

a. Fibrowatt, LLC is a Pennsylvania corporation, licensed to do business in Minnesota. Fibrowatt, LLC owns Fibrominn, LLC, and directly participates in managing Fibrominn operations, including environmental management.

b. Fibrominn, LLC is a Delaware corporation doing business in Minnesota as a foreign corporation. It is a wholly-owned subsidiary of Fibrowatt LLC. Fibrominn LLC operates under a Sale-Leaseback and Financing agreement with Powerminn 9090, LLC. Fibrominn operates a Biomass Power Plant facility located in Benson, Minnesota, hereafter the "Facility." The Facility received Air Emission Permit No. 15100038-004 (Permit) on February 9, 2005.

c. The Facility is a biomass power plant consisting of one boiler which is principally fueled with poultry litter. The Facility's air emission permit also allows the Facility to burn vegetative biomass. The Facility generates an average of 50 megawatt (MW) of electricity for export and has a peak export electrical capacity of 55 MW.

d. Emissions from the boiler are controlled by a baghouse/spray dryer to control particulates, sulfur dioxide (SO₂), sulfuric acid mist, and hydrochloric acid (HCl). Selective non-catalytic reduction (SNCR) is used to control nitrogen oxides (NO_x). Good combustion practices are used to control carbon monoxide (CO) and volatile organic compounds (VOC). The Regulated Parties were subject to preconstruction review requirements under the federal New Source Review program (40 CFR Section 52.21) for particulate matter (PM), SO₂, NO_x, CO, VOC and sulfuric acid mist. The Regulated Parties were also subject to preconstruction review under the National Emission Standards for Hazardous Air Pollutant Sources program, 40 CFR Section 63, subp. B for HCl.

e. The Facility Permit requires performance testing to determine compliance with total PM, opacity, SO₂, NO_x, CO, and HCl, establish emission limits for particulate matter less than 10 micron (PM₁₀) and to verify expected emissions of mercury and dioxins (PCDD/PCDF), among other requirements.

f. On June 15, 2008, the MPCA staff conducted a file review of the Facility. During this review, the MPCA staff documented a number of alleged violations, including failure to conduct performance testing on time. In its July 23, 2008, response to the MPCA, the Regulated Parties proposed and requested an alternate schedule for testing so that the testing could be conducted monthly, therefore allowing the testing to be completed by the end of the quarter originally anticipated in the permit. On August 4, 2008, the MPCA granted approval for this expedited testing schedule. The MPCA, in a September 23, 2008, e-mail, later revised the expedited schedule previously agreed to and requested that the Regulated Parties complete the testing on a

quarterly basis. This revised test schedule required performance testing over more time which better represents the difference in fuel quality over the seasons. The revised test schedule meant that the PM₁₀ limit proposal and HCl emission rate and correlation curve could not be submitted as anticipated in the permit.

PART 6. REGULATED PARTY STATEMENT.

The Regulated Parties' Power Plant is designed to utilize poultry litter (a mixture of poultry manure and biomass bedding material) as its primary fuel – providing a number of benefits for the environment including the generation of baseload renewable energy, reduced greenhouse gas emissions compared to fossil fuels, waterway protection through an alternative manure management approach (keeping excess nutrients in poultry litter from being applied to farm fields), destruction of pathogens in poultry litter, and the reduction in odor and ammonia emissions associated with the timely management of poultry litter.

The Regulated Parties' plant has been designed for the unique characteristics of using poultry litter as its primary fuel and employs state-of-the-art control systems to minimize potential air emissions. Advanced control technologies used at the plant, and determined by the MPCA and the U.S. Environmental Protection Agency (EPA) at the time of permit issuance, to be the best available control technologies, include selective non-catalytic reduction (SNCR), a spray dryer absorber (SDA), and a fabric filter (FF) baghouse. In the case of SNCR and the SDA, this is the first time these particular emission control systems have been applied together to control emissions for this type of power plant or fuel. Accordingly, refinements to the methods and procedures necessary to optimize the plant and its emission control systems could be accomplished only through the experience gained at this first-generation plant.

Although under the terms of its air permit, the facility could have waited considerably longer to conduct initial emissions testing, the facility completed initial performance testing in early July 2007, very soon after reaching full capacity. While this information was helpful in allowing the facility to optimize its operations, it also was representative of ongoing shakedown and commissioning activities through the third calendar quarter of 2007, when final care, custody and control of the plant was transferred from the Engineering, Procurement, and Construction contractor to the Regulated Parties on October 4, 2007. When the Regulated Parties assumed full control and operation of the plant in October 2007, it initiated additional optimization activities during the fourth quarter of 2007 and the first quarter of 2008. These included: (a) air balancing (primary/secondary air adjustments); (b) improvements in the SNCR urea injection system operation in conjunction with the air balancing; (c) improvements in SDA system operation;

(d) adjusting operations to reflect operating constraints imposed by local fuel characteristics; and
(e) adjusting operations for the unique challenges of winter operations. During this time, the Regulated Parties were able to significantly improve the emissions profile for the plant.

During the second and third quarters of 2008, the Regulated Parties consistently operated at high plant capacity and the emissions profile for the plant was good, other than during start-up after the plant's first annual outage in May 2008. During the first day after the plant came out of the outage, NO_x emissions were higher than expected based on the cleaner furnace conditions and the 30-day rolling average for NO_x was biased upward until the impacts of startup conditions were overcome. During the second and third quarters of 2008, the Regulated Parties also: (a) further improved the balance between NO_x and CO emissions; (b) made improvements to the fuel management system; (c) completed an SNCR optimization program; (d) improved SDA system performance through additional nozzle improvements; (e) replaced all of the FF bags with new high-performance fiberglass laminate membrane bags to improve baghouse performance; and (f) took additional steps to improve the plant's environmental management system.

