for the highest percentage of time
2	0.21-0.22	The total 24 hourly averages per month of Tier 2 and Tier 3 which are greater than the Base limit may not exceed eight
3	0.23-0.26	In no case shall the total 24 hourly averages per month exceed 3 for Tier 3

Notes:

1. 24 hour averages are block averages
2. PM limit 0.04 lb/MMBTU

Humboldt Redwood Company, LLC (NCU 060-12, Jan. 5, 2016)
EMISSION LIMITATIONS

Permit Number – NS-074 (Steam Generator)
Boiler C (Carbon Monoxide)

Tier CO	Limits lbs/MMBTU 24 hour average	Allowable Frequency
1	0.8 Base Limit	Tier 1 – base limit, 24 hour average which is the lower limit, needs to be attained for the highest percentage of time
2	>0.8 - 1.0	The total 24 hourly averages per month of Tier 2, and Tier 3, which are greater than the Base limit may not exceed eight
3	>1.0 – 1.5	In no case shall the total 24 hourly averages per month exceed 3 for Tier 3

Permit Number – NS -074 (Steam Generator)
Boiler C (Nitrogen Oxides)

Tier NOx	Limits lbs/MMBTU 24 hour average	Allowable Frequency
1	0.22 Base Limit	Tier 1 – Base limit, 24 hour average which is the lower limit, needs to be attained for the highest percentage of time
2	0.23-0.25	The total 24 hourly averages per month of Tier 2 and Tier 3 which are greater than the Base limit may not exceed eight
3	0.26-0.30	In no case shall the total 24 hourly averages per month exceed 3 for Tier 3

Notes:

1. 24 hour averages are block averages
2. PM limit 0.04 lb/MMBTU

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Exhibit 6

Declaration of Shaun Burke

1 ELLEN M. MAHAN
Deputy Section Chief
2 Environmental Enforcement Section
Environment and Natural Resources Division
3 United States Department of Justice

4 SHEILA McANANEY
Illinois Bar No. 6309635
5 Environmental Enforcement Section
Environment and Natural Resources Division
6 United States Department of Justice
P.O. Box. 7611
7 Washington, DC 20044-7611
Tel: (202) 514-6535
8 Fax: (202) 616-2427
E-mail: sheila.mcananey@usdoj.gov

9 *Attorneys for United States*

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA and
NORTH COAST UNIFIED AIR
QUALITY MANAGEMENT DISTRICT
15
16 Plaintiffs,
17 v.
18 BLUE LAKE POWER, LLC
19
20 Defendant.

Case No. 3:16-cv-00961-JD

**DECLARATION OF SHAUN BURKE
IN SUPPORT OF UNITED STATES'
MOTION TO ENTER
CONSENT DECREE**

21
22 I, Shaun Burke, declare the following:

23 1. I am currently employed as a Senior Environmental Engineer at the U.S. Environmental
24 Protection Agency's Office of Civil Enforcement in Washington, D.C. I have been with the U.S.
25 Environmental Protection Agency as an Environmental Engineer or a Senior Environmental
26 Engineer since 1997. I received a Bachelor of Science Degree from the University of Illinois in
27 Ceramic Engineering in 1992 and a Masters Degree in Environmental Engineering from the
28

1 Illinois Institute of Technology in 1995.

2 2. I submit this Declaration in support of the United States' Motion to Enter the Proposed
3 Consent Decree.

4 3. I have been the lead engineer in a number of Clean Air Act enforcement actions,
5 including 25 that included the resolution of claims under the Clean Air Act's Prevention of
6 Significant Deterioration ("PSD") program and the New Source Review ("NSR") program.

7 4. I am knowledgeable and have experience related to standard emissions control equipment
8 and technologies used on boilers to control NO_x, CO, and PM₁₀ emissions. Additionally, I am
9 familiar with the engineering and operational processes related to obtaining and installing control
10 equipment on boilers.

11 5. I am familiar with the practices and policies of EPA in settling Clean Air Act
12 enforcement cases.

