

**STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY**

IN THE MATTER OF: **Board of Water Commissioners
of the City of Saint Paul**

STIPULATION AGREEMENT

Part 1. PARTIES. This Stipulation Agreement ("Agreement") applies to and is binding upon the following parties:

- a. Board of Water Commissioners of the City of Saint Paul ("Regulated Party"); and
- b. The Minnesota Pollution Control Agency ("MPCA"), which is authorized to enter into this Agreement under Minn. Stat. chs. 115 and 116.

Unless specified otherwise in this Agreement, where this Agreement identifies actions to be taken by the MPCA, the Commissioner or the Commissioner's designees shall act on the MPCA's behalf. If there is more than one Regulated Party, the term "Regulated Party" applies to both Regulated Parties, unless the Agreement refers specifically to one Regulated Party by name.

Part 2. PURPOSE AND SCOPE OF STIPULATION AGREEMENT. The purpose of this Agreement is to resolve the alleged violations set out in Part 4 of this Agreement by specifying actions the Regulated Party agrees to undertake. By entering into this Agreement, the Regulated Party is settling a disputed matter between itself and the MPCA and does not admit that the alleged violations set out in Part 4 of this Agreement occurred. However, the Regulated Party agrees that the MPCA may rely upon the alleged violations set out in Part 4 as provided in Part 9 of this Agreement. Except for the purposes of implementing and enforcing this Agreement, nothing in this Agreement constitutes an admission by any Party, or creates rights, substantive or procedural, that can be asserted or enforced with respect to any claim of or legal action brought by a person who is not a party to this Agreement. All citations are to the latest codification of the cited material unless otherwise indicated.

Part 3. BACKGROUND. The following is the background of this Agreement:

- a. The Regulated Party is a unit of government that operates a facility that provides water to the City of St. Paul and surrounding areas. The Regulated Party operates a facility located at 1900 Rice Street North, St. Paul Minnesota, hereafter the "Facility."
- b. In April 2004, the Regulated Party constructed two diesel generators at the Facility. The Facility began operation of the two diesel generators on May 25, 2005. The Regulated Party did not receive an air emissions permit prior to construction or operation of the generators.
- c. On March 9, 2015, the Regulated Party submitted a permit application for an Option D Registration Permit for the Facility.
- d. On March 30, 2015, the MPCA sent the Regulated Party a permit denial letter because the facility's potential to emit (PTE) exceeded the permit threshold for the Prevention of Significant Deterioration program for nitrogen oxides.
- e. On May 15, 2015, the MPCA sent the Regulated Party an Alleged Violations Letter (AVL).
- f. On July 9, 2015, the Regulated Party replied to the AVL.

Part 4. ALLEGED VIOLATIONS. The MPCA alleges that the Regulated Party has violated the following requirements of statute, rule, and/or permit condition:

a. 40 CFR § 52.21(iii)

No new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Administrator has authority to issue any such permit.

40 CFR § 52.21(r) Source Obligation

(1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

Minn. R. 7007.3000 PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY.

Any person who constructs, modifies, reconstructs, or operates an emissions unit, emission facility, or stationary source must meet the requirements of Code of Federal Regulations, title 40, part 52.21, as amended, entitled "Prevention of Significant Deterioration of Air Quality," which is adopted and incorporated by reference.

All applications and other information required pursuant to Code of Federal Regulations, title 40, part 52.21, from emissions units, emission facilities, and stationary sources located in Minnesota shall be submitted to the commissioner.

Minn. Stat. § 116.081 Prohibitions, which provides in relevant part:

Subd. 1. Obtain permit. It shall be unlawful for any person to construct, install, or operate an emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, storage facility, or system or facility related to the collection, transportation, storage, processing, or disposal of waste, or any part thereof unless otherwise exempted by any agency rule now in force or hereinafter adopted, until plans therefor shall have been submitted to the agency and a written permit therefor shall have been granted by the agency.

