U.S. Department of Justice

United States Attorney
District of Minnesota

600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
www.usdoj.gov/usao/mn

(612)664-5600

March 20, 2001

Ben Fisherow, Esq.
U. S. Department of Justice
Environmental Enforcement Section
P. O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

Re: United States of America v. Metropolitan Council
Civil No. 99-1105 DWF/AJB

Dear Mr. Fisherow:

Enclosed for your file is a copy of the **March 16, 2001 Consent Decree** with respect to the above-entitled matter.

Very truly yours,

ROBERT M. SMALL
United States Attorney

F Siekert

BY: FRIEDRICH A. P. SIEKERT
Assistant United States Attorney

FAPS:tt

Enclosures

c: (w/enclosures)
Mary T. McAuliffe, Esq.
James A. Lofton, Esq.

U.S. ENVIRONMENTAL
PROTECTION AGENCY

MAR 2 6 2001

OFFICE OF REGIONAL
COUNSEL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

ORIGINAL

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 99-CV-1105
	)	(DWF/AVB)
METROPOLITAN COUNCIL,	)	
	)	
Defendant.	)	
	)	

CONSENT DECREE

I. Background

A. The United States of America, at the request of the Administrator of the U.S. Environmental Protection Agency (EPA), filed a complaint against Defendant Metropolitan Council (Met) with respect to a wastewater treatment plant owned and operated by Met in St. Paul, Minnesota.

B. The United States' Complaint initiating this civil action was brought pursuant to pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

C. The United States sought civil penalties and injunctive relief from Met for violations of the Clean Air Act and the Standards of Performance for New Stationary Sources, including general provisions, which are codified at 40 C.F.R. Part 60, and which have been incorporated into the federally enforceable Minnesota State Implementation Plan (Minnesota SIP). In accordance with Section I.A. of the MPCA Order (defined below), which has been incorporated into the Minnesota SIP, emissions of PM-10 from the sewage sludge incinerators at Met's wastewater treatment plant shall not exceed 1.2 lbs. of PM-10 per dry ton of sludge charged. The United States alleges that the limit of 1.2 lbs. of PM-10 per dry ton of sludge charged in the MPCA Order applies to all emissions

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DEPUTY CLERK

from the sewage sludge incinerators, including, but not limited to: (1) fugitive emissions from the emergency stacks (i.e. leakage from the emergency stacks when the emergency dampers are in a closed position); and (2) uncontrolled emissions through the emergency stacks as the result of emergency damper openings. Met claims that the limit of 1.2 lbs. of PM-10 per dry ton of sludge charged in the MPCA Order applies only to emissions from the controlled stacks of the sewage sludge incinerators.

D. The Parties agree and the Court finds that settlement of these civil matters without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters.

E. Met does not admit any liability arising out of the transactions or occurrences alleged in the Complaint, the Finding of Violation or the Notice of Violation. This Consent Decree shall not constitute an admission of any issue of fact or law by either party as to any third party.

NOW THEREFORE, before the taking of testimony, without the necessity of trial, without adjudication of any issues of fact or law, without any admission of liability or of any issue of fact or law by the Defendant, and upon the consent of the Parties hereto,

IT IS ADJUDGED, ORDERED AND DECREED THAT:

II. Definitions

1. Terms used in the Consent Decree that are defined in 42 U.S.C. § 7602 shall have the meaning set forth in such definitions, unless specific definitions are contained herein. Whenever the following terms are used in this Consent Decree, the definition specified hereinafter shall apply:

a. "Defendant" means the Defendant in this action, Metropolitan Council (Met);

b. "Emergency dampers" means the moveable dampers located between each of the six multiple hearth incinerators at the Met WWTP and the emergency stack serving such incinerator;

c. "Emergency stacks" means the emergency relief stacks located at the combustion gas outlet from the six multiple hearth incinerators at the Met WWTP designed to allow combustion gases to bypass the downstream air pollution control devices under emergency conditions;

d. "EPA" means the United States Environmental Protection Agency;

e. "Interest" means interest calculated at the rate provided in 28 U.S.C. § 1961(a);

f. "Malfunction" means any sudden, infrequent and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions. 40 C.F.R. § 60.2.

g. "Met WWTP" means the wastewater treatment plant, including its six multiple hearth incinerators, owned and operated by Met located in St. Paul, Minnesota and commonly known as the Metropolitan Wastewater Treatment Plant;

h. "MPCA" means the Minnesota Pollution Control Agency;

i. "MPCA Order" means an order dated November 30, 1992, which supplements and amends MPCA Air Emission Permit No. 879-90-OT-3 issued to Met on July 12, 1990, which was federally approved as part of the Minnesota SIP on February 15, 1994 (40 C.F.R. § 52.1220);

j. "Notify" and "submit" and other terms signifying an obligation to transmit or communicate documents and information mean to deliver in person, deposit in the United States mail or dispatch by express courier not later than the day that such transmission or communication is required

by this Consent Decree. Should such day be a weekend day or a federally or state recognized holiday, the delivery, deposit, or dispatch shall be due on the next business day;

k. "Parties" means the United States and Met;

l. "Plaintiff" means the United States; and

m. "PM-10" means particulate matter which has an aerodynamic diameter of less than or equal to ten micrometers.