13 6. On several occasions between December 2014 and the present, I have consulted with
14 Mark Sims, the lead engineer in the matter now known as *United States v. Blue Lake Power,*
15 *LLC*, Civil Action No. 3:16-cv-00961-JD, regarding the terms of injunctive relief in that Consent
16 Decree. I am familiar with the terms of the current proposed Consent Decree, the permitting
17 history of the biomass-fired electric generating facility ("the Facility") at issue, and the proposed
18 and current control equipment at the Facility.

19 7. Based on my experience and knowledge of settlements resolving the United States'
20 claims under PSD or NSR, most settlements of such claims require a settling defendant to install
21 specified control equipment and meet specified emission limits in accordance with a compliance
22 schedule during which the source may continue operating. The specified control equipment and
23 limits are agreed in lieu of requiring the settling defendant to undergo the full PSD permitting
24 process and determination of Best Available Control Technology ("BACT") in accordance with
25 42 U.S.C. § 7479. This approach provides certainty regarding the limits and equipment that will
26 be installed, and avoids a lengthy permitting process that would delay implementation of those
27 controls. I do not know of any settlements that require a settling defendant to cease operations
28

1 until it has implemented injunctive relief.

2 8. Based on my experience, the twelve-month schedule for ordering, fabricating, shipping,
3 installation, and operation of a Selective Non-Catalytic Reduction (“SNCR”) system and an
4 improved Over-Fire Air system in the proposed Consent Decree is aggressive, but achievable.
5 An example was the consent decree resolving *United States and Louisiana Dep’t of Env’tl.*
6 *Quality v. Louisiana Generating, LLC*, Civil Action No. 09-100-JJB-DLD (M.D. La.) (lodged on
7 November 21, 2012; entered March 6, 2013) with an installation date of SNCR systems at 3
8 coal-fired boilers of May 1, 2014.

9 9. Based on my experience and knowledge of this Facility, the petition process for
10 alternative emission limits in the proposed Consent Decree is appropriate. I have worked on
11 cases that have involved similar provisions where it is difficult to predict the final achievable
12 emission limits for a facility once the control technology is installed. For example, the Consent
13 Decree that resolved *United States and State of Ohio v. CEMEX, Inc. and CEMEX Construction*
14 *Materials Atlantic, LLC*, Case 3:11-cv-00037-WHR (S.D. Ohio) (Entered 4/4/2011), which
15 included a presumptive limit for application of SNCR at a cement kiln with a backstop rate if
16 CEMEX demonstrates that the unit cannot meet the presumptive limit. A petition process allows
17 the source to demonstrate a limit that is technologically appropriate and for EPA to establish a
18 limit that drives compliance behavior rather than a limit that is technically infeasible to meet.
19 The demonstration period proposed in this Consent Decree will allow for the gathering of
20 sufficient data once the SNCR and OFA systems are installed and working in order for engineers
21 to determine the achievable limits for this facility.

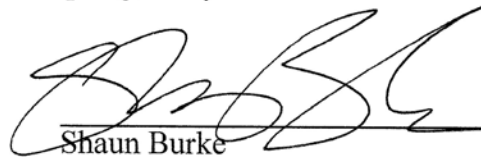
22 10. An emission limit calculated on a 24-hour rolling average requires a facility to identify an
23 emission rate every hour which incorporates emissions from that hour and the previous 23 hours.
24 Therefore, a 24-hour rolling average requires 24 separate compliance determinations. Any short-
25 term spike in emissions that causes a unit to exceed the emission limit will then have an impact
26 on the next 24 hours of emission rates and could cause a unit to be out of compliance for a longer
27 period. In my experience, operating under a 24-hour rolling average provides a strong incentive
28

1 for owners and operators to control for short-term spikes in emissions.

2 11. A boiler burning biomass fuel should be expected to have some degree of variability in
3 emissions. Therefore, in my experience, it is appropriate for the emission limit averaging period
4 to be longer in order to account for this variability. It is not EPA's practice to set emission limits
5 for sources that cannot be met due to uncontrolled variability.