Since the Regulated Parties began operating the facility in October 2007, the Regulated Parties' Facility has been accident free for over 850 days, has not had an odor complaint, and has continued to maintain a strong working relationship with the local community through the Fibrominn Citizen's Advisory Panel and several other community outreach programs.

The Regulated Parties recognize that the MPCA, through this stipulation agreement, has identified several alleged violations. While this Facility is unique in its ability to transform this agricultural residue into a renewable source of energy, the Regulated Parties understand their responsibilities under their air permit and have implemented improvements and practices that will ensure compliance with permit requirements. Since the Regulated Parties took over operation of the plant on October 7, 2007, the company has aggressively pursued a continuous program of improvement, has demonstrated the viability of the combined state-of-the-art emission control systems to meet the stringent permit emission limits, and is proceeding with efforts to further enhance the environmental performance of this important biomass-fueled power plant, the first of its type in the United States.

Part 7. ALLEGED VIOLATIONS. The MPCA alleges that the Regulated Parties have violated the following requirements of statute, rule, and/or permit condition:

a. Late HCl Testing and Submittals:

1) Air Emission Permit No. 15100038-004, Table A: Limits and Other Requirements, EU001 Biomass Boiler, Page A-10

What to Do	Why to Do it
Performance Test: due 30 days after Initial Performance Test for a period of four quarters for HCl (emissions and reduction). Test results for emission rate and reduction efficiency shall be compared to the emissions data obtained during all tests for the purposes of correlating HCl emission rate and reduction efficiency with SO ₂ monitor readings. Five tests are required in all. A proposed indicator range of the SO ₂ monitors is due 45 days after submission of the results of the fifth test.	40 CFR 64.4(d)

Initial Facility start-up was May 10, 2007. The initial performance test was conducted on July 4, 2007. During a review of the facility on June 15, 2008, the MPCA staff documented that the Regulated Parties had not conducted all of the required performance tests for HCl on time.

Requirement	Date Test Due	Date Test Conducted
Second Performance Test	January 30, 2008	September 5, 2008
Third Performance Test	April 30, 2008	December 3, 2008
Fourth Performance Test	July 30, 2008	March 25, 2009
Fifth Performance Test	October 30, 2008	June 10, 2009

2) Air Emission Permit No. 15100038-004, Table A: Limits and Other Requirements, EU001 Biomass Boiler, Page A-11

What to Do	Why to Do it
HCl emission rate and correlation curve: due 45 days after submission of the fifth performance test at the facility for HCl. The submittal shall include: the proposed SO ₂ CEMS operating range that assures compliance with the HCl limit and reduction requirement; a summary of the performance test results, and concurrently taken SO ₂ CEMS data.	40 CFR 64.4(d)

The fifth performance test for HCl was due by October 30, 2008. Therefore, the report for the fifth performance test was due 45 days after completion of the testing on December 14, 2008, making the HCl Emission Rate and Correlation Curve due on January 28, 2009. The report for the fifth performance test was received on September 10, 2009.

b. Late PM₁₀ Testing and Submittals:

1) Air Emission Permit No. 15100038-004, Table A: Limits and Other Requirements, EU001 Biomass Boiler, Page A-8 and A-10

What to Do	Why to Do it
Particulate Matter Less Than 10 Micron: less than or equal to <> lb/mmBtu, based on three runs that are between 60 and 120 minutes in length. The Permittee shall propose limits after completion of the Performance Tests required below. Permit conditions below require the completion of an initial stack performance test within 180 days of initial startup, and then quarterly thereafter until the company has completed a total of five tests. The proposed emission limit shall be submitted within 45 days of the submittal of the final test results.	Title I Condition: 40 CFR 52.21(j), BACT emission limit

What to Do	Why to Do it
Performance Test: due 30 days after end of each calendar quarter following Initial Performance Test for a period of four quarters for PM ₁₀ . Five tests are required in all. Proposed PM ₁₀ emissions limits are due 45 days after submission of the results of the fifth test.	Title I Condition: Testing to establish a BACT emission limit

Initial Facility start-up was May 10, 2007. The initial performance test was conducted on July 4, 2007. During a June 15, 2008, file review, the MPCA staff documented that the Regulated Parties had not conducted all of the required performance tests for PM₁₀ on time.

Requirement	Date Test Due	Date Test Conducted
Second Performance Test	January 30, 2008	September 5, 2008
Third Performance Test	April 30, 2008	December 3, 2008
Fourth Performance Test	July 30, 2008	March 25, 2009
Fifth Performance Test	October 30, 2008	June 9, 2009

2) Air Emission Permit No. 15100038-004, Table A: Limits and Other Requirements, EU001 Biomass Boiler, Page A-8 and A-10

What to Do	Why to Do it
Particulate Matter Less Than 10 Micron: less than or equal to <> lb/mmBtu, based on three runs that are between 60 and 120 minutes in length. The Permittee shall propose limits after completion of the Performance Tests required below. Permit conditions below require the completion of an initial stack performance test within 180 days of initial startup, and then quarterly thereafter until the company has completed a total of five tests. The proposed emission limit shall be submitted within 45 days of the submittal of the final test results.	Title I Condition: 40 CFR 52.21(j), BACT emission limit

The fifth performance test for PM₁₀ was due by October 30, 2008. Therefore, the report for the fifth performance test was due 45 days after completion of the testing on December 14, 2008, making the PM₁₀ limit proposal due on January 28, 2009.

c. Late Mercury Testing:

1) Air Emission Permit No. 15100038-004, Table A: Limits and Other Requirements, EU001 Biomass Boiler, Page A-10

What to Do	Why to Do it
Performance Test: due 180 days after Initial Startup to measure mercury emissions at the inlet and outlet of the spray dryer/fabric filter. The testing is for information gathering purposes. The testing shall be performed annually thereafter, until a total of 5 emissions tests have been completed.	Minn. R. 7007.0800, subp. 2

Initial Facility start-up was May 10, 2007. The initial performance test was conducted on July 4, 2007. During a June 15, 2008, file review, the MPCA staff documented that the Regulated Parties had not conducted all of the required performance tests for mercury on time.