III. Jurisdiction

2. The Parties agree and consent that this Court has jurisdiction over the subject matter and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

IV. Parties Bound and Notice of Transfer

3. The provisions of this Consent Decree shall apply to and be binding upon the United States and upon Met, and Met's officers, agents, successors, assigns and all persons acting on its behalf. However, nothing contained herein shall be construed to establish personal liability for payment of the civil penalties or stipulated penalties on the part of any officer, agent or employee of Met. Each Party certifies that at least one of its undersigned representatives is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Decree, to execute it on behalf of that party, and to legally bind the party on whose behalf he or she executes this Consent Decree.

4. No change in ownership, corporate, or partnership status relating to the Met WWTP will in any way alter the responsibilities of Met under this Consent Decree. In the event of any conveyance of

easement, or other interest in the Met WWTP, or any portion of the facility, all of the Defendant's obligations under this Consent Decree shall continue to be met by Met.

5. During the pendency of this Consent Decree any deed, title, or other instrument of conveyance executed by Met which transfers title to any part of the Met WWTP shall contain a notice that the Met WWTP is the subject of this Consent Decree setting forth the type of the case, case caption and index number, and the Court having jurisdiction.

6. Upon retention of each contractor performing work contemplated by this Consent Decree, Met shall notify each such contractor in writing so that it is made aware of the work schedules and reporting deadlines set forth herein, which are applicable to the work to be performed by the contractor. Met shall further require such contractor to notify in writing each subcontractor performing work contemplated herein of the requirements of this Consent Decree which are applicable to the work to be performed by such subcontractor.

V. Compliance Responsibility

7. Met shall at all times comply with federal and state permits, rules and regulations governing the emission of air pollutants from a stationary source. In addition, Met shall comply with all applicable federal and state environmental laws.

8. This decree does not authorize Met to violate any statute, regulation, permit or order.

VI. Compliance Measures at the MET WWTP

9. In addition to the compliance responsibility set forth in Section V (Compliance Responsibility), for the purpose of minimizing emissions from the emergency stacks, Met shall perform the compliance measures listed below in subparagraphs 9.a through 9.h.

a. Dampers and seals. Met has designed and installed new dampers and seals on the emergency dampers for the emergency stacks on the multiple hearth incinerators in use at the Met WWTP. The new dampers and seals were designed to prevent leakage of PM-10 from the incinerators when the emergency dampers are in the closed position. Met shall not operate any multiple hearth incinerator at the Met WWTP that does not have the new dampers and seals installed in its emergency stack.

b. ID Fan Alarms. Met shall develop and implement a procedure for: (1) maintaining alarms in the Met WWTP multiple hearth incinerator control room so that the incinerator operator is alerted when the amperage for the ID Fans reaches 90 percent of maximum motor current; and (2) immediately taking appropriate corrective action in order to attempt to prevent an emergency damper opening when ID Fan amperage reaches 90 percent of maximum motor current.

c. Operator Training. Within 30 days of the entry of this Consent Decree, Met shall design and implement a plan to provide additional training to Met WWTP multiple hearth incinerator operators. Such training shall be designed to train incinerator operators in assessing and responding to conditions that may lead to an emergency damper opening. The Operator Training Plan shall be submitted to EPA no later than 30 days after entry of this Consent Decree.

d. Scrubber System Operations and Maintenance. Within 30 days of entry of this Consent Decree, Met shall develop and implement a plan to inspect, maintain and calibrate (where required) all components of the Met WWTP multiple hearth scrubber system including pumps, valves, flowmeters, piping, adjustable dP damper, scrubber atomizers and/or distributors and scrubber packing and demisters intended to insure free flow of the scrubber recycle liquids to prevent unnecessary

emergency alarms. The Scrubber System Operations and Maintenance Plan shall be submitted to EPA no later than 30 days after entry of this Consent Decree.

e. Emergency Damper Openings. For each emergency damper opening during operation of the multiple hearth incinerators at the Met WWTP, Met shall notify EPA and MPCA in writing by the end of the following calendar month. This notification shall describe the incident and indicate the reason for the emergency damper opening and shall also describe corrective measures taken by Met to prevent future occurrences. Notwithstanding the preceding sentences of this paragraph, Met shall not be prohibited from activating the emergency dampers during a situation of imminent or actual significant threat to the safety of on-site personnel.

f. Feed Rate Limitation. In addition to the restrictions in the MPCA Order, Met shall not exceed the following sludge feed rates to the Met WWTP multiple hearth incinerators:

(1) Incinerator No.s 5, 6, 8, and 9: 9.9 wet tons per hour calculated as a three-hour average, and 2.93 dry tons per hour calculated as a daily average.

(2) Incinerator No.s 7 and 10: 9.0 wet tons per hour calculated as a three-hour average, and 2.68 dry tons per hour calculated as a daily average.