6 I declare, under penalty of perjury, that the foregoing is true and correct.

7 Executed this ^{22ND}~~20~~ day of September, 2016, in Silver Spring, Maryland.

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10 Shaun Burke

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Exhibit 7

Declaration of Laura Ebbert

1 ELLEN M. MAHAN
Deputy Section Chief
2 Environmental Enforcement Section
Environment & Natural Resources Division
3 United States Department of Justice
4

5 SHEILA McANANEY
Illinois Bar No. 6309635
6 Environmental Enforcement Section
Environment & Natural Resources Division
7 United States Department of Justice
P.O. Box 7611
8 Washington, D.C. 20044
9 Telephone: (202) 616-6535
Facsimile: (202) 616-2427 (Fax)
10 Email: sheila.mcananey@usdoj.gov

11 *Attorneys for the United States*
12
13

14 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 UNITED STATES OF AMERICA and)
17 NORTH COAST UNIFIED AIR)
QUALITY MANAGEMENT DISTRICT,)
18)
19 Plaintiff,)
20 v.)
21)
22 BLUE LAKE POWER, LLC,)
23 Defendant.)
24 _____)

No. 3:16-cv-00961-JD

**DECLARATION OF LAURA
EBBERT IN SUPPORT OF
PLAINTIFF'S MOTION TO
ENTER CONSENT DECREE**

1 I, Laura Ebbert, declare the following:

2 1. I am currently employed as by the U.S. Environmental Protection Agency (“EPA”) at the
3 Region 9 office in San Francisco, California. I have been employed at EPA since 2008. In 2012,
4 I became a Supervisory Environmental Protection Specialist. My current responsibilities include
5 delivery grants and coordination and communication with 148 Tribes on behalf of EPA Region
6 9. In 2000, I received a Bachelor of Arts degree in Native American Studies and a Bachelor of
7 Science degree in Environmental Resource Sciences from the University at California at Davis.
8

9 2. I submit this Declaration in support of the Plaintiffs’ Response to Motion to Intervene.
10

11 3. In September 2015, the Blue Lake Rancheria (“Tribe”) requested and was granted a
12 meeting with the United States Environmental Protection Agency (“EPA”) concerning Blue
13 Lake Power LLC’s (“BLP”) biomass-fired electric generating facility located in Blue Lake,
14 California (“Facility”).
15

16 4. The meeting was held in Washington DC on September 22, 2015, and was attended by
17 representatives of the EPA and the DOJ, including counsel. I attended by phone, along with
18 other representatives of EPA Region 9 and DOJ.

19 5. At the September 22, 2015 meeting, the Tribe presented its concerns regarding particulate
20 matter deposition from the Facility.
21

22 6. At the September 22, 2015 meeting with the Tribe, Counsel for DOJ informed the Tribe
23 that settlement negotiations with BLP were ongoing and agreed to transmit any settlement that
24 was reached to the Tribe on the day any such settlement was lodged with the Court.
25

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27 ///

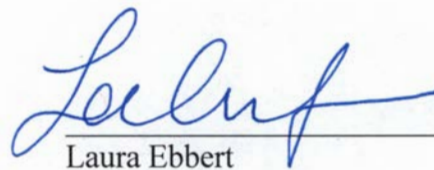
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2 7. Representatives of EPA Region 9's Air Permitting division attended the September 22,
3 2015 meeting, including Colleen McKaughan, Associate Director of Region 9's Office of Air
4 and Radiation, Gerardo Rios, Chief of the Air Permits Section, and Eugene Chen, an engineer
5 with the Air Permits Section. During the meeting, these representatives answered questions from
6 the Tribe regarding the Title V permit process and Blue Lake Power's Title V permit renewal.
7

8 8. On February 26, 2016, I e-mailed Jana Ganion, Energy Director for the Tribe a copy of
9 the lodged Consent Decree and offered a meeting with DOJ and the EPA to discuss the proposed
10 Consent Decree.
11