Requirement	Date Due	Date Conducted
Second Performance Test	July 4, 2008	September 5, 2008

d. Other Late Testing:

1) Air Emission Permit No. 15100038-004, Table A: Limits and Other Requirements, GP001 Continuous Emission Monitors, Page A-6

What to Do	Why to Do it
CEMS Relative Accuracy Test Audit (RATA): due before end of each calendar half year (two successive QA operating quarters) following CEMS Certification Test. Conduct the RATA in accordance with 40 CFR pt. 75, Appendix B. If the RATA results indicate a relative accuracy of 7.5% or less, the next RATA is not required for four successive QA operating quarters.	40 CFR pt. 60, Appendix F, section 5.1.1; Minn. R. 7017.1170, subp. 5

The continuous emissions monitoring systems (CEMS) Certification Test was conducted on June 24, 2007. The CEMS Certification Test includes a CEMS Relative Accuracy Test Audit (RATA); however, the permit required a CEMS RATA, which is a separate test that is required after the CEMS Certification Test. During a June 15, 2008, file review, the MPCA staff documented that the Regulated Parties had not conducted the required CEMS RATA on time.

Requirement	Date Due	Date Conducted
First CEMS RATA	December 31, 2007	July 29, 2008 – August 11, 2008

e. Failed Performance Test:

1) Air Emission Permit No. 15100038-004, Table A: Limits and Other Requirements, EU001 Biomass Boiler, Page A-8

What to Do	Why to Do it
Total Particulate Matter: Less than or equal to 0.02 lbs/million Btu heat input based on three runs that are between 60 and 120 minutes in length.	Title I Condition: 40 CFR 52.21(j), BACT emission limit. Also meets the requirements of 40 CFR 60.43b(c)

The Regulated Parties conducted a Performance Test on September 4 and 5, 2008. The results of the performance test were noncompliant for PM. The test results showed PM at 0.0611 pounds per million British thermal unit (lb/mmBtu). A Notice of Noncompliance was sent on November 10, 2008. A re-test was conducted December 2, 2008, through December 3, 2008. The results of the retest, 0.0075 lb/mmBtu are compliant.

f. Missed Pressure Drop Range Proposal:

1) Air Emission Permit No. 15100038-004, Table A: Limits and Other Requirements, CE004 Fabric Filter – High Temperature, i.e., T>250 Degrees F, Page A-14

What to Do	Why to Do it
Pressure Drop: greater than or equal to <X> inches of water column and less than or equal to <Y> inches of water column.	40 CFR 64.3(a)(2)
The specified range of pressure drop shall be submitted with the stack emissions test results required for testing to be performed within 180 days of initial startup. All technical information used to develop the appropriate pressure drop range shall be submitted with the proposed range.	

Initial Startup was achieved on May 10, 2007. An Initial Performance Test was conducted on July 4, 2007, and therefore the original pressure drop range was due by August 18, 2007. The Regulated Parties submitted the Proposed Pressure Drop Range on February 25, 2009.

g. Other Late or Missed Submittals:

1) Air Emission Permit No. 15100038-004, Table B: One Time Submittals or Notifications, Page B-2

What to Send	When to Send	Portion of Facility Affected
Testing Frequency Plan:	Due 60 days after Initial Performance Test for PM, and HCl emissions. The plan shall specify a testing frequency based on the test data and MPCA guidance. Future performance tests based on one-year (12 month), 36 month, and 60 month intervals, or as applicable, shall be required upon written approval of the MPCA	EU001

The initial performance tests for PM and HCl were conducted on July 4, 2007. The Testing Frequency Plan was due by September 2, 2007. During the review, the MPCA staff determined that the Regulated Parties had not submitted the Testing Frequency Plan. This was submitted on July 23, 2008.

2) Minn. R. 7017.2035 Performance Test Reporting Requirements

Subp. 2. Submittal schedule. The performance test report shall be postmarked or received within 45 days following completion of the performance test unless an alternate schedule is given in the applicable compliance document. The owner or operator of the emission facility may request in the test plan that the submittal deadline be extended by up to 15 days if the complexity of the test schedule or the laboratory analysis is such that submittal within 45 days is impractical. The owner or operator of the emission facility shall provide to the commissioner a microfiche copy of the performance test report to be postmarked or received within 60 days of the deadline for submittal of the test report. The complete permit file number, complete emission facility name, and exact date of testing shall be provided.

The Initial Performance Tests for NO_x, CO, SO₂, HCl, PCDD/PCDF, PM, PM₁₀, mercury, opacity, carbon dioxide (CO₂), and oxygen were conducted on July 4, 2007. In accordance with Minn. R. 7017.2035, the performance test reports were due no later than August 18, 2007. The Regulated Parties submitted the initial performance test reports on October 15, 2007, 58 days late.

3) Air Emission Permit No. 15100038-004, Table B: Recurrent Submittals, Page B-3

What to Send	When to Send	Portion of Facility Affected
Semiannual Deviations Report	Due 30 days after end of each calendar half-year following Permit Issuance. The first semiannual report submitted by the Permittee shall cover the calendar half-year in which the permit is issued. The first report of each calendar year covers January 1 - June 30. The second report of each calendar year covers July 1 - December 31. If no deviations have occurred, the Permittee shall submit the report stating no deviations.	Total Facility

The Permit was issued on November 25, 2002. The Semiannual Deviations Reports are due July 30 and January 30 every year. The MPCA staff documented the status of the following Semiannual Deviations Reports:

Requirement	Date Due	Date Submitted	Overdue
First Half 2003	July 30, 2003	August 9, 2004	Over One Year
Second Half 2003	January 30, 2004	August 9, 2004	Over Eight Months
First Half 2004	July 30, 2004	August 9, 2004	Nine Days
First Half 2007	July 30, 2007	August 7, 2007	Seven Days
Second Half 2007	January 30, 2008	February 1, 2008	One Day

The Regulated Parties submitted the First-half 2003; Second-half 2003; First-half 2004; First-half 2007; and Second-half 2007 Deviation Reports after the required deadlines.