Minn. R. 7007.0150 PERMIT REQUIRED,

Subp. 1. Prohibition. No person may construct, modify, reconstruct, or operate an emissions unit, emission facility, or stationary source except in compliance with an air emission permit from the agency. Exceptions to the requirement to obtain a permit are located in part 7007.0300. Exceptions to the requirement to obtain a permit amendment are located in parts 7007.1250 and 7007.1350. A person violates this subpart when the person begins actual construction on a new source, reconstruction, or modification prior to obtaining the permit or amendment, except as allowed in parts 7007.0750, subpart 7, 7007.1450, subpart 7, and 7007.1500, subpart 3a.

In April of 2004, the Regulated Party constructed and began operation of two diesel emergency generators at the Facility without first receiving an air emissions permit. The PTE of the two generators was 541.4 tpy of NO_x. The installation of the two generators exceeded the 250 tpy Prevention of Significant Deterioration (PSD) rules for NO_x.

b. Minn. R. 7019.3000 Emission Inventory

Subp. 1. Emission inventory required.

A. All owners or operators of emission reporting facilities, as defined in part 7002.0015, subpart 3a, shall submit an annual emission inventory report to the agency, in a format specified by the commissioner, relating to carbon monoxide, particulate matter, and all chargeable pollutants as defined in part 7002.0015, subpart 2a. The report shall be submitted on or before April 1 of the year following the year being reported. . . .

The Regulated Party is required to submit an annual emission inventory report for each year that air pollutants were emitted and an air emissions permit is required. The Regulated Party failed to submit emission inventory reports for the years of 2004 through 2014. No emission inventory reports have been submitted.

Part 5. CIVIL PENALTY.

The Regulated Party agrees to pay \$15,000 to the MPCA as a civil penalty for the violations alleged in Part 4 within 30 days after the effective date of this Agreement. An invoice for the civil penalty will be sent to the Regulated Party upon the effective date of the Agreement. Payment of the penalty amount of \$15,000 is to be by check or money order payable to the Minnesota Pollution Control Agency and should not be submitted until an invoice from the MPCA is received.

The check must be mailed to: Fiscal Services – 6th Floor, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194; or to make an Electronic Payment, contact MPCA Fiscal Services at 651-757-2834.

If the Regulated Party fails to make the required payment within 45 days after the Effective Date of this Agreement, the Regulated Party agrees to pay a late payment charge in an amount equal to 10 percent of the unpaid civil penalty. Sixty days after the Effective Date of this Agreement, the Regulated Party agrees to pay an additional late charge in an amount equal to 20 percent of the unpaid civil penalty. If the payment, including late charges, is not received by the MPCA within 60 days after the Effective Date of this Agreement, the MPCA may immediately exercise any and all administrative and judicial remedies available to it to collect the amount due. The Regulated Party agrees to pay and shall also be indebted to the MPCA for its attorneys' fees and cost incurred by the MPCA in connection with its collection of the amounts owed pursuant to this Agreement.

Part 6. *REGULATED PARTY REQUIREMENTS.* The Regulated Party agrees to the following requirements:

a. The Regulated Party shall submit completed Emission Inventory Reports (Reports) for 2004 to 2015. Upon completion and submittal of the Reports and MPCA review, the MPCA will require payment of the unpaid air emission fees for this year. The MPCA request for payment and payment schedule will be addressed in future MPCA correspondence.

...Within 30 days upon execution of this Agreement.

b. The Regulated Party shall submit to the MPCA a Best Available Control Technology (BACT) analysis for the generators installed in 2004. The BACT analysis is to be conducted as if the equipment were not yet constructed (e.g., the Regulated Party cannot include economic or technical feasibility issues associated with how the equipment is currently constructed or used). The analysis must be based on equipment as designed at its maximum capacity. The Regulated Party may choose to truncate the BACT analysis process by identifying the top-ranked control option as BACT in each situation. If the analysis is determined to be incomplete or insufficient, the Regulated Party will have 30 days from notification by the MPCA to resubmit.

....Within 60 days upon execution of this Agreement.

c. The Regulated Party shall submit an application for an appropriate air permit. The Regulated Party shall operate the Facility in compliance with the complete air emissions permit application that it submits pursuant to Part 6.c. of this Agreement. This requirement shall terminate on the date that the MPCA issues the Air Emissions Permit.