12 9. Based on discussions with a member of my staff who arranged and attended a meeting at
13 my instruction, on March 29, 2016, representatives of EPA's Air Permits section had a telephone
14 conference with the Tribe to answer additional questions regarding Blue Lake Power's permit.
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18 Executed this 21st day of September, 2016, in San Francisco, California.
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22 _____
23 Laura Ebbert
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Exhibit 8

Declaration of Brian Wilson

1 ELLEN M. MAHAN
2 Deputy Section Chief
3 Environmental Enforcement Section
4 Environment & Natural Resources Division
5 United States Department of Justice

6 SHEILA McANANEY
7 Illinois Bar No. 6309635
8 Environmental Enforcement Section
9 Environment & Natural Resources Division
10 United States Department of Justice
11 P.O. Box 7611
12 Washington, D.C. 20044
13 Telephone: (202) 616-6535
14 Facsimile: (202) 616-2427 (Fax)
15 Email: sheila.mcananey@usdoj.gov

16 *Attorneys for the United States*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 UNITED STATES OF AMERICA and
21 NORTH COAST UNIFIED AIR QUALITY
22 MANAGEMENT DISTRICT,

23 Plaintiffs,

24 vs.

25 BLUE LAKE POWER, LLC

26 Defendant.

27 CASE NO.: 3:16-cv-00961-JD

28 **DECLARATION OF BRIAN WILSON IN**
SUPPORT OF THE UNITED STATES'
MOTION TO ENTER CONSENT
DECREE

Hon. James Donato

I, Brian Wilson, declare as follows:

1. I am the Air Pollution Control Officer ("APCO") for the North Coast Unified Air Quality Management District (the "District") and have been so employed since 2015. The APCO serves as the Executive Director for the District. From 2010 to 2015, I was employed by the District as its Deputy APCO, and was employed by the District from 2006 to 2010 as a Permit Engineer.

2. I have personal knowledge of the matters set forth herein, except for those items stated to be based on information and belief. For those items based upon information and belief, I have

1 relied upon information typically used by professionals in my field to inform our professional
2 judgment and opinion, and as to those matters, I am informed and believe them to be true as
3 expressly stated herein. If called to testify on the matters herein, I could and would testify
4 competently thereto.

5 3. I submit this declaration in support of the United States' Motion to Enter Consent Decree.

6 4. The District is a California regional air pollution control district with jurisdiction for the
7 territory comprised of Humboldt, Del Norte and Trinity Counties. The District is vested with
8 primary authority for implementing and enforcing the California and federal Clean Air Acts as
9 they relate to stationary sources of air pollution within its jurisdictional territory.

10 5. The APCO is responsible for permitting air emissions from all Title V sources in the
11 District, in accordance with federal and California laws, and for enforcing alleged permit
12 violations as well as alleged violations of applicable rules and regulations adopted to achieve and
13 maintain ambient air quality standards.

14 6. Due to its size, equipment configuration, date of construction, and quantity of emissions,
15 of the Blue Lake Power biomass facility located at 200 Taylor Way, Blue Lake, California
16 ("Facility") is subject to several federal Clean Air Act programs including Prevention of
17 Significant Deterioration (PSD) and Title V operating permits. These programs are implemented
18 through federally approved state and local rules.

19 7. I have reviewed the District's permit, compliance and enforcement files for the Facility,
20 and on that basis am informed and believe that in 1985, the District issued PSD permit No.
21 HAC-129a and local Permit to Operate No. HS-071 to the Facility. In 1998, the District issued
22 federal Title V Permit to Operate 096-12 for a regulatory standard five (5) year term (Title V
23 Permit"). The specified Title V Permit emissions unit is a steam boiler which is subject to control
24 through an electrostatic precipitator (ESP) and the Title V Permit includes a specific monitoring
25 and reporting schedule using Continuous Emissions Monitors (CEMS) for NOX and CO and
26 Continuous Opacity Monitor (COMs) for opacity, located in the Facility's stack. When Blue
27 Lake Power, LLC (BLP) began operation of the Facility in 2010, the District requested and
28

1 continues to receive when the Facility is operational this monitoring information on daily basis,
2 which District staff review as a routine part of their duties.