4) Air Emission Permit No. 15100038-004, Table B: Recurrent Submittals, Page B-3

What to Send	When to Send	Portion of Facility Affected
Compliance Certification	Due 30 days after end of each calendar year following Permit Issuance (for the previous calendar year). To be submitted on a form approved by the Commissioner, both to the Commissioner and to the U.S. EPA regional office in Chicago. This report covers all deviations experienced during the calendar year.	Total Facility

The Permit Issuance was November 25, 2002. The Compliance Certifications are due by January 30 each year. The MPCA staff documented that the following Compliance Certifications were submitted late:

Requirement	Date Due	Date Submitted	Overdue
2003 Certification	January 30, 2004	August 9, 2004	Over Seven Months
2007 Certification	January 30, 2008	February 1, 2008	One Day

The Regulated Parties failed to submit the 2003 and 2007 Annual Compliance Certifications by the January 30 due date.

5) Air Emission Permit No. 15100038-004, Table B: Recurrent Submittals, Page B-3

What to Send	When to Send	Portion of Facility Affected
Excess Emissions/Down time Reports (EER)	Due 30 days after end of each calendar quarter following Initial Startup of the Monitor. The EER shall indicate all periods of monitor bypass and all periods of exceedances of the limit including exceedances allowed by an applicable standard, i.e. during startup, shutdown, and malfunctions. Also included will be the information listed in 40 CFR 60.49b (g), and listed under recordkeeping and reporting requirements under EU001.	MR004

The Initial Startup of the Monitor was completed on May 10, 2007. The MPCA staff documented that the Regulated Parties had submitted the following excess emission reports (EER) late:

Requirement	Date Due	Date Submitted	Days Overdue
Third Quarter 2007	October 30, 2007	October 31, 2007	One day late
First Quarter 2008	January 30, 2008	February 1, 2008	One day late

6) **Air Emission Permit No. 15100038-004, Table A: Limits and Other Requirements, Total Facility, Page A-4 and A-5**

What to Do	Why to Do it
On-Site Silt Loading Measurement	
1. Within 180 days of Initial startup, measure the silt loading on the facility's on-site paved roads. Follow the notification and reporting requirements applicable to stack emissions testing given above in this table. The measurements shall be made according to the applicable ASTM method, and shall be agreed upon between the Agency and Fibrominn prior to the testing. The testing is for information gathering purposes.	Minn. R. 7009

Initial Startup was achieved on May 10, 2007. The silt loading measurement was due by November 6, 2007. The MPCA staff documented that the Regulated Parties had not submitted the On-Site Road Silt Loading Measurement. This was completed April 28, 2009, and was submitted to the MPCA on June 13, 2009.

g. Continuous Monitor Downtime:

1) Minn. R. 7017.1090 Monitor Operational Requirements

Subpart 1. Continuous operation. A CEMS or COMS must be operated and data recorded during all periods of emission unit operation including periods of emission unit start-up, shutdown, or malfunction. This requirement to operate the monitor applies whether or not a numerical emission limit applies during these periods. A CEMS or COMS must not be bypassed except in emergencies where failure to bypass the CEMS or COMS would endanger human health, safety, or plant equipment.

The Regulated Parties' third quarter 2007 EER documents the Boiler CEMS downtime for SO₂ percent reduction (MR-007) for July 1, 2007, through September 30, 2007, as 157 hours of the total operating time of 1,728 hours, or 9.1 percent.

The Regulated Parties' first quarter 2008 EER documents the Boiler CEMS Downtime for SO₂ percent Reduction (MR-007) for January 1, 2008, through March 31, 2008, as 243 hours of the total operating time of 1,967 hours, or 12.4 percent.

The Regulated Parties' fourth quarter 2008 EER documents the Boiler CEMS Downtime for SO₂ percent Reduction (MR-007) for October 1, 2008, through December 31, 2008, as 172 hours of the total operating time of 1,615 hours, or 10.7 percent.

The downtime is not exempt under Minn. R. 7017.1090.

h. Excess NO_x Emissions:

1) Air Emission Permit No. 15100038-004, Table A: Limits and Other Requirements, EU001 Biomass Boiler, Page A-8

What to Do	Why to Do it
<p>Emission Limits</p> <p>Unless otherwise noted, the emission limits below apply at all times except during periods of startup, shutdown, or malfunction. Duration of startup, shutdown, or malfunction periods is limited to 3 hours per occurrence.</p>	

What to Do	Why to Do it
<p>Nitrogen Oxides: Less than or equal to 0.16 lb/million Btu heat input based on a 30 day rolling average. This limit applies at all times including periods of startup, shutdown, or malfunction. The 30 day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30 day period. A new 30 day rolling average emission rate is calculated each steam generating unit operating day.</p>	<p>Title I Condition: 40 CFR 52.21(j), BACT emission limit, also meets the requirements of 40 CFR 60.44b(1)</p>

The Regulated Parties' third quarter 2007 EER documents the Boiler NO_x Excess Emissions as 820 hours of the total operating time of 1,728 hours or 47.5 percent. The only reason for the excess emissions listed on the EER is boiler tuning. However, during the first 24 days of the quarter data was calculated using uncertified NO_x data. Based on this, 389 hours of Boiler NO_x Excess Emissions occurred while using certified data.

