

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff

v.

DAIRYLAND POWER COOPERATIVE,

Defendant.

Civil Action No.: 12-CV-462

SIERRA CLUB,

Plaintiff

v.

DAIRYLAND POWER COOPERATIVE,

Defendant.

Civil Action No.: 10-CV-303-bbc

~~PROPOSED~~ ORDER MODIFYING CONSENT DECREE

Upon the unopposed motion of Plaintiff, the United States of America, IT IS HEREBY ORDERED that the United States' motion is granted, and that the proposed Modification to Consent Decree lodged by the United States on March 10, 2014, as Docket Entry No. 10 in Civil Action No. 12-CV-462 is ENTERED, and the Consent Decree originally entered on August 27, 2012 (Docket Entry No. 9), is amended as provided below:

1. Modify Paragraph 66, as follows:

66. By no later than December 31, 2014, DPC shall (a) Cease Burning Coal in the ~~boiler~~boilers of Alma Unit 4 and Alma Unit 5, and (b) amend any submissions to Wisconsin's air emissions inventory, and apply to amend all applicable permits, so as to reflect the fact that Alma Unit 4 ~~has permanently Ceased Burning Coal, unless DPC notifies Plaintiffs in writing on or before December 31, 2012 that it is electing to instead comply with the requirements set forth in Paragraphs 83, 102, and 119 of this Consent Decree. If DPC timely makes such election, it may comply with the requirements of Paragraphs 83, 102, and 119 instead of Ceasing Burning Coal at Alma Unit 4 under this Paragraph.~~ and Alma Unit 5 have permanently Ceased Burning Coal.

2. Modify Paragraph 81, as follows:

81. For the period commencing on June 1, 2012 and continuing through May 31, 2013, DPC shall not exceed a Unit-Specific Annual Tonnage Cap of 748 tons of NO_x per year at Alma Unit 5, and a Plant-Wide Annual Tonnage Cap of 1,308 tons of NO_x per year at Alma ~~Units 4 and~~Unit 4 and Alma Unit 5. For the period commencing on June 1, 2013 and continuing through May 31, 2014, DPC shall not exceed a Plant-Wide Annual Tonnage Cap of 1,308 tons of NO_x per year at Alma Unit 4 and Alma Unit 5. For the period commencing on June 1, 2014 and continuing through December 31, 2014, DPC shall not exceed a Plant-Wide Annual Tonnage Cap of 763 tons of NO_x per year at Alma Unit 4 and Alma Unit 5.

3. Modify Paragraph 82, as follows:

82. By no later than December 31, 2014, DPC shall Cease Burning Coal in the boilerboilers at Alma Unit 4. ~~In addition, for the period commencing on June 1, 2013 and continuing through May 31, 2014, and each June 1 through May 31 thereafter, DPC shall not exceed a Unit Specific Annual Tonnage Cap of 748 tons of NO_x per year at Alma Unit 5; provided, however, that DPC may elect, pursuant to Paragraph 66, to comply with the alternate compliance option set forth in Paragraph 83 in lieu of the requirements set forth in this Paragraph.~~

4. Delete Paragraph 83, as follows:

83. Deleted. *Alternate Compliance Option*: If DPC provides timely notice pursuant to Paragraph 66, DPC may, in lieu and instead of complying with the requirements set forth in Paragraph 82, comply with the following annual tonnage limitations:

a. For the period commencing on June 1, 2012 and continuing through May 31, 2013, and each June 1 through May 31 thereafter until May 31, 2019, DPC shall not exceed a Plant Wide Annual Tonnage Cap of 1,308 tons of NO_x per year at Alma Units 4 and 5; provided that if either Alma Unit 4 or Alma Unit 5 Ceases Burning Coal then the other Unit (Alma Unit 4 or Alma Unit 5) that continues to burn coal shall meet a Unit Specific Annual Tonnage Cap of 746 tons of NO_x per year; and

b. For the period commencing June 1, 2019 and continuing through May 31, 2020, and each June 1 through May 31 thereafter, DPC shall not exceed a Plant Wide Annual Tonnage Cap of 785 tons of NO_x per year at Alma Units 4 and 5; provided that if