...Within 60 days of the MPCA's approval of the BACT analysis or the modeling protocol, whichever is later.

Part 7. *PENALTIES FOR VIOLATIONS OF THIS AGREEMENT.*

a. If the Regulated Party fails to comply with requirements of Part 6 of this Agreement, the Regulated Party shall pay to the MPCA a penalty in the amount of \$500.00 per requirement for each day of failure.

b. Penalties for failure to comply with requirements of Part 6 of this Agreement shall accrue from the date the Regulated Party was to have fulfilled the requirement until the Regulated Party fulfills the requirement. Penalties shall not accrue while the MPCA considers a timely extension request under Part 12 or during dispute resolution under Part 10, unless the MPCA determines that the Regulated Party filed the request or initiated dispute resolution solely for purposes of delay. If the Regulated Party does not pursue dispute resolution under Part 10 for denial of a timely extension request, penalties shall accrue from the date the extension request is denied by the MPCA Case Contact. If the Regulated Party pursues dispute resolution for denial of an extension request and does not file a timely challenge in a court of competent jurisdiction as provided by Part 10, penalties shall accrue from the date of a Commissioner's dispute resolution decision against the Regulated Party until the Regulated Party fulfills the requirement that is the subject of the extension request.

c. The Regulated Party shall pay a penalty under this Part within 30 days after receiving written notice from the MPCA that the penalty is due, unless the Regulated Party has challenged the factual basis of a penalty asserted under this Part under the dispute resolution provision of Part 10, in which case the penalty, if still applicable, shall be due within 30 days of final resolution of the dispute under Part 10. The written notice shall specify the provision of the Agreement that the Regulated Party has not fulfilled and indicate the date penalties began to accrue. If the Regulated Party fails to make timely payment, the Regulated Party agrees to pay a late payment charge, in addition to the stipulated penalty, to be assessed as follows. Forty-five days after receipt of written notice, the Regulated Party shall be obligated to pay a late charge in an amount equal to 10 percent of the unpaid stipulated penalty. Sixty days after receipt of written notice, the Regulated Party shall be obligated to pay an additional late charge in an amount equal to 20 percent of the unpaid stipulated penalty.

d. In dispute resolution before the Commissioner under Part 10, the Regulated Party can contest the factual basis for the MPCA's determination that the Regulated Party has not fulfilled a requirement of this Agreement covered by this Part. However, the Regulated Party waives its right to challenge, on legal grounds, the requirement that it pay penalties under this Part.

e. The Regulated Party shall not be liable for payment of penalties for failure to comply with requirements of Part 6 of this Agreement covered by this Part if it has submitted to the MPCA a timely request for an extension of schedule under Part 12 and the MPCA has granted the request. The MPCA's grant of an extension of schedule waives the payment of penalties covered by this Part only on the requirements for which the MPCA granted an extension of schedule and only for the time period specified by the MPCA in the grant of an extension. An extension of schedule for one requirement of Part 6 does not extend the schedule for any other requirement of Part 6.

f. Any requirement of this Agreement may be enforced as provided in Minn. Stat. § 115.071. Payment of a stipulated penalty does not relieve the Regulated Party of its obligation to fulfill and complete requirements under the Agreement and to otherwise comply with the terms and conditions of the Agreement.

Part 8. COVENANT NOT TO SUE AND RESERVATION OF REMEDIES. With respect to the Regulated Party, the MPCA agrees not to exercise any administrative, legal or equitable remedies available to the MPCA to address the violations alleged and described in Part 4 as long as the Regulated Party performs according to and has complied with the terms and conditions contained in this Agreement.

The MPCA reserves the right to enforce this Agreement or take any action authorized by law, if the Regulated Party fails to comply with the terms and conditions of this Agreement. Further, the MPCA reserves the right to seek to enjoin violations of this Agreement and to exercise its emergency powers pursuant to Minn. Stat. § 116.11 in the event conditions or the Regulated Party's conduct warrant such action. Nothing in this Agreement shall prevent the MPCA from exercising these rights and nothing in this Agreement constitutes a waiver of these rights.