The feed rate restrictions set forth in this Paragraph shall be effective August 1, 2000. However, the feed rate restrictions in this Paragraph shall not apply during periods of compliance stack testing required by EPA or MPCA. For each exceedance of the feed rate limitations, including during periods of compliance stack testing, Met shall notify EPA and MPCA in writing by the end of the following calendar month. This notification shall describe the time and date when the exceedance took place and the calculated feed rate.

g. Additional Compliance Measures. Until the shutdown of the Met WWTP multiple hearth incinerators described in Paragraph 9.h. below, Met shall undertake and implement any other compliance measures not addressed in this Section VI as EPA shall direct for the purpose of further minimizing emissions from the emergency stacks provided that such compliance measures are reasonable and appropriate in light of the prospective replacement of the multiple hearth incinerators. EPA shall provide any such directions in writing, and Met shall be allowed a reasonable time period in which to implement any compliance measures directed by EPA. Any dispute with regard to a proposed compliance measure shall be subject to Dispute Resolution as set forth in Section XI (Dispute Resolution).

h. Construction and Installation of New Fluidized Bed Incinerators. Met shall replace the multiple hearth incinerators currently in use at the Met WWTP with new fluidized bed incinerators. A general description of fluidized bed incinerators is set forth in Appendix A. The construction and completion of the fluidized bed incinerators at the Met WWTP shall be in accordance with the construction schedule and timetable set forth in Appendix B.

VII. Supplemental Environmental Project

10. As part of the requirements under this Consent Decree, Met shall perform and complete the Supplemental Environmental Project (SEP), which is identified and described in Appendix C. The parties agree that performance of the SEP is intended to secure significant environmental or public health protection and improvements.

11. Met hereby certifies that, as of the date of this Consent Decree, Met is not required to perform or develop the SEP described in Appendix C by any federal, state or local law or regulation;

nor is Met required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Met further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. Further, Met certifies that it has not received, and will not in the future receive as a SEP or other penalty offset in any other enforcement action for such project, or credit for any emissions reductions resulting from such project in any federal, state or local emissions trading or early reduction program.

12. The total expenditure for the SEP shall be not less than $1,600,000 in accordance with the specifications set forth in Appendix C. Met shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Reports, discussed in Paragraphs 16 and 18.

13. Met shall complete the SEP and submit a SEP Completion Report within 90 days of commencement of operation of the fluidized bed incinerators. The SEP Completion Report shall contain the following information:

(i) A detailed description of the SEP as implemented;

(ii) A description of any operating problems encountered and the solutions thereto, if any;

(iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks or other appropriate evidence of the expenditure (which shall be made available to the United States, if requested);

(iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree; and

(v) A description of the environmental and public health benefits, if any, resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible);

14. Met shall submit a Periodic Report on the status of implementation of the SEP specified in Appendix C on each March 1 and September 1 following entry of this Consent Decree until the submission of the SEP Completion Report. Each Periodic Report shall contain a progress update on implementation of the SEP. Periodic Reports, the SEP Completion Report and other SEP-related reports submitted to the government, if any, may contain requests for confidentiality under Section XIII (Public Access to Documents), where appropriate.

15. Met shall submit any additional reports required by Appendix C to EPA in accordance with the schedule and requirements recited therein.

16. Met agrees that failure to submit the SEP Completion Report or any Periodic Report required above shall be deemed a violation of this Consent Decree and Met shall be liable for stipulated penalties pursuant to Paragraph 24 below.

17. Notwithstanding the preceding Paragraph, the parties may, by mutual agreement, modify the construction/installation completion date for the SEP or modify the submission date of a SEP Completion Report or any Periodic SEP Report in accordance with the following procedures. Any agreed upon modification shall be in writing, shall be signed by the parties, and shall have as its effective date the date on which it is signed by EPA, and shall be incorporated into this Consent Decree. Any request by Met for a SEP completion date or submission date modification shall be made in writing. Such requests must provide justification for the requested modification. Any request by Met for a date

modification and subsequent response by EPA shall not be subject to Dispute Resolution under this Consent Decree.

18. Following receipt of the SEP Completion Report, EPA will do one of the following: a) accept the SEP Completion Report; b) reject the SEP Completion Report, notify Met, in writing, of deficiencies in the SEP Completion Report and grant Met an additional 60 days in which to correct any deficiencies; or c) reject the SEP Completion Report and seek stipulated penalties in accordance with Paragraph 21.

19. If EPA elects to reject a SEP Report and grant Met an additional 60 days in which to correct any deficiencies, EPA shall permit Met the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to the previous Paragraph within ten days of receipt of such notification. EPA and Met shall have an additional 30 days from receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this 30-day period, EPA shall provide a written statement of its decision to Met, which shall be final and binding on Met subject to Dispute Resolution in Section XI. Met agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Decree. In the event the SEP is not completed as contemplated herein, as determined by EPA, and EPA has not granted Met additional time in which to complete the SEP, stipulated penalties shall be due and payable by Met to EPA in accordance with Paragraph 21 and 27 below.

