ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV034–FIP; FRL–7140–6]

Approval and Promulgation of Implementation Plans: Revision of the Visibility FIP for NV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a revision to the long-term strategy portion of the Nevada federal implementation plan (FIP) for Class I visibility protection. This revision concerns emissions reduction requirements for the Mohave Generating Station (MGS) located in Clark County, Nevada. The new requirements are based on a consent decree entered into by the owners of MGS and the Grand Canyon Trust (GCT), the Sierra Club, and the National Parks and Conservation Association (NPCA). The emissions reductions resulting from compliance with the consent decree will address concerns raised by the Department of the Interior (DOI) regarding MGS's contribution to visibility impairment at the Grand Canyon National Park (GCNP) due to sulfur dioxide (SO_2) emissions. In addition, incorporating the requirements of the consent decree into the long-term strategy of the Nevada Visibility FIP will allow for reasonable progress toward the national visibility goal with respect to the MGS's contribution to visibility impairment at GCNP due to SO_2 emissions according to the criteria set forth in Section 169A(g)(1) of the Clean Air Act.

EFFECTIVE DATE: This rule is effective on March 11, 2002.

ADDRESSES: Materials in Docket Number A–2001–04 related to this final rulemaking are available for review during normal business hours at the following locations: EPA Region IX, Air Division, 75 Hawthorne Street, San Francisco, California 94105–3901; and EPA, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. This document is also available as an electronic file on the EPA Region IX Web Page at *http://www.epa.gov/region09/air/mohave.*

FOR FURTHER INFORMATION CONTACT: Steve Frey at (415) 972–3990, Air Division (AIR–1), EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Background

EPA published a proposed rule in the **Federal Register** (65 FR 45003) on July 20, 2000, to revise the long-term strategy in Nevada's Visibility FIP to incorporate the requirements of the consent decree for MGS. EPA provided a 30-day public comment period and received comments from six parties on the proposed rule. These comments and EPA's responses are provided in section III of this document. Please refer to the proposed rule for further details on the statutory and regulatory framework, visibility impairment at GCNP, the citizen suit against MGS, and advance rulemaking actions.

II. Review and Revision of Nevada Visibility FIP Long-Term Strategy

This rule is EPA's first report assessing the long-term visibility strategy for Nevada since promulgating the Nevada Visibility FIP. We reviewed the long-term strategy only for the purpose of addressing DOI's certification of existing visibility impairment at GCNP and MGS's contribution to that impairment, and evaluating whether the terms of the Mohave consent decree will make reasonable progress toward the national visibility goal. This revision of the long-term strategy of the Nevada Visibility FIP will allow for reasonable progress toward the CAA national visibility goal with respect to MGS's contribution to visibility impairment at GCNP due to SO_2 emissions. However, EPA is not conducting a comprehensive review of the long-term strategy of the Nevada Visibility FIP at this time. Federal land managers have not provided any information for such a review and EPA is not aware of any evidence that visibility impairment at any other Class I area can be attributed to a specific source or group of sources located in Nevada. Moreover, the National Park Service (NPS) has reviewed the consent decree and believes that an EPA rulemaking which adopts the emission limits and other requirements from the decree is an appropriate means of addressing its concerns regarding the impact of SO_2 emissions from MGS on visibility impairment at GCNP. For more information on the long-term strategy review and consultation with federal land managers (FLM), please refer to the proposed rule.

III. Public Comments and EPA Responses

EPA received comments on the proposed rule from Southern California Edison, Peabody Group, Environmental Defense, Grand Canyon Trust, Sierra Club, and one private citizen. A summary of their comments and EPA's responses are provided below.

Comment 1: EPA should incorporate the settlement terms in the Nevada Visibility FIP as complete satisfaction of any statutory or regulatory requirements that could apply to MGS as a result of possible visibility impacts at GCNP. The final rule should indicate that the consent decrees's emission limits supercede any inconsistent federal, state or local requirements applicable to MGS including the Nevada SIP.