The Regulated Party agrees to waive all claims it may now have, as of the effective date of this Agreement, under Minn. Stat. § 15.472 for fees and expenses arising out of matters leading up to and addressed in this Agreement.

Part 9. REPEAT VIOLATIONS. Federal and state environmental programs establish harsher penalties for violations of environmental laws or rules that constitute repeat violations. In a proceeding to resolve alleged violations by the Regulated Party, if any, occurring after the date of the alleged violations set out in Part 4 of this Agreement, the Regulated Party may argue about the extent to which the violations alleged in Part 4 of this Agreement should affect the penalty amount for the later violations, but waives the right: (1) to contend that the violations alleged in Part 4 of this Agreement did not occur as alleged and (2) to require the MPCA to prove the violations alleged in Part 4 of this Agreement.

Part 10. RESOLUTION OF DISPUTES. The parties to this Agreement shall resolve disputes that arise as to any part of the Agreement as follows:

a. Either party, acting through its Case Contact (as named in Part 13 below), may initiate dispute resolution by providing to the Case Contact of the other party an initial written statement setting forth the matter in dispute, the position of the party, and the information the party is relying upon to support its position.

The other party, acting through its Case Contact, shall provide a written statement of its position and supporting information to the Case Contact of the initiating party within 14 calendar days after receipt of the initial written statement.

b. If the parties, acting through their Case Contacts, do not reach a resolution of the dispute and reduce such resolution to writing in a form agreed upon by the parties within 21 calendar days after the initiating party receives the statement of position from the responding party, the Commissioner shall issue a written decision resolving the dispute. The written decision may address stipulated penalties assessed pursuant to Part 7. The Commissioner's decision shall be considered a final decision of the MPCA for purposes of judicial review.

c. The Commissioner's decision shall become an integral and enforceable part of this Agreement unless the Regulated Party timely challenges the decision in a court of competent jurisdiction. Failure to timely challenge means the Regulated Party agrees to comply with the MPCA Commissioner's decision on the matter in dispute and to pay any penalties that accrue pursuant to Part 7 for failure to fulfill requirements of this Agreement that are the subject of the dispute resolution. Further, if the Commissioner's decision assesses penalties pursuant to Part 7 of this Agreement, the Regulated Party agrees to and shall pay the amount of penalty determined by the Commissioner within 60 days after receiving the Commissioner's decision.

d. Throughout any dispute resolution, the Regulated Party shall comply with all portions of the Agreement that the MPCA determines are not in dispute.

Part 11. VENUE. Actions brought by the MPCA to enforce requirements and terms of this Agreement shall be venued in Ramsey County District Court.

Part 12. EXTENSION OF SCHEDULES. If the Regulated Party wants an extension of a deadline included in any schedule under this Agreement, including schedules established by approved submittals, the Regulated Party must request the extension in writing at least ten days before the scheduled deadline, or as soon as possible before that date if the reason for the extension request arises less than ten days before the deadline.

Each deadline extension request shall separately specify the reason why the extension is needed. No requested extension shall be effective until approved in writing by the MPCA, acting through the MPCA Case Contact or the Commissioner.

The MPCA shall grant an extension only for the period of time the MPCA determines is reasonable under the circumstances. The written approval or grant of an extension request shall be considered an enforceable part of the Agreement.

The Regulated Party has the burden of demonstrating to the satisfaction of the MPCA that the request for the extension is timely, and that good cause exists for granting the extension. Good cause can include, but is not limited to, the following:

- a. Circumstances beyond the reasonable control of the Regulated Party; and
- b. Delays caused by the MPCA in reviewing timely submittals required by this Agreement, submitted by the Regulated Party in complete and approvable form, which make it not feasible for the Regulated Party to meet the required schedules.

Good cause does not include unanticipated costs, increases in the cost of control equipment, or delays in MPCA review of submittals when the submittals are not in complete and approvable form.

The Regulated Party may challenge a decision by the MPCA to deny a request for an extension under Part 10.