3 8. The Facility owners filed a timely application for renewal of the Title V operating permit
4 on March 13, 2013, pursuant to District Rule 502(1.2) which allows under federal rule for an
5 automatic extension of the current Title V operating permit pending final action by the District
6 on the renewal application.

7 9. I am further informed and believe that the Facility was first operational in 1986 and in
8 1999, the Facility shut down. The Facility did not restart until 2010.

9 10. The Facility owner has paid its annual Title V Permit fees through the fiscal year ending
10 June 30, 2016. For the District's FY 2015/16 annual fee period, the Facility owner in November
11 2015 requested, and I allowed them, to delay making their payment until May 2016 in
12 accordance with District Rule 400(I)(8.0).

13 11. I am further informed and believe that the District closely monitored the Facility's air
14 quality compliance at the time of its 2010 restart, and issued several Notices of Noncompliance
15 primarily for opacity, continuous operation of the ESP, and excess particulate matter (PM10)
16 violations. These alleged violations resulted in a settlement agreement between BLP and the
17 District in 2011. Although this settlement agreement has been disclosed to the public, the District
18 does not as a matter of policy discuss enforcement matters with members of the public.

19 12. District staff makes itself readily available to meet with the public on an ongoing basis to
20 answer any questions about all air quality, District programs and specific sources. In regard to
21 the Blue Lake Power Facility, I have attended four separate public meetings held in the City of
22 Blue Lake, have met in person with and/or spoken extensively on the phone with Blue Lake
23 Power owners and operators, City of Blue Lake representatives, a Blue Lake Rancheria
24 representative, and concerned Blue Lake area residents.

25 13. The District performs routine annual full compliance evaluations for all Title V sources
26 including the Blue Lake Power Facility, and performs other inspections throughout the year as
27 necessary. In addition, the District has air quality inspectors onsite when the plant begins
28 operation after periods of inactivity.

1 14. In addition to receiving regular monitoring reports from a source, the District may also
2 receive complaints from the public. When the District receives a complaint from the public it is
3 logged into a Complaint Database. All complaints are then provided to its Compliance and
4 Enforcement staff for follow up and response. Depending on the circumstances, further
5 investigation may be necessary and action is taken as determined appropriate on a case by case
6 basis. The database is updated to reflect any findings and/or any response to the complainant.

7 15. I am further informed and on that basis believe that since 2010, the Complaint Database
8 indicates that the District has received 188 complaints regarding the Blue Lake Power Facility
9 with the following complaints by year: (149) 2010, (7) 2011, (9) 2012, (13) 2013, (6) 2014, (4)
10 2015. Upon further review of the complaints, all complaints in 2015 were about conditions
11 experienced at two different locations; and in 2014, four of the six complaints were about
12 conditions occurring at the same location .

13 16. The District utilizes portable air quality monitors called “EBAMs” capable of detecting
14 ambient particulate matter to 2.5 microns (“PM2.5”) as another tool to assess ambient air quality.
15 Although EBAMs are used as a tool to indicate the concentration of PM in a particular location
16 (such as deployment in a town during wildfires), they are non-regulatory, must be calibrated, and
17 are not used for enforcement determinations.

18 17. From May 2010 through August 2012, the District deployed two EBAMs in the area of
19 the Facility: one of the EBAMs was placed in the middle of the City of Blue Lake’s small
20 downtown area near the Facility, and another was placed close to the area estimated to receive
21 maximum downwind emissions. These monitors did not record any values that would suggest an
22 exceedance of the ambient air quality standard for Fine Particulate Matter (PM2.5) at those
23 locations.