Response: The purpose of this rule is to incorporate the consent decree into Nevada's Visibility FIP, not to evaluate and revise Nevada's SIP or to address other requirements which may apply to MGS now or in the future. Thus, EPA is not amending the State of Nevada's requirements currently applicable to MGS. As to other requirements, the State of Nevada must prepare a SIP submittal under the regional haze section of the CAA which may apply to a variety of sources including MGS.

Comment 2: EPA's action is interpreted as constituting the final action and review that is contemplated under the reasonable attribution section of the CAA (Section 169A). Another party commented that EPA should confirm that the FIP provisions regarding MGS only resolve that facility's current, source-specific SO_2 visibility impact on the Grand Canyon.

Response: Since EPA is not making a finding of reasonable attribution, is not determining the best available retrofit technology, and is not formally reviewing the effect of SO_2 emission limits on future impairment, this rule does not constitute a final determination under Section 169A of the CAA with regard to these issues. Section 169A also remains applicable in this case because it includes other air pollutants which may affect existing or future visibility impairment. EPA believes that incorporating the requirements of the consent decree into the Nevada Visibility FIP addresses the existing impact of SO_2 emissions from MGS on visibility impairment at GCNP, allows for reasonable progress toward the national visibility goal, and ensures the consent decree is federally enforceable.

Comment 3: Two parties commented that this rule is not adequate to relieve EPA of its responsibility to conduct a comprehensive review of the Nevada

Visibility FIP's long-term strategy to protect visibility in Class I areas, and to ensure reasonable progress is being made to meet the national visibility goal. EPA's claim that it need not develop a long-term strategy for a source unless it was specifically identified in a certification of impairment by the FLM is without support. The long-term strategy in the proposed FIP is deficient for failing to acknowledge and remedy Class I visibility impacts due to Nevada sources other than MGS. EPA also should acknowledge the impact of non-Nevada sources of visibility impairing pollution on the Grand Canyon and take immediate action to ensure these sources are controlled.

Response: As EPA noted in the notice of proposed rulemaking, we are not conducting a comprehensive review of the Nevada Visibility FIP at this time. We are revising the long-term strategy only for the purpose of addressing the DOI's certification of existing visibility impairment at GCNP by MGS, and evaluating whether the terms of the Mohave consent decree will make reasonable progress toward the national visibility goal. This revision to the FIP is specific to requirements for MGS and does not constitute the three-year review of the components of the long-term strategy. Regarding a more comprehensive and periodic review of the long-term strategy, we believe that implementation of the requirements of the regional haze rule (40 CFR 51.308 and 309) will result in a regional strategy for western States, including Nevada, that will provide for additional progress toward the national visibility goal.

Comment 4: Visibility impairment at GCNP cannot reasonably be attributed to emissions from MGS. The proposed rule seems to suggest that the results of project MOHAVE could support a finding of reasonable attribution without supplying any explanation of the basis for such a conclusion. EPA should confirm that it has made no determinations as to the extent to which improvements in visibility at GCNP would be either perceptible or significant due to the implementation of this rule. Another party commented to the contrary that EPA should make an attribution decision at this point.

Response: EPA is not making a finding of reasonable attribution in this rule. If EPA were to make a determination regarding visibility impairment, Project MOHAVE would not be the only source of information. Any improvement in visibility at GCNP that may be directly attributable to SO_2 reductions at MGS will depend on many variables. However, the results of Project MOHAVE indicate there will likely be a noticeable improvement in visibility at GCNP during ten percent of the summer period as a result of reductions in SO_2 emissions from MGS.

Comment 5: The rule should be corrected to acknowledge that Project MOHAVE examined nitrogen oxides (NO_X) and particulate matter emissions, and both were determined not to cause noticeable impairment. Despite the fact that visibility impact from these pollutants are not significant, the revision to the Nevada Visibility FIP should include NO_X and particulate matter control requirements since they were established as part of a complete package in the consent decree.