~~either Alma Unit 4 or Alma Unit 5 Ceases Burning Coal then the other Unit (Alma Unit 4 or Alma Unit 5) that continues to burn coal shall meet a Unit Specific Annual Tonnage Cap of 449 tons of NO_x per year.~~

5. Modify Paragraph 84, as follows:

84. The DPC System, collectively, shall operate so as not to exceed the following System-Wide Annual NO_x Tonnage Limitations:

For the 12-Month Period Specified Below:	System-Wide Annual NO_x Tonnage Limitation:
June 1, 2012 to May 31, 2013	7,808
June 1, 2013 to May 31, 2014	7,693
June 1, 2014 to May 31, 2015	7,242
June 1, 2015 to May 31, 2016	6,257
June 1, 2016 to May 31, 2017 and continuing each 12-month period thereafter	3,199

~~Provided, however, that if DPC provides timely notice that it elects to comply with the alternative compliance option pursuant to Paragraph 66, DPC shall, in lieu of complying with the System-Wide Annual NO_x Tonnage Limitations set forth above, instead comply with the following System-Wide Annual NO_x Tonnage Limitations:~~

For the 12-Month Period Specified Below:	System-Wide Annual NO_x Tonnage Limitation:
June 1, 2012 to May 31, 2013	7,821
June 1, 2013 to May 31, 2014	7,707
June 1, 2014 to May 31, 2015	7,482 <u>6,976</u>
June 1, 2015 to May 31, 2016	6,817 <u>5,497</u>
June 1, 2016 to May 31, 2017	3,748 <u>2,302</u>

June 1, 2017 to May 31, 2018	3,748 <u>2,302</u>
June 1, 2018 to May 31, 2019	3,748 <u>2,302</u>
June 1, 2019 to May 31, 2020 and continuing each 12-month period thereafter	3,236 <u>2,302</u>

6. Modify Paragraph 97, as follows:

97. With prior written notice to EPA, DPC may, in lieu of installing and operating an FGD at J.P. Madgett pursuant to Paragraph 96, install and operate DSI that has been designed for and has been demonstrated to achieve at least 95 percent SO₂ removal efficiency and a 30-Day Rolling Average SO₂ Emission Rate of no greater than 0.080 lb/mmBTU. If DPC elects to install such DSI, DPC shall provide such written notice by June 30, 2012, and, commencing on ~~May 1~~ December 31, 2014 and continuing thereafter, DPC shall Continuously Operate such DSI so as to achieve and maintain a 30-Day Rolling Average SO₂ Emission Rate of not more than 0.090 lb/mmBTU. If, during the period beginning ~~May 1~~ December 31, 2014 and ending ~~April~~ December 30, 2015, DPC fails to Continuously Operate such DSI so that it achieves and maintains a 30-Day Rolling Average SO₂ Emission Rate of not more than 0.090 lb/mmBTU, then, in addition to any other remedies that may be available to Plaintiffs, DPC shall (a) install a dry FGD at J.P. Madgett and, commencing no later than December 31, 2018 and continuing thereafter, DPC shall Continuously Operate such FGD so as to achieve and maintain a 30-Day Rolling Average SO₂ Emission Rate of not more than 0.090 lb/mmBTU; and (b) continue to Continuously Operate the installed DSI so as to achieve and maintain a 30-

Day Rolling Average SO₂ Emission Rate of not more than 0.090 lb/mmBTU until the dry FGD is in operation.

7. Delete Paragraph 100, as follows:

100. Deleted. ~~DPC shall install either DSI or a dry FGD at Alma Unit 5, and commencing no later than 30 months after the Date of Entry of this Consent Decree, and continuing thereafter, DPC shall Continuously Operate such DSI or dry FGD on Alma Unit 5 so that it achieves and maintains a 30-Day Rolling Average SO₂ Emission Rate of no greater than 1.00 lb/mmBTU.~~

8. Delete Paragraph 101, as follows:

101. Deleted. ~~By no later than December 31, 2014, DPC shall Cease Burning Coal in the boiler at Alma Unit 4. In addition, for the period commencing on June 1, 2013 and continuing through May 31, 2014, DPC shall not exceed a Unit Specific Annual Tonnage Cap of 3,452 tons of SO₂ per year at Alma Unit 5, and for the period commencing on June 1, 2014 and continuing through May 31, 2015, and each June 1 through May 31 thereafter, DPC shall not exceed a Unit Specific Annual Tonnage Cap of 2,136 tons of SO₂ per year at Alma Unit 5. Provided, however, that DPC may elect, pursuant to Paragraph 66, to comply with the alternate requirements set forth in Paragraph 102 in lieu of the requirements set forth in this Paragraph.~~