20. In the event that Met fails to comply with any of the terms or provisions of this Section relating to the performance of the SEP described in Appendix C, and/or to the extent that the actual

expenditures for the SEP do not equal or exceed the cost of the SEP described in Appendix C, Met shall be liable for stipulated penalties according to the provisions set forth below.

21. Except as provided in Paragraph 22 below, if the SEP specified in Appendix C has not been completed satisfactorily, Met shall pay a stipulated penalty to the United States in the amount of $750,000.

22. If the SEP specified in Appendix C is not completed satisfactorily, but Met made good faith and timely efforts to complete each project and certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Met shall not pay any stipulated penalty.

23. If the SEP specified in Appendix C is satisfactorily completed, but Met spent less than 90 percent of the amount of money required to be spent for the project, Met shall pay a stipulated penalty to the United States in the amount of $160,000.

24. For failure to submit a SEP Completion Report as required above, Met shall pay a stipulated penalty of $500 for each day after the date the report is due until the report is submitted. For failure to submit any other report required by this Section, or if a SEP Report is rejected by EPA, Met shall pay a stipulated penalty of $250 for each day after the report was originally due until the report is submitted.

25. Whether Met has satisfactorily completed the SEP called for by this Consent Decree and whether Met has made a good faith, timely effort to implement the SEP shall be determined by EPA, but such determination shall be subject to Dispute Resolution.

26. Stipulated penalties for this Section shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

27. Met shall pay stipulated penalties under this Section within 15 days of receipt of written demand by EPA for such penalties. The method of payment, interest and late charges shall be in accordance with Section IX (Civil Penalty).

28. Any public statement, oral or written, in print, film, or other media, made by Met making reference to the SEP identified in Appendix C shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Department of Justice on behalf of the U.S. Environmental Protection Agency for violations of the Clean Air Act."

VIII. Site Access

29. EPA, its employees and authorized agents (including contractors and subcontractors), shall have access to the Met WWTP, at all reasonable times and in accordance with Met internal security and safety procedures for the purposes of inspecting, investigating or verifying compliance with the terms of this Consent Decree, including but not limited to, the requirements of Section VII (Supplemental Environmental Project), consistent with the authority set forth in Section 114 of the Clean Air Act, 42 U.S.C. § 7414. For the purposes of this Consent Decree, Met agrees that Section 114 of the Clean Air Act authorizes inspecting, investigating and verifying Met's compliance with this Consent Decree.

30. Met shall have the right to accompany EPA representatives and employees throughout their presence at the Met WWTP and to monitor and record the investigative activities conducted by

EPA. If such a recording of EPA's investigatory activities is made, Met shall, upon request, provide a copy of the recording to EPA. This request shall be confirmed in writing.

31. This Section in no way limits any right of inspection and/or entry available to EPA pursuant to applicable federal or state laws, regulations, or permits. This Section does not constitute a waiver of any claim of attorney-client privilege or attorney-work product that Met may assert with regard to documents or recordings at the Met WWTP.

IX. Civil Penalty

32. Based on the nature of the alleged violations, Met's agreement to perform the SEP described in Appendix C, and other relevant factors, Met shall pay a civil penalty in the amount of $250,000 within 30 days of entry of this Consent Decree. Interest on the civil penalty shall begin to accrue on December 4, 1998. Payments under this Consent Decree shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank. Payment shall be made in accordance with instructions provided by the Plaintiff to Met upon execution of the Consent Decree. Any EFTs received at the U.S. D.O.J. lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next business day. In addition, a late penalty of six percent per annum shall be assessed on any unpaid principal which is overdue for 90 days or more. A copy of any check and correspondence from Met to the U.S. Attorney shall be sent to the United States and EPA as provided in Section XVII (Notices).

X. Stipulated Penalties

33. If Met fails to comply with the notice provisions of Paragraph 9.e. or the submittal requirements of Paragraphs 9.c. or 9.d. of this Consent Decree, it shall pay the following stipulated penalties:

Period of Failure To Comply	Penalty Per Violation Per Day
1st through 30th day	$500
31st through 60th day	$1,000
61st day and beyond	$2,000

34. Except for the submittal requirements of Paragraphs 9.c., if Met fails to comply additional compliance measures set forth in Paragraphs 9.b., 9.c. or 9.d. or if Met fails to pay the civil penalty as required by Paragraph 32 of this Consent Decree, it shall pay the following stipulated penalties:

Period of Failure To Comply	Penalty Per Violation Per Day
1st through 30th day	$2,000
31st through 60th day	$3,000
61st day and beyond	$5,000

35. If Met fails to comply with any of the feed rate restrictions in Paragraph 9.f., it shall pay a stipulated penalty as determined by this Paragraph. Each calendar day on which one or more of the feed rate restrictions in Paragraph 9.f. is exceeded (on one or more incinerators) shall be considered a "Penalty Day" for purposes of this Paragraph. Met shall pay a stipulated penalty for each "Penalty

Day" as determined under either subpart a. or subpart b. of this Paragraph, which ever is greater, but with no more than one stipulated penalty per calendar day:

a.