24 18. Beginning in December 2015, I have actively participated with the EPA and Department
25 of Justice in the enforcement action negotiations with Blue Lake Power which resulted in
26 development of the initial Consent Decree as well as the revised Consent Decree. At all times, I
27 participated in these negotiations in a manner without bias that is consistent with the District’s
28 mandate to enforce federal, state and local air quality laws. The District’s General Counsel,

1 Nancy Diamond, has represented the District throughout this enforcement action through my
2 direction. I have been aware that she is also City Attorney for the City of Blue Lake and do not
3 believe that influenced or biased her representation for the District.

4 19. I am familiar with the requirements of the initial Consent Decree as well as the revised
5 Consent Decree and have reviewed the public comments submitted for the initial Consent
6 Decree. I believe that the requirements of the revised Consent Decree are responsive to public
7 concerns about adequate protection at the time of restart, and will provide this air quality
8 protection.

9 20. I have reviewed the draft Fuel Management Plan and Fugitive Road Dust Plan, as well as
10 the Ash Handling and Disposal Procedures submitted by Blue Lake Power as required by the
11 Consent Decree on August 19, 2016. It is my professional belief that the implementation of
12 these Plans and Protocol will lead to a decrease in fugitive dust and ash from the Facility.

13 21. I have also reviewed the Boiler Engineering Study Protocol submitted by Blue Lake
14 Power as required by the Consent Decree on September 8, 2016, It is my professional belief that
15 this Protocol together with the CD requirements imposes a timeline for Blue Lake Power to
16 complete the required CD milestones (Boiler Engineering Study, installation and operation of
17 SNCR and Over Fire Air (OFA) system) that will achieve compliance as quickly as technically
18 possible.

19 22. Based on my involvement with this case, it is my professional opinion that Blue Lake
20 Power has the technical capability to comply with the terms of the CD.

21 23. The District has previously determined that the use of older model residential wood
22 stoves is a large contributor to particulate matter pollution within the District. Accordingly, the
23 District implements a Wood Stove Incentive Replacement Program to assist citizens within its
24 jurisdiction in replacing older, non-certified wood stoves, with cleaner, more fuel-efficient wood
25 heating devices or other less polluting heating appliances.

26 24. As part of the District's commitment to protecting the public, the District intends to
27 allocate the Environmental Mitigation of \$10,000 to be paid under the Consent Decree by Blue
28 Lake Power for the District's Wood Stove Incentive Replacement Program toward residents of

1 the immediate City of Blue Lake area. The District intends to make good faith efforts to
2 prioritize the availability of such funds for wood stove replacement within an approximate two-
3 mile radius of the Facility, as deemed appropriate by the District.

4 25. The District currently maintains a website where it provides the public with the current
5 major source Title V operating permit issued for sources under its jurisdiction and other relevant
6 information. In order to facilitate public understanding of the Consent Decree for the Blue Lake
7 Power Facility, the District intends to post the semi-annual reports to be submitted by Blue Lake
8 Power to EPA and the District under the consent decree, as well as the operational plans once
9 they have received final approval.

10 I declare under penalty of perjury under the laws of the State of California that the foregoing
11 is true and correct.

12 Executed this 22 day of SEPTEMBER, 2016 at EUREKA, California.

13 DATED: SEPTEMBER 22, 2016

Brian Wilson, Air Pollution Control Officer
NORTH COAST UNIFIED AIR QUALITY
MANAGEMENT DISTRICT



Signature

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Exhibit 9

Declaration of Nancy Diamond

1 ELLEN M. MAHAN
2 Deputy Section Chief
3 Environmental Enforcement Section
4 Environment & Natural Resources Division
5 United States Department of Justice

6 SHEILA McANANEY
7 Illinois Bar No. 6309635
8 Environmental Enforcement Section
9 Environment & Natural Resources Division
10 United States Department of Justice
11 P.O. Box 7611
12 Washington, D.C. 20044
13 Telephone: (202) 616-6535
14 Facsimile: (202) 616-2427 (Fax)
15 Email: sheila.mcananey@usdoj.gov

16 *Attorneys for the United States*

17 **UNITED STATES DISTRICT COURT**
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20 UNITED STATES OF AMERICA and
21 NORTH COAST UNIFIED AIR QUALITY
22 MANAGEMENT DISTRICT,

23 Plaintiffs,

24 vs.