9. Modify Paragraph 102, as follows:

102. ~~Alternate Compliance Option.~~ If DPC provides timely notice pursuant to Paragraph 66, DPC may, in lieu and instead of complying with the requirements set forth in Paragraph 101, comply with the following requirements:

a. ~~DPC shall install either DSI or a dry FGD at Alma Unit 4, and commencing no later than 30 months after the Date of Entry of this Consent Decree, and continuing thereafter, DPC shall Continuously Operate such DSI or FGD on Alma Unit 4 so that it achieves and maintains a 30-Day Rolling Average SO₂ Emission Rate of no greater than 1.00 lb/mmBTU;~~

b. By no later than December 31, 2014, DPC shall Cease Burning Coal in the boilers at Alma Unit 4 and Alma Unit 5. For the period commencing on June 1, 2013 and continuing through May 31, 2014, DPC shall not exceed a Plant-Wide Annual Tonnage Cap of 6,038 tons of SO₂ per year at Alma Units Unit 4 and 5; provided that if either Alma Unit 4 or Alma Unit 5 Ceases Burning Coal then Alma Unit 5. For the other Unit (Alma Unit 4 or Alma Unit 5) that continues to burn coal period commencing on June 1, 2014 and continuing through December 31, 2014, DPC shall meet not exceed a Unit-Specific Plant-Wide Annual Tonnage Cap of 3,452,522 tons of SO₂ per year; at Alma Unit 4 and Alma Unit 5.

c. ~~For the period commencing June 1, 2014 and continuing through May 31, 2015, and each June 1 through May 31 thereafter until May 31, 2019, DPC shall not exceed a Plant-Wide Annual Tonnage Cap of 3,737 tons of SO₂ per year at Alma Units 4 and 5; provided that if either Alma Unit 4 or Alma Unit 5 Ceases Burning Coal then the other Unit (Alma Unit 4 or Alma Unit 5) that continues to burn coal shall meet a Unit-Specific Annual Tonnage Cap of 2,136 tons of SO₂ per year; and~~

d. ~~For the period commencing June 1, 2019 and continuing through May 31, 2020, and each June 1 through May 31 thereafter, DPC shall not exceed a Plant Wide Annual Tonnage Cap of 2,242 tons of SO₂ per year at Alma Units 4 and 5; provided that if either Alma Unit 4 or Alma Unit 5 Ceases Burning Coal then the other Unit (Alma Unit 4 or Alma Unit 5) that continues to burn coal shall meet a Unit Specific Annual Tonnage Cap of 1,282 tons of SO₂ per year.~~

10. Modify Paragraph 103, as follows:

103. The DPC System, collectively, shall operate so as not to exceed the following System-Wide Annual SO₂ Tonnage Limitations:

For the 12 Month Period Specified Below:	System-Wide Annual SO₂ Tonnage Limitation:
June 1, 2012 to May 31, 2013	24,570
June 1, 2013 to May 31, 2014	20,067
June 1, 2014 to May 31, 2015	11,303
June 1, 2015 to May 31, 2016 and continuing each 12-month period thereafter	4,472

~~Provided, however, that if DPC provides timely notice pursuant to Paragraph 66, DPC shall, in lieu of complying with the System Wide Annual SO₂ Tonnage Limitations set forth above, instead comply with the following System-Wide Annual SO₂ Tonnage Limitations:~~

For the 12-Month Period Specified Below:	System-Wide Annual SO₂ Tonnage Limitation:
June 1, 2012 to May 31, 2013	24,657
June 1, 2013 to May 31, 2014	20,131
June 1, 2014 to May 31, 2015	11,987<u>6,073</u>
June 1, 2015 to May 31, 2016	6,073<u>2,330</u>
June 1, 2016 to May 31, 2017	6,057<u>2,330</u>
June 1, 2017 to May 31, 2018	6,057<u>2,330</u>