The Regulated Parties' second quarter 2008 EER documents the Boiler NO_x Excess Emissions as 131 hours of the total operating time of 1,794 hours or 7.3 percent. The only reason for the excess emissions listed on the EER is post boiler cleaning tuning.

Boiler cleaning or tuning is not sufficient justification to exempt the excess emissions.

i. Excess SO₂ Emissions:

1) Air Emission Permit No. 15100038-004, Table A: Limits and Other Requirements, EU001 Biomass Boiler, Page A-8

What to Do	Why to Do it
<p>Emission Limits</p> <p>Unless otherwise noted, the emission limits below apply at all times except during periods of startup, shutdown, or malfunction. Duration of startup, shutdown, or malfunction periods is limited to 3 hours per occurrence.</p>	

What to Do	Why to Do it
Sulfur Dioxide: Less than or equal to 0.07 lbs/million Btu heat input or 80% control, whichever is least stringent based on a 24-hour daily geometric average emission concentration or a 24-hour daily geometric average percent reduction.	Title I Condition: 40 CFR 52.21(j), BACT emission limit

The Regulated Parties' second quarter 2007 EER document the Boiler SO₂ Excess Emissions as 31 hours of the total operating time of 61 hours or 50.8 percent. The only reason for the excess emissions listed on the EER as submitted is initial startup (31 hours).

The Regulated Parties' third quarter 2007 EER documents the Boiler SO₂ Excess Emissions as 66 hours of the total operating time of 1,696 hours or 3.9 percent. The reasons for the excess emissions listed on the EER are: boiler tuning (18 hours) and nozzle cleaning (48 hours).

The Regulated Parties' fourth quarter 2007 EER documents the Boiler SO₂ Excess Emissions as 136 hours of the total operating time of 1,921 hours or 7.1 percent. The reason for the excess emissions listed on the EER is nozzle cleaning.

The Regulated Parties' first quarter 2008 EER documents the Boiler SO₂ Excess Emissions as 36 hours of the total operating time of 1,967 hours or 1.8 percent. The reason for the excess emissions listed on the EER is nozzle cleaning.

The Regulated Parties' fourth quarter 2008 EER documents the Boiler SO₂ Excess Emissions as 59 hours of the total operating time of 1,615 hours or 3.7 percent. The reason for the excess emissions listed on the EER is lime slurry injection line plugging – clean piping.

The Regulated Parties' first quarter 2009 EER documents the Boiler SO₂ Excess Emissions as 24 hours of the total operating time of 1,715 hours or 1.4 percent. The reason for the excess emissions listed on the EER is SDA lime injection nozzles plugging.

These reasons are not sufficient justification to exempt the excess emissions.

j. Excess CO Emissions:

1) Air Emission Permit No. 15100038-004, Table A: Limits and Other Requirements, EU001 Biomass Boiler, Page A-8

What to Do	Why to Do it
Emission Limits Unless otherwise noted, the emission limits below apply at all times except during periods of startup, shutdown, or malfunction. Duration of startup, shutdown, or malfunction periods is limited to 3 hours per occurrence.	

What to Do	Why to Do it
Carbon Monoxide: Less than or equal to 0.24 lbs/million Btu heat input based on a 24-hour daily average.	Title I Condition: 40 CFR 52.21(j) BACT emission limit

The Regulated Parties' second quarter 2007 EER's documents the Boiler CO Excess Emissions as 24 hours of the total operating time of 61 hours or 39.3 percent. The only reason for the excess emissions listed on the EER is initial startup (24 hours).

The Regulated Parties' third quarter 2007 EER documents the Boiler CO Excess Emissions as 114 hours of the total operating time of 1,696 hours or 6.7 percent. The reasons for the excess emissions listed on the EER are boiler tuning (90 hours) and maintenance (24 hours).

The Regulated Parties' fourth quarter 2007 EER documents the Boiler CO Excess Emissions as 80 hours of the total operating time of 1,921 hours or 4.2 percent. The only reason for the excess emissions listed on the EER is fuel feed instability (80 hours).

The Regulated Parties' first quarter 2008 EER documents the Boiler CO Excess Emissions as 24 hours of the total operating time of 1,967 hours or 1.2 percent. The reason for the excess emissions listed on the EER is fuel feeders plugging.

The Regulated Parties' fourth quarter 2008 EER documents the Boiler CO Excess Emissions as 71 hours of the total operating time of 1,615 hours or 4.4 percent. The reason for the excess emissions listed on the EER is fuel feeder plugging.

The Regulated Parties' second quarter 2009 EER document the Boiler CO Excess Emissions as 24 hours of the total operating time of 1,864 hours or 1.3 percent. The reason for the excess emissions listed on the EER is fuel delivery equipment malfunctions.

These reasons are not sufficient justification to exempt the excess emissions.

k. Failure to Self Report Deviations:

1) Air Emission Permit No. 15100038-004, Table B: Recurrent Submittals, Page B-3

What to Send	When to Send	Portion of Facility Affected
Semi Annual Deviations Report	Due 30 days after end of each calendar half-year following Permit Issuance. The first semiannual report submitted by the Permittee shall cover the calendar half-year in which the permit was issued. The first report of each calendar year covers January 1 – June 30. The second report of each calendar year covers July 1 – December 31. If no deviations have occurred, the Permittee shall submit the report stating no deviations.	Total Facility

2) Minn. R. 7007.0800 PERMIT CONTENT. Subp. 6. Reporting.

A. Deviation reporting time frames are described in subitems (1) and (2).

...

(2) For all other deviations, the permit shall require the permittee to submit a deviation report, on a form approved by the commissioner, at least semiannually. The report is due whether or not a deviation occurred during the reporting period. The midyear deviations report, covering deviations which occurred during the period from January 1 to June 30, is due by July 30 of each year and the end-of-year deviations report, covering deviations which occurred during the period from July 1 to December 31, is due by January 30 of each year.

