

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
NORTHERN STATES POWER)	
COMPANY, a Wisconsin corporation,)	
d/b/a XCEL ENERGY,)	
)	
Defendant.)	

**NOTICE OF LODGING OF PROPOSED CONSENT DECREE PENDING
SOLICITATION OF PUBLIC COMMENT BY U.S. DEPARTMENT OF JUSTICE**

The United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), hereby notifies the Court that it is lodging with the Court a proposed Consent Decree pursuant to 28 C.F.R. § 50.7. The Court should not yet sign the proposed Consent Decree; rather, the proposed Consent Decree should remain lodged with the Court while the United States provides an opportunity for public comment. See 28 C.F.R. § 50.7. The Department of Justice will publish in the Federal Register a Notice informing the public that the proposed Consent Decree has been lodged with the Court, and solicit public comment for a period of thirty days. Consent Decree, § XVI, ¶ 61.

As discussed further below, the Consent Decree resolves specific allegations and claims of the United States against Defendant Northern States Power Company, a Wisconsin corporation, doing business as Xcel Energy ("Defendant" or "NSP").

I. Overview

The United States is simultaneously filing a Complaint against Defendant for injunctive relief and the assessment of civil penalties for violations of various provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 to 7671q ("CAA"), and the federal regulations implementing the CAA. Defendant, not having an opportunity to answer the Complaint and without admitting any liability, has agreed with the United States that settlement of this matter is in the public interest and, without litigation, is the most appropriate means of resolving this matter.

Accordingly, the Parties have negotiated the proposed Consent Decree in good faith to resolve the violations alleged by the United States. At this time, the Parties believe that the proposed Consent Decree is a reasonable and fair settlement of the claims alleged in the United States' Complaint, and that the proposed Consent Decree adequately protects the public interest and is in accordance with the CAA, and other applicable federal laws and regulations. However, the United States reserves the right to evaluate any public comments submitted prior to asking the Court to take any action on the Consent Decree.

II. Summary of Proposed Consent Decree

A. Injunctive Relief for Violations of Environmental Laws

In general, NSP has completed installation of the pollution control equipment on each municipal waste combustor ("MWC") at its La Crosse French Island Plant necessary to come into compliance with Subpart FFF emission limits, with the

exception the carbon monoxide ("CO") emission limitation. Consent Decree, § IV.A., ¶ 10. NSP has installed a dry lime injection scrubber and pulse jet baghouse on each MWC, and installed a Selective Noncatalytic Reduction ("SNCR") process to control nitrous oxide ("NOx") emissions. NSP has also installed continuous emission monitoring systems ("CEMS") for sulfur dioxide ("SO₂") and nitrous oxide ("NOx") on each MWC. Consent Decree, § IV.C., ¶¶ 18-19. With the exception of the CO emission limitation, this pollution control equipment has brought NSP into compliance with the pollutant emission limitations set forth in the large MWC regulations.

In addition, NSP will complete all large MWC training requirements no later than 6 months from the lodging date of the Consent Decree, and will comply with applicable recordkeeping and recording requirements. Consent Decree, § IV.B., ¶16 and § IV.D., ¶ 20. It has also agreed to implement a plan to minimize CO emissions during the pendency of the Decree. Consent Decree, § IV.A., ¶ 12.b. and Exhibit A.

NSP is currently unable to meet the large MWC CO emission limitation of 100 ppmv consistently. On July 8, 2002, NSP submitted a Petition to EPA's Administrator to modify the CO emission limitation in the large MWC regulations. Consent Decree, § IV.A., ¶ 11. During the pendency of the petition, NSP will undertake significant steps to minimize the potential for CO exceedences. Consent Decree, § IV.A., ¶ 12.b. and Exhibit A. NSP is also required to report any CO emission limitation exceedance. Consent Decree, § IV.A., ¶ 13. Moreover, if EPA does not agree to modify the CO emission limitation included in the large MWC regulations, then NSP has agreed that it

will take all steps necessary to install any control equipment upgrades or other facility changes necessary to comply with the then applicable CO emission limit. Consent Decree, § IV.A., ¶¶ 11-14.

B. Civil Penalty for Alleged Violation of Environmental Laws

The proposed Consent Decree also requires NSP to pay a civil penalty of \$500,000 to the United States within thirty days from the entry date of the proposed Consent Decree. Consent Decree, § V, ¶ 21. Further, upon demand of the United States, NSP will be required to pay additional stipulated penalties for its failure to comply with the terms of the Consent Decree, if any. Consent Decree, § VI, ¶ 25.


III. Conclusion

The Court should not yet sign the proposed Consent Decree; rather, the proposed Consent Decree should remain lodged with the Court while the United States provides an opportunity for public comment. 28 C.F.R. § 50.7. The Department of Justice will publish in the Federal Register a Notice informing the public that the proposed Consent Decree has been lodged with the Court, and solicit public comment for a period of thirty days. Consent Decree, § XVI, ¶ 61. During the comment period, no action is required of the Court. After the close of the comment period, the United States will evaluate the comments received, if any, and advise the Court whether the United States requests entry of the Consent Decree. NSP has agreed to the entry of the proposed Consent Decree without further consent. Consent Decree, § XVI, ¶ 61.

Dated this 18th day of June, 2003.

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