Number of Penalty Days in a Calendar Month	**Stipulated Penalty Per Penalty Day**
1st through 12th day	$500
13th through 30th day	$5,000
31st day and beyond	$10,000.

b. If a particular incinerator exceeds the feed rate restrictions in Paragraph 9.f. on consecutive calendar days, then the stipulated penalty for those Penalty Days shall be as follows:

Number of Consecutive Penalty Days With An Exceedance on the Same Incinerator	**Penalty Per Day**
1st through 4th day	$500
5th through 30th day	$5,000
31st and beyond	$10,000

36. If Met fails to comply with the additional compliance measures set forth in Paragraph 9.g., it shall pay the following stipulated penalties:

Period of Failure To Comply	Penalty Per Violation Per Day
1st through 30th day	$2,000
31st through 60th day	$3,000
61st day and beyond	$5,000.

However, if Met invokes Dispute Resolution as provided in Section XI on the issue of whether it must undertake and implement the compliance measures as directed by EPA under Paragraph 9.g., stipulated penalties shall be tolled after the 35th day of any such direction by EPA under Paragraph 9.g. until a final determination on the merits is made by this Court on the dispute in question. If the United States prevails on the dispute, stipulated penalties shall begin to accrue at such date as the Court shall determine and shall begin to accrue as if 35 days had elapsed from the implementation date of the action that EPA has directed under Paragraph 9.g.

37. If Met fails to comply with the dates for completion of the Additional Compliance Measures in Paragraph 9.h. of this Consent Decree, it shall pay the following stipulated penalties:

Period of Failure To Comply	Penalty Per Violation Per Day
1st through 30th day	$5,000
31st through 60th day	$10,000
61st day and beyond	$15,000

38. Stipulated penalties under this Section shall be paid by certified check payable to the **"Treasurer of the United States"** and shall reference DOJ Case No. 90-5-2-1-2243 and the case caption on the check.

Address for payment:

Chief, Civil Division
United States Attorney's Office
District of Minnesota
Room 600, United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415

A copy of the check and any correspondence from Met to the United States Attorney shall be sent to the United States and EPA as provided in Section XVII (Notices).

39. Met shall notify EPA in writing of any occurrence under the Consent Decree for which stipulated penalties may be due as soon as it has knowledge of such occurrence. The United States reserves the right to demand payment of stipulated penalties upon a determination by the United States that a violation of this Consent Decree has occurred.

40. Except as provided in Paragraph 36, all stipulated penalties begin to accrue on the day after performance is due or on the day a violation occurs, and continue to accrue through the final day of correction of the noncompliance. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree. Penalties shall accrue as provided in Section X (Stipulated Penalties) regardless of whether EPA has notified Met of a violation. All stipulated penalties owed to the United States under this Section shall be due and payable within 30 days of Met's receipt from EPA of a written demand for payment of the penalties, unless Met invokes the Dispute Resolution procedures under Section XI (Dispute Resolution).

41. Except as provided in Paragraph 36, stipulated penalties shall continue to accrue as provided in Section X (Stipulated Penalties) during any dispute resolution period, but need not be paid

unless the United States prevails in the dispute. If the United States prevails by decision of this Court, Met shall remit payment of all accrued penalties within 30 days of receipt of the Court's decision. If Met fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties and any interest that has accrued.

42. Nothing in this Section shall be construed as prohibiting, altering or in any way limiting the ability of the United States to seek other remedies or sanctions available by virtue of Met's violation(s) of this Consent Decree or of the statutes and regulations referenced herein. The United States may elect, at its sole discretion, whether to seek stipulated penalties under this Section or other remedies as provided in the Consent Decree or to seek civil penalties under the Act for a particular violation of the Consent Decree, and Met shall not be liable for both stipulated penalties or other remedies as provided in the Consent Decree and statutory penalties for the same violation. In the event that the United States elects not to seek stipulated penalties or other remedies pursuant to this Consent Decree, and instead commences an enforcement action based on the application of any PM numerical standard or any other air emission numerical standard to any source other than the controlled stack of each sewage sludge incinerator at the Met WWTP, Met reserves the right to raise any and all defenses available to Met at the time of the entry of this Consent Decree.

43. The payment of stipulated penalties shall not alter in any way Met's obligation to complete the performance of the actions described in this Consent Decree.

XI. Dispute Resolution

44. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with

respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Met that have not been disputed in accordance with this Section.

45. The dispute resolution procedures of this Consent Decree are invoked by one party sending the other party a written Notice of Dispute. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties. The period for informal negotiations shall not exceed 21 days from the date of the Notice of Dispute, unless it is modified by written agreement of the parties to the dispute.

46. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 14 days after the conclusion of the informal negotiation period, Met invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Met.

47. Within 14 days after receipt of Met's Statement of Position, EPA will serve on Met its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA.