The Regulated Parties failed to self report that they had not conducted the Performance Test for Mercury Emissions on time; had not submitted the Testing Frequency Plan on time; had not submitted the Annual Compliance Certifications for 2003 and 2007 on time; and had not conducted the CEMS RATA on time.

Part 8. CIVIL PENALTY. The Regulated Parties agree to pay sixty-five thousand dollars (\$65,000) to the MPCA as a civil penalty for the violations alleged in Part 7 within 30 days after the effective date of this Agreement. Payment of the penalty amount of \$65,000 is to be by check or money order payable to the Minnesota Pollution Control Agency. The check must be mailed to: Enforcement Penalty Coordinator, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194 or to make an Electronic Payment, contact Carl Agerbeck at 651-757-2182, MPCA Fiscal Services staff.

If the Regulated Parties fail to make the required payment on time, the MPCA may assess and the Regulated Parties agree to pay a late payment charge, in addition to the civil penalty, to be assessed as follows. Forty-five days after the effective date of this Agreement, the Regulated Parties are obligated to pay a late charge in an amount equal to ten percent of the unpaid civil penalty. Sixty days after the effective date of this Agreement, the Regulated Parties are obligated to pay an additional late charge in an amount equal to twenty percent of the unpaid civil penalty.

Part 8A. SUPPLEMENTAL ENVIRONMENTAL PROJECT.

a. The Regulated Parties has proposed and the MPCA accepts the proposal to perform a Supplemental Environmental Project (SEP) at a cost to the Regulated Parties of at least eighty thousand dollars (\$80,000). The Regulated Parties shall implement the SEP described in Attachment A, which is incorporated herein and made a part of this Agreement. The Regulated Parties shall implement the SEP in accordance with the schedule set out in Attachment A. The

Regulated Parties shall provide to the MPCA copies of receipts, invoices, or contracts that substantiate the cost incurred by the Regulated Parties for the purchase, installation, maintenance, necessary modifications, and certification of the equipment within 30 days of the completion of the SEP.

The Regulated Parties understand that the actual cost of completion of the SEP may exceed \$80,000. The Regulated Parties agree to expend the amount of money necessary to complete the SEP as described and agreed. The Regulated Parties shall receive no payment or other compensation for the work performed in completion of the SEP. The Regulated Parties shall maintain copies of all invoices, contracts, manifests, receipts, and any and all other documentation of the actual costs the Regulated Parties incur in completing the SEP. If the final cost of the SEP is less than \$80,000, then the Regulated Parties shall pay to the MPCA the difference between \$80,000 and the actual cost of the SEP, determined by the following equation: $\$80,000 - (\text{final SEP cost}) = \text{Payment Due}$. Any resulting Payment Due shall be made to the MPCA within 30 days of the submittal of the substantiated cost of the SEP, in the same manner as outlined in Part 8.

b. If the Regulated Parties fail to complete the Project described in Part 8.A.a., Attachment A, the Regulated Parties shall submit a notice and an additional civil penalty of \$80,000 to the MPCA within thirty days of the first day of abandonment. The notice shall identify the first day of abandonment. The \$80,000 is to be paid in the same manner as outlined in Part 8. Fail to complete includes, but is not limited to: failure to purchase the analyzer, failure to install the analyzer, failure to operate the analyzer, and failure to commission the analyzer. The monitor accuracy or reliability regarding emissions measured does not effect the completeness of the Project.

Part 9. REGULATED PARTY REQUIREMENTS.

a. The Regulated Parties have completed the following requirements:

1) The Regulated Parties shall submit a Testing Frequency Plan showing that Performance Testing will be conducted in December 2008, March 2009, and June 2009, for all required pollutants. This was submitted on July 23, 2008.

2) The Regulated Parties shall submit a plan to the Agency detailing how continuous opacity measuring systems (COMS)/CEMS downtime will be eliminated. The Regulated Parties agreed to elaborate on the previous submittal, dated October 16, 2008, and did so in a letter dated December 22, 2008. In this letter, the Regulated Parties stated that they have replaced the CEMS

extraction lines and have increased the heat tracing to avoid condensation problems, which should decrease monitor downtime.

3) The Regulated Parties shall implement the COMS/CEMS plan immediately upon approval by the MPCA. This plan was submitted on December 22, 2008.

4) The Regulated Parties shall conduct the Analysis of the Pressure Drop and submit the Report to the Agency no later than February 28, 2009. The analysis was submitted on February 25, 2009. The proposed range is greater than or equal to three inches and less than or equal to 12 inches of water column.

5) The Regulated Parties shall submit detailed documentation describing the reasons for all CEMS/COMS downtime according to Minnesota Rules. This was submitted on October 16, 2008, and with more detail on December 22, 2008. A letter was sent to the Regulated Parties on June 11, 2009, to further explain the MPCA's determination of acceptable monitor downtime.

6) The Regulated Parties shall submit detailed documentation describing the reasons for all Excess Emissions according to Minnesota Rules. This was submitted on December 22, 2008. The Regulated Parties stated that the main reason for excess emissions was the shakedown period.

7) The Regulated Parties shall submit a plan detailing when RATA testing will be conducted. This was submitted on December 22, 2008, and the RATA for 2009 was completed.