Response: EPA agrees that Project MOHAVE examined particulate matter and NO_X to a limited extent. While the Project MOHAVE results indicate particulate matter and NO_X do not appear to contribute to noticeable visibility impairment at GCNP, EPA believes the collective effect of reducing these emissions along with SO_2 will further contribute to improved visibility. The rule includes NO_X and particulate matter control requirements since they are part of the consent decree.

Comment 6: The final rule should include the consent decree's section on stipulated penalties or EPA should clarify that it will apply the consent decree's method to determine violations and assess penalties.

Response: By not including the stipulated penalties of the consent decree, EPA is preserving its authority to take enforcement action under the CAA that is not limited to the terms of the decree. This is consistent with EPA's policy when we are a party to a consent decree. EPA does not allow a private party to limit its penalty authority under the CAA.

Comment 7: EPA should clarify the preamble language as follows. A 90-day or 365-day rolling average is really a 90-day or 365-day ''boiler-operating-day rolling average.'' An expedited compliance schedule is required only if the owners sell 100 percent of their interest in MGS ''to the same entity or entities acting in concert.'' Compliance with the interim opacity limit was intended to be met ''over the entire averaging period'' between entry of the consent decree and the date by which compliance is demonstrated with the final opacity limit.

Response: EPA's intent in the preamble is consistent with the interpretation reflected in the comments above.

Comment 8: EPA should clarify the final rule language in three areas to ensure consistency with the consent decree as follows. The interim emission limits and the beginning of the opacity averaging period in § 52.1488(d)(5) should be initiated as of the date of entry of the consent decree on December 15, 1999, rather than referencing paragraph (d). Remove the brackets around the phrase ''[the end of the first calendar quarter for which the emissions limitations in paragraph (d)(2) of this section first take effect]'' in § 52.1488(d)(6)(ii) because the date will not be known at the time the final rule is promulgated. Remove the brackets around ''[the first full 365 boiler-operating-days after the .150 pound SO_2 limit in paragraph (d)(2) of this section takes effect]'' in § 52.1488(d)(6)(ii)(C) to incorporate the language since the date is unknown.

Response: EPA made these clarifications to the final rule in this document.

IV. Final Action

EPA is finalizing the revisions to the long-term strategy of the Nevada Visibility FIP with minor corrections to the final rule noted in section III. As discussed in the proposal, the final rule adopts the emission limits, compliance deadlines and other requirements of the consent decree between the Grand Canyon Trust, Sierra Club, National Parks and Conservation Association and the owners of the Mohave Generating Station (Southern California Edison, Nevada Power, Salt River Project, Los Angeles Department of Water and Power) as approved by the U.S. District Court of Nevada on December 15, 1999. Under the terms of the consent decree, MGS owners will install pollution control equipment by 2006 to reduce SO_2 emissions by 85 percent, particulate matter emissions, and NO_X. MGS must also meet an SO_2 emission limit of .150 lb/mmbtu and an opacity limit of 20 percent. EPA is promulgating these requirements at 40 CFR 52.1488. For more detailed information on emission controls and limitations, emission control construction deadlines, emission limitation compliance deadlines, interim emission limits, reporting, and force majeure provisions, please refer to the proposed rule.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. For small entities engaged in fossil fuel electric generation, the SBA defines small entities as those generating 4 million or fewer megawatts of electric output per year.

After considering the potential for economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The rule revises the Nevada Visibility FIP to incorporate the requirements of a consent decree entered into by the owners of MGS and the Grand Canyon Trust, the Sierra Club, and the National Parks and Conservation Association. Thus, the rule does not create any new requirements or impose any additional control costs beyond those created by the consent decree. Moreover, MGS, which has a generating capacity of 13.4 million megawatts per year, is not a small business. Therefore, because the FIP does not create any new requirements and applies only to one entity which does not meet the definition of a small entity, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal

governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

K. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to identical...reporting or record keeping requirements imposed on ten or more persons...'' 44 U.S.C. 3502(3)(A). Because this final rule only revises the Nevada Visibility FIP to incorporate the requirements of the consent decree entered into by the owners of one company, the Paperwork Reduction Act does not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxide.