June 1, 2018 to May 31, 2019	<u>6,057,230</u>
June 1, 2019 to May 31, 2020 and continuing each 12-month period thereafter	<u>4,578,330</u>

11. Delete Paragraph 117, as follows:

117. Deleted. Commencing no later than 30 months after the Date of Entry of this Consent Decree, and continuing thereafter, DPC shall Continuously Operate an ESP on Alma Unit 5 so that it achieves and maintains a PM Emission Rate of no greater than 0.030 lb/mmBTU; provided that, if DPC installs a Baghouse at Alma Unit 5, DPC shall Continuously Operate the Baghouse so that such Unit achieves and maintains a filterable PM Emission Rate of no greater than 0.015 lb/mmBTU

12. Modify Paragraph 118, as follows:

118. By no later than December 31, 2014, DPC shall Cease Burning Coal in the boilerboilers at Alma Unit 4. In addition, for the period commencing on June 1, 2014 and continuing through May 31, 2015, and each June 1 through May 31 thereafter, DPC shall not exceed a Unit Specific Annual Tonnage Cap of 64 tons of PM at Alma Unit 5; provided, however, that DPC may elect, pursuant to Paragraph 66, to comply with the alternate requirements set forth in Paragraph 119 in lieu of the requirements set forth in this Paragraph, and Alma Unit 5.

13. Delete Paragraph 119, as follows:

119. Deleted. *Alternate Compliance Option.* If DPC provides timely notice pursuant to Paragraph 66, DPC may, in lieu and instead of complying with the requirements set forth in Paragraph 118, comply with the following requirements:

- a. ~~Commencing no later than 30 months after the Date of Entry of this Consent Decree, and continuing thereafter, DPC shall Continuously Operate an ESP on Alma Unit 4 so that it achieves and maintains a filterable PM Emission Rate of no greater than 0.030 lb/mmBTU; provided that, if DPC installs a Baghouse at Alma Unit 4, DPC shall Continuously Operate the Baghouse so that such Unit achieves and maintains a filterable PM Emission Rate of no greater than 0.015 lb/mmBTU;~~
- a. ~~For the period commencing on June 1, 2014 and continuing through May 31, 2015, and each June 1 through May 31 thereafter until May 31, 2019, DPC shall not exceed a Plant Wide Annual Tonnage Cap of 112 tons of PM per year at Alma Units 4 and 5; provided that if either Alma Unit 4 or Alma Unit 5 Ceases Burning Coal then the other Unit (Alma Unit 4 or Alma Unit 5) that continues to burn coal shall meet a Unit Specific Annual Tonnage Cap of 64 tons of PM per year; and~~
- e. ~~For the period commencing on June 1, 2019 and continuing through May 31, 2020, and each June 1 through May 31 thereafter, DPC shall not exceed a Plant Wide Annual Tonnage Cap of 67 tons of PM per year at Alma Units 4 and 5; provided that if either Alma Unit 4 or Alma Unit 5 Ceases Burning Coal then the other Unit (Alma Unit 4 or Alma Unit 5) that continues to burn coal shall meet a Unit Specific Annual Tonnage Cap of 39 tons of PM per year.~~

14. Modify Paragraph 121, as follows:

121. To determine compliance with the filterable PM Emission Rate established in Paragraphs 115, and 116, ~~117, and 119 (as applicable)~~, DPC shall use EPA Method 5 (filterable portion only), or any alternate method approved by EPA pursuant to Section

XIII (Review and Approval of Submittals) of this Consent Decree. Each test shall consist of three separate runs performed under representative operating conditions not including periods of startup, shutdown, or Malfunction. The sampling time for each run shall be at least 120 minutes and the volume of each run shall be 1.70 dry standard cubic meters (60 dry standard cubic feet). DPC shall calculate the PM Emission Rate from the stack test results in accordance with 40 C.F.R. § 60.8(f). The results of each PM stack test shall be submitted to Plaintiffs within 60 Days of completion of each test.

15. Modify Paragraph 123, as follows:

123. When DPC submits the application for modification of its Title V Permit pursuant to Paragraph 192, that application shall include a Compliance Assurance Monitoring (“CAM”) plan, under 40 C.F.R. Part 64, for the PM Emission Rate in Paragraphs 115, ~~116, 117, and 119 (as applicable).~~ 116. The PM CEMS required under Paragraph 124 may be used in that CAM plan.