48. Following receipt of both Statements of Position, the Director of Air and Radiation Division, EPA Region 5, will issue, within a reasonable time, a final written decision resolving the dispute, which sets forth the basis for EPA's decision. The Division Director's decision shall be binding on Met unless, within 21 days of receipt of the decision, Met files with the Court and serves on the

United States a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Met's notice of judicial appeal.

49. Except as to disputes arising under Paragraph 9.g., in any judicial review of the dispute, Met shall have the burden of proving, based on the administrative record of the dispute, that EPA's decision is arbitrary and capricious. With respect to disputes arising under Paragraph 9.g., Met shall have the burden of proving, based on the administrative record of the dispute, that EPA's decision is unreasonable or fails to meet the conditions set forth in Paragraph 9.g. For purposes of this Section, the administrative record shall consist of the Notice of Dispute, the Statements of Position and all supporting documentation, and the Division Director's written decision.

50. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Met under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. However, payment of stipulated penalties with respect to the disputed matter, shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree unless Met prevails on a disputed issue. In the event that Met does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XII. Force Majeure

51. If any event causes or may cause a delay or failure in Met's compliance with any provision of this Consent Decree, Met shall notify the United States in writing as soon as practicable, but in any event within 10 working days of when Met first knew of the event, or should have known of the event by the exercise of due diligence. In this notice, Met shall specifically reference this provision of the Consent Decree and describe the anticipated length of the delay or impediment to performance, the cause or causes of the delay or impediment, the measures taken or to be taken by Met to prevent or minimize the delay or impediment, and the schedule by which those measures will be implemented. Met shall adopt all reasonable measures to avoid and minimize such delays.

52. Failure by Met to comply with the above notice requirements shall render this Section voidable by the United States as to the specific event for which Met failed to comply with such notice requirement, and, if voided, of no effect as to the particular event involved.

53. EPA shall notify Met of its agreement or disagreement with Met's claim of unavoidable delay or impediment to performance within 30 days of receipt of the notice provided under this Section. If the United States agrees that the violation has been or will be caused by circumstances beyond the control of Met and that Met could not have foreseen and prevented such delay by the exercise of due diligence, the parties shall stipulate to an extension of the compliance requirement(s) affected by the delay by a period not exceeding the delay actually caused by such circumstances. Met shall not be liable for stipulated penalties for the period of any such delay.

54. If EPA does not agree with Met's claim of a delay or impediment to performance, either party may submit the matter to the Court for resolution pursuant to the dispute resolution procedures

established in this Decree. If the Court determines that the violation has been or will be caused by circumstances beyond the control of Met and that Met could not have foreseen and prevented such delay by the exercise of due diligence, Met shall be excused as to that violation and delay (including stipulated penalties), but only for the delay actually caused by such circumstances.

55. Met shall bear the burden of proving that any delay of any requirement of this Consent Decree was caused by or will be caused by circumstances beyond the control of Met and that Met could not have foreseen and prevented such delay by the exercise of due diligence. Met shall also bear the burden of proving the duration and extent of any delay attributable to such circumstances. Absent written approval by the United States, an extension of one compliance date based on a particular event shall not of itself result in an extension of a subsequent compliance date or dates.

56. Unanticipated or increased costs or expenses associated with the performance of Met's obligations under this Consent Decree shall not constitute circumstances beyond Met's control, or serve as a basis for an extension of time under this Section. Temporary shutdowns for routine maintenance do not constitute circumstances beyond Met's control for purposes of this Paragraph.

XIII. Public Access to Documents

57. All data, factual information, and documents obtained by the United States from Met pursuant to this Consent Decree shall be subject to public inspection unless identified as confidential by Met in conformance with 40 C.F.R. Part 2. Any assertion of confidentiality must be accompanied by responses to the questions listed at 40 C.F.R. § 2.204(e)(4). The data, factual information, and documents so identified as confidential shall be disclosed only in accordance with appropriate EPA and

DOJ regulations. Environmental contamination data, including hydrogeological or chemical data, or any other scientific or engineering tests or data, shall not be deemed confidential.

XIV. Record Retention

58. Met shall preserve, during the pendency of this Consent Decree and for a minimum of five years after its termination, or as required by law, whichever period is longer, at least one legible copy of all non-privileged records and documents, including computer tapes, in its possession which relate to its performance of its obligations under this Consent Decree. Not less than 60 days before expiration of the record retention requirements under this Consent Decree, Met shall notify EPA of the expiration of its record retention obligation and give EPA the opportunity to inspect and copy the applicable documents. This notification will identify the nature of the documents and their storage location or locations.

59. Met further agrees that within 30 days of retaining or employing any agent, consultant or contractor for the purpose of carrying out the terms of this Consent Decree, Met will enter into an agreement, with any such agents, consultants or contractors whereby such agents, consultants and/or contractors (excluding outside legal counsel) will be required to provide a copy to Met for subsequent retention by Met of all documents produced pursuant to this Consent Decree. Such agreement shall require said agents, consultants and/or contractors upon completion of their work or such earlier time as requested by the United States to furnish Met a copy of originals of all documents, data, analyses, and all other materials created or obtained during their performance of work specified in this Consent Decree.