25 BLUE LAKE POWER, LLC

26 Defendant.

27 CASE NO.: 3:16-cv-00961-JD

28 **DECLARATION OF NANCY DIAMOND**
IN SUPPORT OF UNITED STATES'
MOTION FOR ENTRY OF CONSENT
DECREE

Hon. James Donato

I, Nancy Diamond, declare as follows:

1. I am contract General Counsel to the North Coast Unified Air Quality Management District ("District") and have served in this capacity since 2003.

2. I have personal knowledge of the matters set forth herein.

3. I currently represent the District in the above-captioned litigation, *United States of America and North Coast Unified Air Quality Management District v. Blue Lake Power, LLC*, Case No. 3:16-cv-00961 JD. During the course of this litigation, I have interacted with the

1 District's Air Pollution Control Officer (APCO), Brian Wilson, as the District's agent and have
2 obtained litigation direction from him.

3 4. In addition to representing the District, my law office has several other public agency
4 clients, including the City Council of the City of Blue Lake for which I have served as its City
5 Attorney since 2008.

6 5. The California State Bar Rules of Professional Conduct Rule 3-310, *Avoiding the*
7 *Representation of Adverse Interests*, precludes an attorney from simultaneously representing
8 clients whose interests are potentially adverse without obtaining the informed written consent of
9 each of the clients.

10 6. I do not believe that my simultaneous representation of the District and the City of Blue
11 Lake during the pendency of the Blue Lake Power, LLC enforcement action creates a potential
12 conflict of interest.

13 7. The subject matter jurisdiction and authority of the District and City of Blue Lake do not
14 overlap and are therefore not adverse or potentially adverse to each other. The District is
15 statutorily mandated to implement and enforce federal, state and local air quality laws. The
16 subject matter of this litigation is compliance with federal Clean Air Act permitting programs.
17 The City of Blue Lake, as a California general law city, has no authority to enforce the Clean Air
18 Act permitting programs other than as a private citizen.

19 8. Comments submitted to Department of Justice (DOJ) about the Consent Decree
20 ("Consent Decree") lodged with this Court on February 26, 2016 (ECF Document No. 2-1) assert
21 that the District has an interest in the imposition of enhanced penalties against Blue Lake Power,
22 LLC while the City has an interest in limiting penalties against the company; and, therefore, the
23 positions of the District's General Counsel and Blue Lake City Attorney inherently conflict.

24 9. The penalty provisions in the Consent Decree were agreed to by the District; there is no
25 other basis for identifying the District's inherent financial or punitive interest in this litigation.
26 The City Council of the City of Blue Lake has taken no position in regard to penalty assessment
27 in this litigation, or to any matter concerning this litigation, either in support or opposed. Neither
28 the Blue Lake City Council nor any City representative submitted a public comment about the
Consent Decree.

1 10. Nevertheless, in response to these public comments, I provided information to both the
2 Governing Board of the District and the City Council for the City of Blue Lake about the conflict
3 of interest allegations and gave them each an opportunity to review whether to retain
4 independent counsel or waive any potential conflict of interest.

5 11. On April 14, 2016, the Governing Board of the District provided the informed written
6 consent for me to continue representing the District on matters pertaining to Blue Lake Power,
7 LLC and waived any potential conflict of interest.

8 12. On or about April 26, 2016, the City Council for the City of Blue Lake chose to, and did,
9 retain outside counsel to represent the City Council on all City of Blue Lake matters pertaining to
10 Blue Lake Power, LLC.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing
12 is true and correct. Executed on Sept 22, 2016 at Arcata, California.

13
14 DATED: 9/22, 2016

Nancy Diamond
COUNSEL FOR
PLAINTIFF, NORTH COAST UNIFIED AIR
QUALITY MANAGEMENT DISTRICT

Nancy Diamond
Signature