8) The Regulated Parties shall submit a permit compliance checklist. This was submitted on December 22, 2008. This compliance checklist contains the due date for the following: CEMS and COMS Quarterly Report, CEMS Linearity and Leak Check Quarterly Report, COM/CEMS Excess Emissions/Downtime Report, Semiannual Deviations Report, Semiannual Deviation Report – Fabric Filter CAM, Semiannual Deviation Report – Odor Complaints, COMS Calibration Audit, Annual CEMS RATA Testing, Annual Compliance Certification, Annual Air Emissions Inventory Report, Annual Acid Rain Allowance Transfer, Silt Load Testing, Mercury Testing – Annual Information Test, Quarterly Testing – PM₁₀/HCl Performance Testing, SO₂/HCl Correlation Curve, PM₁₀ Emission Limit, Pressure Drop Range, and Bag Leak Detector Level.

9) The Regulated Parties shall implement the Testing Frequency Plan immediately upon approval by the MPCA. This was implemented on October 16, 2008.

10) The Regulated Parties shall conduct the On-Site Road Silt Loading Measurement and submit the Report to the Agency. The Regulated Parties shall follow the requirements

outlined in the permit when conducting this measurement. This was completed April 28, 2009, and was submitted June 13, 2009.

11) The Regulated Parties shall submit a list identifying all operators, as well as a plan for each of these operators to attend an accredited Waste Combustor Operator School, or equivalent subject to MPCA approval. Additionally, upon completion of Waste Combustor Operator School, or equivalent, the Regulated Parties shall submit documentation verifying operator certification. The Regulated Parties shall also submit a schedule consisting of ongoing training requirements, subject to MPCA approval. Upon MPCA approval of the continuing training, the Regulated Parties shall notify the MPCA if training is not conducted according to the schedule, and shall list this as a violation on their semiannual deviations report. On June 15, 2009, the Regulated Parties submitted a list of the plant supervisors and control room operators as well as the existing certification they hold. The Regulated Parties stated at this time that the training would be complete after three consecutive training sessions as offered by the Minnesota State College, Redwing campus.

12) The Regulated Parties shall submit an HCl Correlation Curve 45 days after the submission of the results of the fifth quarterly HCl test completed on June 10, 2009. The submittal shall include: the proposed SO₂ CEMS operating range that assures compliance with the HCl limit and reduction requirement; a summary of the performance test results, and concurrently taken SO₂ CEMS data. The HCl Correlation Curve was received September 10, 2009, and stated that a 24 hour geometric average SO₂ value of 0.47 lb/mmBtu is proposed as the target threshold emission rate for HCl corrective action, and that when the system exceeds this value, corrective action will be taken to resolve the problem.

b. The Regulated Parties agree to complete the following requirements:

1) The Regulated Parties shall submit a PM₁₀ modeling protocol within 30 days of the effective date of this agreement. The MPCA will provide the source data for neighboring Chippewa Valley Ethanol Cooperative and Glacial Plains facilities. The Regulated Parties shall include the source data from neighboring facilities in the protocol. The Regulated Parties will work directly with the MPCA modeling staff in order to verify that the modeling protocol is approved before any modeling is conducted.

2) The Regulated Parties shall conduct two PM₁₀ performance tests. One test shall be conducted in the fourth calendar quarter 2009 and the second and final test shall be conducted in the first calendar quarter 2010. The performance tests must be conducted at least 45 days apart.

These tests shall be conducted using EPA methods 201A and 202, as appropriate. All performance test notifications and submittals shall be submitted as required in the permit.

3) The Regulated Parties shall submit to the MPCA a proposed PM₁₀ limit, proposed surrogate operating parameters and a summary of all PM₁₀ performance test results within 45 days following the submittal of the results of the first calendar quarter 2010 PM₁₀ performance test report. The Regulated Parties shall fully explain the basis and rationale for its proposed limit and operating parameters.

4) The Regulated Parties shall perform the modeling using the approved PM₁₀ limit. The modeling shall be conducted following the approved modeling protocol. The Regulated Parties shall submit the results of the modeling within 60 days of approval of the proposed PM₁₀ limit.

5) The Regulated Parties shall submit an application for a major permit amendment to incorporate the approved PM₁₀ emission limit, as well as emissions from the North American Fertilizer facility, within 60 days of the MPCA's approval of the modeling results.

6) The Regulated Parties shall complete performance testing for PM during the first calendar quarter 2010 and submit a Testing Frequency Plan identifying Performance Testing that will be conducted for Total Particulate Matter, PM₁₀, and HCl. The Testing Frequency Plan will be submitted 45 days after the MPCA approves the PM₁₀ permit limit.

Part 10. PENALTIES FOR VIOLATIONS OF THIS AGREEMENT.

a. If the Regulated Parties fail to comply with requirements of Parts 9.b.1), 9.b.2), 9.b.3), 9.b.5), or 9.b.6). of this Agreement, the Regulated Parties shall pay to the MPCA a penalty in the amount of \$500 per requirement for each day of failure.

b. Penalties for failure to comply with requirements of Part 9 of this Agreement shall accrue from the date the Regulated Parties were to have fulfilled the requirement until the Regulated Parties fulfill the requirement. Penalties shall not accrue while the MPCA considers a timely extension request under Part 15 or during dispute resolution under Part 13, unless the MPCA determines that the Regulated Parties filed the request or initiated dispute resolution solely for purposes of delay. If the Regulated Parties do not pursue dispute resolution under Part 13 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 Parties 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 13, penalties shall accrue from the date of a Commissioner's

dispute resolution decision against the Regulated Parties until the Regulated Parties fulfill the requirement that is the subject of the extension request.

c. The Regulated Parties shall pay a penalty under this Part within 30 days after receiving written notice from the MPCA that the penalty is due. The written notice shall specify the provision of the Agreement that the Regulated Parties have not fulfilled and indicate the date penalties began to accrue. If the Regulated Parties fail to make timely payment, the MPCA may assess and the Regulated Parties agree 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 Parties shall be obligated to pay a late charge in an amount equal to ten percent of the unpaid stipulated penalty. Sixty days after receipt of written notice, the Regulated Parties shall be obligated to pay an additional late charge in an amount equal to twenty percent of the unpaid stipulated penalty.

d. In dispute resolution before the Commissioner under Part 13, the Regulated Parties can contest the factual basis for the MPCA's determination that the Regulated Parties have not fulfilled a requirement of this Agreement covered by this Part. However, the Regulated Parties waive their right to challenge, on legal grounds, the requirement that they pay penalties under this Part.

e. The Regulated Parties shall not be liable for payment of penalties for failure to comply with requirements of Part 9 of this Agreement covered by this Part if they have submitted to the MPCA a timely request for an extension of schedule under Part 15 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 9 does not extend the schedule for any other requirement of Part 9.