Dated: February 1, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart DD—Nevada

2. Section 52.1488 is amended by adding paragraph (d) to read as follows:

§ 52.1488 Visibility protection.

* * * * *

(d) This paragraph (d) is applicable to the Mohave Generating Station located in the Las Vegas Intrastate Air Quality Control Region (§ 81.80 of this chapter).

(1) *Definitions.*

Administrator means the Administrator of EPA or her/his designee.

Boiler-operating-day shall mean any calendar day in which coal is combusted in the boiler of a unit for more than 12 hours. If coal is combusted for more than 12 but less than 24 hours during a calendar day, the calculation of that day's sulfur dioxide (SO_2) emissions for the unit shall be based solely upon the average of hourly Continuous Emission Monitor System data collected during hours in which coal was combusted in the unit, and shall not include any time in which coal was not combusted.

Coal-fired shall mean the combustion of any coal in the boiler of any unit. If the Mohave Generating Station is converted to combust a fuel other than coal, such as natural gas, it shall not emit pollutants in greater amounts than that allowed by paragraph (d) of this section.

Current owners shall mean the owners of the Mohave Generating Station on December 15, 1999.

Owner or operator means the owner(s) or operator(s) of the Mohave Generating Station to which paragraph (d) of this section is applicable.

Rolling average shall mean an average over the specified period of boiler-operating-days, such that, at the end of the first specified period, a new daily average is generated each successive boiler-operating-day for each unit.

(2) *Emission controls and limitations.* The owner or operator shall install the following emission control equipment, and shall achieve the following air pollution emission limitations for each coal-fired unit at the Mohave Generating Station, in accordance with the deadlines set forth in paragraphs (d) (3) and (4) of this section.

(i) The owner or operator shall install and operate lime spray dryer technology on Unit 1 and Unit 2 at the Mohave Generating Station. The owner or operator shall design and construct such lime spray dryer technology to comply with the SO_2 emission limitations, including the percentage reduction and pounds per million BTU in the following requirements:

(A) SO_2 emissions shall be reduced at least 85% on a 90-boiler-operating-day rolling average basis. This reduction efficiency shall be calculated by comparing the total pounds of SO_2 measured at the outlet flue gas stream after the baghouse to the total pounds of SO_2 measured at the inlet flue gas stream to the lime spray dryer during the previous 90 boiler-operating-days.

(B) SO_2 emissions shall not exceed .150 pounds per million BTU heat input on a 365-boiler-operating-day rolling average basis. This average shall be calculated by dividing the total pounds of SO_2 measured at the outlet flue gas stream after the baghouse by the total heat input for the previous 365 boiler-operating-days.

(C) Compliance with the SO_2 percentage reduction emission limitation above shall be determined using continuous SO_2 monitor data taken from the inlet flue gas stream to the lime spray dryer compared to continuous SO_2 monitor data taken from the outlet flue gas stream after the baghouse for each unit separately. Compliance with the pounds per million BTU limit shall be determined using continuous SO_2 monitor data taken from the outlet flue gas stream

after each baghouse. The continuous SO_2 monitoring system shall comply with all applicable law (e.g., 40 CFR Part 75, or such other provisions as may be enacted). The inlet SO_2 monitor shall also comply with the quality assurance-quality control procedures in 40 CFR part 75, appendix B.

(D) For purposes of calculating rolling averages, the first boiler-operating-day of a rolling average period for a unit shall be the first boiler-operating-day that occurs on or after the specified compliance date for that unit. Once the unit has operated the necessary number of days to generate an initial 90 or 365 day average, consistent with the applicable limit, each additional day the unit operates a new 90 or 365 day (''rolling'') average is generated. Thus, after the first 90 boiler-operating-days from the compliance date, the owner or operator must be in compliance with the 85 percent sulfur removal limit based on a 90-boiler-operating-day rolling average each subsequent boiler-operating-day. Likewise, after the first 365 boiler-operating-days from the compliance date, the owner or operator must be in compliance with the .150 sulfur limit based on a 365-boiler-operating-day rolling average each subsequent boiler-operating-day.