XV. General Provisions

60. This Consent Decree resolves only the civil claims of the United States for the violations specifically alleged in the Notice of Violation, the Finding of Violation, and the Complaint in this action through the date of lodging of the Consent Decree. Nothing in this Consent Decree is intended to nor shall be construed to operate in any way to resolve any other civil or criminal liability of Met. However, the United States agrees that if Met complies with its obligations under this Consent Decree and uses due diligence in minimizing emissions through the emergency stacks, it shall not impose or seek to impose additional civil penalties, stipulated penalties, or other sanctions or remedies for the claims alleged in the Complaint in this action up to and including April 1, 2000.

61. This Consent Decree shall not relieve Met of its obligation to comply with all applicable provisions of federal, state or local law, or regulations, or with any order of the Court, including but not limited to, an order pursuant to Section 303 of the Clean Air Act, 42 U.S.C. § 7603; nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

62. Compliance with this Consent Decree shall not be a defense to any actions not related to this Consent Decree subsequently commenced pursuant to federal laws and regulations administered by EPA.

63. This Consent Decree shall not be construed to affect or limit in any way the obligation of Met to comply with all federal, state and local laws and regulations governing the activities required by this Consent Decree.

64. This Consent Decree shall not be construed as a ruling or determination of any issue related to any federal, state, or local permit, if required in order to implement this Consent Decree or

required in order to continue or alter operations of the Met WWTP and Met shall remain subject to all such permitting requirements. Met shall be responsible for obtaining any federal, state, or local permit(s) for any activity at the Met WWTP including those necessary for construction of the fluidized bed incinerators and the performance of the SEP required by this Consent Decree.

XVI. Costs

65. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Decree.

XVII. Notices

66. Whenever under the terms of this Consent Decree notice is required to be given or a report or other document is required to be forwarded by one party to another, it shall be directed to the following individuals at the addresses specified below, unless it is otherwise specifically provided in this Consent Decree. The Parties also designate the following individuals to receive any immediate notice and to communicate informally about problems incurred or anticipated in meeting the requirements of this Consent Decree and its attachments. Any change in the individuals designated by either Party must be made in writing to the other Party. Any correspondence submitted to the government shall include a reference to the case caption and index number of this court action.

As to the United States and EPA:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

Chief
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division, AE-17J
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

As to Met:

General Manager, Wastewater Services
Metropolitan Council
Mears Park Center
230 East Fifth Street
St Paul, Minnesota 55101

VIII. Modification

67. Except as provided for herein, there shall be no modification of this Consent Decree without the written approval of both Parties to this Consent Decree and the Court.

68. Notwithstanding the preceding Paragraph, the Parties may, by written agreement, modify the proposals, Workplans, statements of work, and schedules provided for pursuant to the provisions of Section VII (Supplemental Environmental Project).

XIX. Effective and Termination Dates

69. This Consent Decree shall be effective upon the date of its entry by the Court. The Consent Decree shall be terminated upon completion of all requirements of this Consent Decree excluding record retention.

70. When Met determines that it has complied with all requirements of this Consent Decree, including its attachments, it shall certify such compliance in writing to the United States. The

certification by Met shall indicate the case name and civil action number and include the following language:

> "I certify pursuant to Section XIX (Effective and Termination Dates) of the Consent Decree that Met has completed all the requirements set forth in the Consent Decree including the requirements in Section VII (Supplemental Environmental Project)."

The United States shall have 120 days following receipt of such certification to serve on Met written notice stating any opposition to the compliance certificate. Any such opposition shall state specifically what requirements of the Consent Decree have not been fulfilled. After receiving written notification from the United States or after the expiration of the 120-day time period, Met may file its certification with the Court and petition the Court with notice to the United States for termination of this Consent Decree. The United States may support or oppose Met's petition, and the Court may conduct such inquiry and rule as it deems appropriate.

71. Notwithstanding the preceding Paragraph, the Parties may at any time move jointly to terminate this Consent Decree without the certification based on their representation that all its requirements have been satisfied, and the Court may order such termination after conducting such inquiry as it deems appropriate. Termination of this Consent Decree will not terminate Met's obligation to preserve all records in accordance with the Record Retention provisions contained in Section XIV (Record Retention).

XX. Retention of Jurisdiction

72. This Court shall retain jurisdiction of this matter until further order of the Court or until termination of this Consent Decree.

73. The United States retains the right to seek to enforce the terms of this Consent Decree and take any action authorized by federal or state law not inconsistent with the terms of this Consent Decree to achieve or maintain compliance with the terms and conditions of this Consent Decree or otherwise.

XXI. Public Notice Requirements

74. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for, inter alia, notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments.

75. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. In such case, this Consent Decree shall be null and void and of no further force and effect. Met consents to the entry of this Consent Decree without further notice.

XXII. Signatories/Service

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

77. Met hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Met in writing that it no longer supports entry of the Consent Decree.