16. Modify Paragraph 192, as follows:

192. Within 180 Days after the Date of Entry of this Consent Decree, DPC shall modify any applicable Title V Permit application(s), or apply for modification of its Title V Permits, to include a schedule for all Unit-specific, plant-specific, and system-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, any (a) 12-Month Rolling Average Emission Rate, (b) 30-Day Rolling Average NO_x Emission Rate, (c) 30-Day Rolling Average SO₂ Emission Rate, (d) Plant-Wide Annual Tonnage Cap, (e) System-Wide Annual NO_x Tonnage Limitation, (f) System-Wide Annual SO₂ Tonnage Limitation, (g)

Unit-Specific Annual Tonnage Cap, (h) the requirements pertaining to the Surrender of SO₂ and NO_x Allowances, and (i) the Retirement of any Unit as required ~~or elected under~~ this Decree.

17. Modify Paragraph 193, as follows:

193. Within one year from the Date of Entry of this Consent Decree, DPC shall either apply to permanently include the requirements and limitations enumerated in this Consent Decree into a federally enforceable non-Title V permit or request a site-specific revision to the Wisconsin SIP to include the requirements and limitations enumerated in this Consent Decree. The permit application or Wisconsin SIP revision request shall require compliance with the following: any applicable (a) 12-Month Rolling Average Emission Rate, (b) 30-Day Rolling Average NO_x Emission Rate, (c) 30-Day Rolling Average SO₂ Emission Rate, (d) Plant-Wide Annual Tonnage Cap, (e) System-Wide Annual NO_x Tonnage Limitation, (f) System-Wide Annual SO₂ Tonnage Limitation, (g) Unit-Specific Annual Tonnage Cap, (h) requirement pertaining to the Surrender of SO₂ and NO_x Allowances, and (i) the Ceasing of Burning Coal at any Unit as required ~~or elected under~~ this Decree.

18. Modify Paragraph 195, as follows:

195. Prior to conditional termination of enforcement through this Consent Decree, DPC shall obtain enforceable provisions in its Title V permits that incorporate all Unit-specific, plant-specific, and system-specific performance, operational, maintenance, and

control technology requirements established by this Consent Decree including, but not limited to, any (a) 12-Month Rolling Average Emission Rate, (b) 30-Day Rolling Average NO_x Emission Rate, (c) 30-Day Rolling Average SO₂ Emission Rate, (d) Plant-Wide Annual Tonnage Cap, (e) System-Wide Annual NO_x Tonnage Limitation, (f) System-Wide Annual SO₂ Tonnage Limitation, (g) Unit-Specific Annual Tonnage Cap, (h) the requirements pertaining to the Surrender of SO₂ and NO_x Allowances, and (i) the Ceasing of Burning Coal at any Unit as required ~~or elected~~ under this Decree.

19. Modify Paragraph 229, as follows:

229. Conditional Termination of Enforcement Through this Consent Decree. Subject to the provisions of Paragraph 230, after DPC:

- a. has successfully completed construction, and has maintained operation, of all pollution controls as required by this Consent Decree for a period of two years and has successfully completed all actions necessary to Retire any Unit required ~~or elected~~ to be Retired as required by this Consent Decree; and
- b. has obtained all the final permits and/or site-specific Wisconsin SIP revisions (i) as required by Section XVII (Permits) of this Consent Decree and (ii) that include as federally enforceable permit terms or Wisconsin SIP provisions, all Unit-specific, plant-specific, and system-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree;

then DPC may so certify these facts to the Plaintiffs and this Court. If the Plaintiffs do not object in writing with specific reasons within 45 Days of receipt of DPC's

certification, then, for any violations of this Consent Decree that occur after the filing of notice, the Plaintiffs shall pursue enforcement of the requirements through the applicable permits and/or other enforcement authorities and not through this Consent Decree.

All provisions of the Consent Decree unaffected by these modifications shall operate in conjunction with these new provisions in the same manner as had the new provisions been included in the Decree when it was entered by the Court in the above-captioned actions on August 25 and August 27, 2012.

ENTERED and ORDERED this 28th day of April, 2014.

Barbara B. Crabb
BARBARA B. CRABB
U.S. District Judge
United States District Court
Western District of Wisconsin