(E) Nothing in this paragraph (d) shall prohibit the owner or operator from substituting equivalent or superior control technology, provided such technology meets applicable emission limitations and schedules, upon approval by the Administrator.

(ii) The owner or operator shall install and operate fabric filter dust collectors (also known as FFDCs or baghouses), without a by-pass, on Unit 1 and Unit 2 at the Mohave Generating Station. The owner or operator shall design and construct such FFDC technology (together with or without the existing electrostatic precipitators) to comply with the following emission limitations:

(A) The opacity of emissions shall be no more than 20.0 percent, as averaged over each separate 6-minute period within an hour, beginning each hour on the hour, measured at the stack.

(B) In the event emissions from the Mohave Generating Station exceed the opacity limitation set forth in paragraph (d) of this section, the owner or operator shall not be considered in violation of this paragraph if they submit to the Administrator a written demonstration within 15 days of the event that shows the excess emissions were caused by a malfunction (a sudden and unavoidable breakdown of process or control equipment), and also shows in writing within 15 days of the event or immediately after correcting the malfunction if such correction takes longer than 15 days:

(1) To the maximum extent practicable, the air pollution control equipment, process equipment, or processes were maintained and operated in a manner consistent with good practices for minimizing emissions;

(2) Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations would be exceeded or were being exceeded. Individuals working off-shift or overtime were utilized, to the maximum extent practicable, to ensure that such repairs were made as expeditiously as possible;

(3) The amount and duration of excess emissions were minimized to the maximum extent practicable during periods of such emissions;

(4) All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality; and

(5) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(C) Notwithstanding the foregoing, the owner or operator shall be excused from meeting the opacity limitation during cold startup (defined as the startup of any unit and associated FFDC system after a period of greater than 48 hours of complete shutdown of that unit and associated FFDC system) if they demonstrate that the failure to meet such limit was due to the breakage of one or more bags caused by condensed moisture.

(D) Compliance with the opacity emission limitation shall be determined using a continuous opacity monitor installed, calibrated, maintained and operated consistent with applicable law (e.g., 40 CFR Part 60, or such other provisions as may be enacted).

(iii) The owner or operator shall install and operate low-NO_X burners and overfire air on Unit 1 and Unit 2 at the Mohave Generating Station.

(3) *Emission control construction deadlines.* The owner or operator shall meet the following deadlines for design and construction of the emission control equipment required by paragraph (d)(2) of this section. These deadlines and the design and construction deadlines set forth in paragraph (d)(4)(iii) of this section are not applicable if the emission limitation compliance deadlines of paragraph (d)(4) of this section are nonetheless met; or coal-fired units at the Mohave Generating Station are not in operation after December 31, 2005; or coal-fired units at the Mohave Generating Station are not in operation after December 31, 2005 and thereafter recommence operation in accordance with the emission controls and limitations obligations of paragraph (d)(2) of this section.

(i) Issue a binding contract to design the SO_2, opacity and NO_X control systems for Unit 1 and Unit 2 by March 1, 2003.

(ii) Issue a binding contract to procure the SO_2, opacity and NO_X control systems for Unit 1 and Unit 2 by September 1, 2003.

(iii) Commence physical, on-site construction of SO_2 and opacity equipment for Unit 1 and Unit 2 by April 1, 2004.

(iv) Complete construction of SO_2, opacity and NO_X control equipment and complete tie in for first unit by July 1, 2005.

(v) Complete construction of SO_2, opacity and NO_X control equipment and complete tie in for second unit by December 31, 2005.

(4) *Emission limitation compliance deadlines.* (i) The owner's or operator's obligation to meet the SO_2 and opacity emission limitations and NO_X control obligations set forth in paragraph (d)(2) of this section shall commence on the dates listed below, unless subject to a force majeure event as provided for in paragraph (d)(7) of this section:

(A) For one unit, January 1, 2006; and

(B) For the other unit, April 1, 2006.