78. Met shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of Met with respect to all matters arising under or relating to this Consent Decree. Met hereby agrees to accept service in that manner and to waive the formal service requirement set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

Consent Decree entered in accordance with the foregoing this 16th day of March, 2001.

DONOVAN W. FRANK
Judge of United States District Court

FOR PLAINTIFF - UNITED STATES OF AMERICA

DATE: 6-23-2000

JOEL M. GROSS, Chief
U.S. Department of Justice
Environment and Natural Resources
Division
Environmental Enforcement Section
1425 New York Avenue, N.W.
Washington, D.C. 20005

DATE: 6-24-00

JAMES A. LOFTON
Senior Counsel
U.S. Department of Justice
Environment and Natural Resources
Division
Environmental Enforcement Section
1425 New York Avenue, N.W.
Washington, D.C. 20005

B. TODD JONES
United States Attorney
District of Minnesota

By:

DATE: 8/10/00

FRIEDRICH A.P. SIEKERT
Attorney Id. No. 142013
Assistant United States Attorney
United States Courthouse
Room 600
300 South Fourth Street
Minneapolis, Minnesota 55415

DATE: 7/24/00

STEVEN A. HERMAN
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
401 M Street, S.W. (2201A)
Washington, D.C. 20460

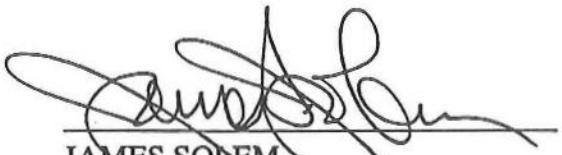
DATE: 7/12/00

FRANCIS X. LYONS
Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

DATE: July 12, 2000

MARY T. McAULIFFE
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

FOR DEFENDANT - METROPOLITAN COUNCIL



DATE: 5-25-00

JAMES SOLEM
Regional Administrator
Metropolitan Council
Mears Park Centre
230 East Fifth Street
St. Paul, MN 55101-1634

APPENDIX A

GENERAL DESCRIPTION OF FLUIDIZED BED INCINERATORS

A fluidized bed incinerator is a cylindrical refractory-lined shell that contains a sand bed and fluidized air. The air is diffused throughout the sand bed and creates a high degree of turbulence. Oxidizing temperatures are generally maintained at 1400° F to 1600° F within the incinerator. Dewatered sludge is normally introduced within or just above the fluidized bed. The drying and combustion process occurs very rapidly. Combustion gases exit the fluidized bed incinerator through the top of the unit and are treated prior to emission to the atmosphere. Because the fluidized bed incinerator is an air tight vessel designed to operate under a slightly positive pressure, an emergency relief stack is not required for proper operation.

APPENDIX B

United States v. Metropolitan Council

Milestone Date	**Action**
Completed	Issue Request for Proposals for design and construction of incinerator units
Within 3 months of final permit	Issue notice to proceed on incinerator design
Within 11 months of final permit	Complete final design for new solids management building in which incinerators are to be located
Within 14 months of final permit	Issue notice to proceed on construction of new solids management building
Within 50 months of final permit	Final shutdown of all multiple hearth incinerators; no further emissions through these units

APPENDIX C

United States v. Metropolitan Council

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Met Council proposes to add a dry electrostatic precipitator ("dry ESP") to the air pollution control train of one of the new fluidized bed incinerators at the Met WWTP.

A base air pollution control train comprised of a wet scrubber followed by a wet ESP is required for removing particulate matter (both PM and PM-10) from the flue gases emitted from a fluidized bed incinerator. The wet scrubber will primarily remove acid gasses while the wet ESP will remove particulate matter and heavy metals that exist as condensible oxides and salts. The dry ESP will be added ahead of the wet scrubber in the air pollution control train to provide enhanced particulate removal.

The dry ESP operates on the principle of electrostatic attraction. A high negative voltage applied to a discharge electrode produces a strong electric field between discharge and collector electrodes. Particles in the gas stream acquire a negative charge as they pass through the electrical field. Because of their charge, the particles are then attracted to a grounded collection electrode. After collection on the electrode, particles can be removed by mechanical vibration and collected in a hopper.

This SEP will result in a significant net environmental benefit. The dry ESP will result in a significant additional reduction in PM/PM-10 emissions from the incinerator. While the actual reduction will vary depending on actual sludge throughput in the incinerator, the maximum additional reduction is projected to be approximately 3.5 tons of PM/PM-10 per year, based on design capacity. The combination of the dry ESP and the wet scrubber/wet ESP effectively will achieve among the highest level of PM/PM-10 emissions reduction feasible.

The dry ESP will be installed in conjunction with the construction of the fluidized bed incinerator. The dry ESP will be operational at the startup of the incinerator. The estimated cost of adding the dry ESP to an incinerator air pollution control train is in excess of $1.6 million (as measured by 1998 dollars).

Met Council hereby represents that the dry ESP is not required by NSPS regulations or Minnesota SIP performance requirements.