Part 13. CASE CONTACT. The MPCA and the Regulated Party shall each designate a Case Contact for the purpose of overseeing the implementation of this Agreement. The MPCA Case Contact is Brent Rohne. The address, telephone number, and email address of the MPCA's Case Contact is: 520 Lafayette Road North, St. Paul, Minnesota 55155, 651-757-2674, and brent.rohne@state.mn.us. The Regulated Party's Case Contact is Stephen Schneider. The address, telephone number, and email address of the Regulated Party's Case Contact is: 1900 Rice Street, St. Paul, Minnesota 55113, 651-266-6274, steve.schneider@ci.stpaul.mn.us. Either party may change its designated Case Contact by notifying the other party in writing, within five days of the change. To the extent possible, communications between the Regulated Party and the MPCA concerning the terms and conditions of this Agreement shall be directed through the Case Contacts.

Part 14. APPLICABLE LAWS AND PERMITS. This Agreement does not relieve the Regulated Party of the duty to comply with the requirements of all applicable federal, state and local laws and regulations, including without limitation in the Regulated Party's undertaking actions to comply with this Agreement. Except when the MPCA has specifically authorized a different compliance method in Part 6, the Regulated Party must also comply with all applicable permits, orders, stipulation agreements and schedules of compliance. Nothing in this Agreement exempts or relieves the Regulated Party of its obligation to comply with local governmental requirements.

Part 15. OTHER CLAIMS. Nothing herein shall release the Regulated Party from any claims, causes of action or demands in law or equity by any person, firm, partnership or corporation not a signatory to this Agreement for any liability it may have arising out of or relating to the release of any pollutant or contaminant from its operations or from a facility. Neither the Regulated Party nor the MPCA shall be held as a party to any contract entered into by the other party to implement the requirements of this Agreement.

Part 16. LIABILITIES. Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. The State's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minn. Stat. §§ 3.732, et seq., and other applicable law.

Part 17. SUCCESSORS, AGENTS AND CONTRACTORS. This Agreement shall be binding upon the Regulated Party and its successors and assigns and upon the MPCA, its successors and assigns. If the Regulated Party sells or otherwise conveys or assigns any of its right, title or interest in the Facility, the conveyance shall not release the Regulated Party from any obligation imposed by this Agreement, unless the party to whom the right, title or interest has been transferred or assigned agrees in writing to fulfill the obligations of this Agreement and the MPCA approves the transfer or assignment. The Regulated Party shall ensure that the Regulated Party's agents, contractors and subsidiaries comply with the terms and conditions of this Agreement.

Part 18. AMENDMENTS. Except with respect to extensions of schedules granted under Part 12 and approved submittals under Part 6, this Agreement may be amended only by written agreement between the parties.

Part 19. EFFECTIVE DATE. This Agreement shall be effective on the date it is signed by the MPCA.

Part 20. TERMINATION. The provisions of this Agreement shall be deemed satisfied and terminated when the Regulated Party receives written notice from the MPCA that the Regulated Party has demonstrated, to the satisfaction of the MPCA, that all terms of the Agreement have been completed. Termination of this Agreement does not release the Regulated Party from any duty to comply with any statutes, rules or permit conditions, whether or not they are cited in this Agreement. The Regulated Party agrees that it shall retain all records related to this Agreement for three years following its termination. Termination of this Agreement does not release the Parties from any provisions intended to have future application, including without limitation Parts 8 (Covenant Not To Sue And Reservation Of Remedies), 9 (Repeat Violations) and 16 (Hold Harmless Agreement), which terms shall survive the termination of this Agreement.

BY THEIR SIGNATURES BELOW, THE UNDERSIGNED REPRESENT THAT THEY HAVE AUTHORITY TO BIND THE PARTIES THEY REPRESENT

**Board of Water Commissioners of the City of
Saint Paul**

**STATE OF MINNESOTA
POLLUTION CONTROL AGENCY**

By: _____
Matt Anfang
President

By: _____
Jeff J. Smith
Division Director
Industrial Division

Date: _____

Date: _____

By: _____
Mollie Gagnelius
Secretary

Date: _____

By: _____
Todd Hurley
Director
Office of Financial Service

Date: _____

Approved:

By: _____
Stephen P. Schneider
General Manager
Saint Paul Regional Water Services

Date: _____

Approved as to Form:

By: _____
Assistant City Attorney

Date: _____