(ii) The unit that is to meet the emission limitations by April 1, 2006 may only be operated after December 31, 2005 if the control equipment set forth in paragraph (d)(2) of this section has been installed on that unit and the equipment is in operation. However, the control equipment may be taken out of service for one or more periods of time between December 31, 2005 and April 1, 2006 as necessary to assure its proper operation or compliance with the final emission limits.

(iii) If the current owners' entire (*i.e.,* 100%) ownership interest in the Mohave Generating Station is sold either contemporaneously, or separately to the same person or entity or group of persons or entities acting in concert, and the closing date or dates of such sale occurs on or before December 30, 2002, then the emission limitations set forth in paragraph (d)(2) of this section shall become effective for one unit three years from the date of the last closing, and for the other unit three years and three months from the date of the last closing. With respect to interim construction deadlines, the owner or operator shall issue a binding contract to design the SO_2, opacity and NO_X control systems within six months of the last closing, issue a binding contract to procure such systems within 12 months of such

closing, commence physical, on-site construction of SO_2 and opacity control equipment within 19 months of such closing, and complete installation and tie-in of such control systems for the first unit within 36 months of the last closing and for the second unit within 39 months of the last closing.

(5) *Interim emission limits.* (i) For the period of time between the date of the consent decree (December 15, 1999) and the date on which each unit must commence compliance with the final emission limitations set forth in paragraph (d)(2) of this section (''interim period''), the following SO_2 and opacity emission limits shall apply:

(i) SO_2: SO_2 emissions shall not exceed 1.0 pounds per million BTU of heat input calculated on a 90-boiler-operating-day rolling average basis for each unit;

(ii) Opacity: The opacity of emissions shall be no more than 30 percent, as averaged over each separate 6-minute period within an hour, beginning each hour on the hour, measured at the stack, with no more than 375 exceedances of 30 percent allowed per calendar quarter (including any pro rated portion thereof), regardless of reason. If the total number of excess opacity readings from the date of the consent decree (December 15, 1999) to the time the owner or operator demonstrates compliance with the final opacity limit in paragraph (d)(2) of this section, divided by the total number of quarters in the interim period (with a partial quarter included as a fraction), is equal to or less than 375, the owner or operator shall be in compliance with this interim limit.

(6) *Reporting.* (i) Commencing on January 1, 2001, and continuing on a bi-annual basis through April 1, 2006, or such earlier time as the owner or operator demonstrates compliance with the final emission limits set forth in paragraph (d)(2) of this section, the owner or operator shall provide to the Administrator a report that describes all significant events in the preceding six month period that may or will impact the installation and operation of pollution control equipment described in this paragraph, including the status of a full or partial sale of the Mohave Generating Station based upon non-confidential information. The owner's or operator's bi-annual reports shall also set forth for the immediately preceding two quarters: all opacity readings in excess of 30 percent, and all SO_2 90-boiler-operating-day rolling averages in BTUs for each unit for the preceding two quarters.

(ii) Within 30 days after the end of the first calendar quarter for which the emission limitations in paragraph (d)(2) of this section first take effect, but in no event later than April 30, 2006, the owner or operator shall provide to the Administrator on a quarterly basis the following information:

(A) The percent SO_2 emission reduction achieved at each unit during each 90-boiler-operating-day rolling average for each boiler-operating-day in the prior quarter. This report shall also include a list of the days and hours excluded for any reason from the determination of the owner's or operator's compliance with the SO_2 removal requirement.

(B) All opacity readings in excess of 20.0 percent, and a statement of the cause of each excess opacity reading and any documentation with respect to any claimed malfunction or bag breakage.

(C) Each unit's 365-boiler-operating-day rolling average for each boiler-operating-day in the prior quarter following the first full 365 boiler-operating-days after the .150 pound SO_2 limit in paragraph (d)(2) of this section takes effect.

(7) *Force majeure provisions.* (i) For the purpose of this paragraph (d), a ''force majeure event'' is defined as any event arising from causes wholly beyond the control of the owner or operator or any entity controlled by the owner or operator (including, without limitation, the owner's or operator's contractors and subcontractors, and any entity in active participation or concert with the owner or operator with respect to the obligations to be undertaken by the owner or operator pursuant to paragraph (d)), that delays or prevents or can reasonably be anticipated to delay or prevent compliance with the deadlines in paragraphs (d)(3) and (4) of this section, despite the owner's or operator's best efforts to meet such deadlines. The requirement that the owner or operator exercise ''best efforts'' to meet the deadline includes using best efforts to avoid any force majeure event before it occurs, and to use best efforts to mitigate the effects of any force majeure event as it is occurring, and after it has occurred, such that any delay is minimized to the greatest extent possible.

(ii) Without limitation, unanticipated or increased costs or changed financial circumstances shall not constitute a force majeure event. The absence of any administrative, regulatory, or legislative approval shall not constitute a force majeure event, unless the owner or operator demonstrates that, as appropriate to the approval: they made timely and complete applications for such approval(s) to meet the deadlines set forth in paragraph (d)(3) of this section or paragraph (d)(4) of this section; they complied with all requirements to obtain such approval(s); they diligently sought such approval; they diligently and timely responded to all requests for additional information; and without such approval, the owner or operator will be required to act in violation of law to meet one or more of the deadlines in paragraph (d)(3) of this section or paragraph (d)(4) of this section.

(iii) If any event occurs which causes or may cause a delay by the owner or operator in meeting any deadline in paragraphs (d) (3) or (4) of this section and the owner or operator seeks to assert the event is a force majeure event, the owner or operator shall notify the Administrator in writing within 30 days of the time the owner or operator first knew that the event is likely to cause a delay (but in no event later than the deadline itself). The owner or operator shall be deemed to have notice of any circumstance of which their contractors or subcontractors had notice, provided that those contractors or subcontractors were retained by the owner or operator to implement, in whole or in part, the requirements of paragraph (d) of this section. Within 30 days of such notice, the owner or operator shall provide in writing to the Administrator a report containing: an explanation and description of the reasons for the delay; the anticipated length of the delay; a description of the activity(ies) that will be delayed; all actions taken and to be taken to prevent or minimize the delay; a timetable by which those measures will be implemented; and a schedule that fully describes when the owner or operator proposes to meet any deadlines in paragraph (d) of this section which have been or will be affected by the claimed force majeure event. The owner or operator shall include with any notice their rationale and all available documentation supporting their claim that the delay was or will be attributable to a force majeure event.

(iv) If the Administrator agrees that the delay has been or will be caused by a force majeure event, the Administrator and the owner or operator shall stipulate to an extension of the deadline for the affected activity(ies) as is necessary to complete the activity(ies). The Administrator shall take into consideration, in establishing any new deadline(s), evidence presented by the owner or operator relating to weather, outage schedules and remobilization requirements.

(v) If the Administrator does not agree in her sole discretion that the delay or anticipated delay has been or will be

caused by a force majeure event, she will notify the owner or operator in writing of this decision within 20 days after receiving the owner's or operator's report alleging a force majeure event. If the owner or operator nevertheless seeks to demonstrate a force majeure event, the matter shall be resolved by the Court.

(vi) At all times, the owner or operator shall have the burden of proving that any delay was caused by a force majeure event (including proving that the owner or operator had given proper notice and had made ''best efforts'' to avoid and/or mitigate such event), and of proving the duration and extent of any delay(s) attributable to such event.

(vii) Failure by the owner or operator to fulfill in any way the notification and reporting requirements of this Section shall constitute a waiver of any claim of a force majeure event as to which proper notice and/or reporting was not provided.

(viii) Any extension of one deadline based on a particular incident does not necessarily constitute an extension of any subsequent deadline(s) unless directed by the Administrator. No force majeure event caused by the absence of any administrative, regulatory, or legislative approval shall allow the Mohave Generating Station to operate after December 31, 2005, without installation and operation of the control equipment described in paragraph (d)(2) of this section.

(ix) If the owner or operator fails to perform an activity by a deadline in paragraphs (d)(3) or (4) of this section due to a force majeure event, the owner or operator may only be excused from performing that activity or activities for that period of time excused by the force majeure event.

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