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 Parties of their obligation to fulfill and complete requirements under the Agreement and to otherwise comply with the terms and conditions of the Agreement.

Part 11. COVENANT NOT TO SUE AND RESERVATION OF REMEDIES. With respect to the Regulated Parties, 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 7 and in the October 3, 2008, Notice of Violation issued to the Regulated Parties as long as the Regulated

Parties perform according to and have 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 Parties fail 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 Parties' 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 Parties agree 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 12. 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 Parties, if any, occurring after the date of the alleged violations set out in Part 7 of this Agreement, the Regulated Parties may argue about the extent to which the violations alleged in Part 7 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 7 of this Agreement did not occur as alleged and (2) to require the MPCA to prove the violations alleged in Part 7 of this Agreement.

Part 13. 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 16 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 10. 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 Parties timely challenge the decision in a court of competent jurisdiction. Failure to timely challenge means the Regulated Parties agree to comply with the MPCA Commissioner's decision on the matter in dispute and to pay any penalties that accrue pursuant to Part 10 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 10 of this Agreement, the Regulated Parties agree 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 Parties shall comply with all portions of the Agreement that the MPCA determines are not in dispute.

Part 14. VENUE. Actions brought by the MPCA to enforce requirements and terms of this Agreement shall be venued in Ramsey County District Court.

Part 15. EXTENSION OF SCHEDULES. If the Regulated Parties want an extension of a deadline included in a schedule set out in Part 9, the Regulated Parties 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 Parties have 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 Parties; and
- b. Delays caused by the MPCA in reviewing timely submittals required by this Agreement, the Regulated Parties submitted in complete and approvable form, which make it not feasible for the Regulated Parties 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 Parties may challenge a decision by the MPCA to deny a request for an extension under Part 13.

Part 16. CASE CONTACT. The MPCA and the Regulated Parties shall each designate a Case Contact for the purpose of overseeing the implementation of this Agreement. The MPCA Case Contact is Jennifer Lovett. The Regulated Parties' Case Contact is Jack Jones. 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 Parties and the MPCA concerning the terms and conditions of this Agreement shall be directed through the Case Contacts. The address and telephone number of the MPCA's Case Contact is: 520 Lafayette Road North, St. Paul, Minnesota 55155-4194, 651-757-2538.

Part 17. REGULATED PARTY INFORMATION. The Regulated Parties shall not knowingly make any false statement, representation or certification in any record, report, plan or other document filed or required to be submitted to the MPCA under this Agreement.

The Regulated Parties shall immediately upon discovery report to the MPCA any errors in such record, report, plan or other document.

Part 18. REVIEW OF SUBMITTALS. The MPCA, acting through its Commissioner, Case Contact, or other designated MPCA staff, shall review all submittals made by the Regulated Parties as required by this Agreement and shall notify the Regulated Parties in writing of the approval or disapproval of each submittal, if applicable. The MPCA and the Regulated Parties shall consult with each other upon the request of either party during the review of submittals or modifications. If any submittal is disapproved in whole or in part, the MPCA Commissioner or designated MPCA staff shall notify the Regulated Parties of the specific inadequacies and shall indicate the necessary amendments or reviews. Within 15 calendar days after receipt of any notice of disapproval, the Regulated Parties shall submit revisions and take actions to correct the inadequacies.

Part 19. ACCESS. During the term of this Agreement, the Regulated Parties agree to provide the MPCA and its staff access to the Facility and its records and documents related to the implementation of this Agreement to the extent provided under Minn. Stat. § 116.091 or other law, conditioned only upon the presentation of credentials.

Part 20. SAMPLING AND DATA AVAILABILITY. The Regulated Parties shall make available to the MPCA the results of any sampling, tests, or other data generated by the Regulated Party, or on its behalf, to implement the requirements of this Agreement.

Part 21. RETENTION OF RECORDS. The Regulated Parties shall retain in its possession all records, documents, reports and data related to this Agreement. The Regulated Parties shall preserve these records, documents, reports and data for a minimum of three years after the termination of this Agreement despite any document retention policy of the Regulated Parties to the contrary, and shall promptly make all such documentation available for review upon request by the MPCA.

Part 22. APPLICABLE LAWS AND PERMITS. The Regulated Parties shall undertake all actions required to be taken pursuant to this Agreement in accordance with the requirements of all applicable state and federal laws and regulations. Except when the MPCA has specified and authorized a different compliance method in Part 9, the Regulated Parties must also comply with all applicable permits, orders, stipulation agreements and schedules of compliance. Nothing in this Agreement exempts or relieves the Regulated Parties of its obligation to comply with local governmental requirements.

Part 23. OTHER CLAIMS. Nothing herein shall release the Regulated Parties 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 Parties 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 24. HOLD HARMLESS AGREEMENT. The Regulated Parties agree to indemnify, save and hold the MPCA, its agents and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of the Regulated Parties, their officers, employees, agents, or contractors in implementing the activities conducted pursuant to this Agreement; provided, however, that the Regulated Parties shall not indemnify the MPCA or save or hold its employees and agents harmless from any claims or causes of action arising out of the acts or omissions of the MPCA, or its employees and agents.

When the Regulated Parties are required to hold the MPCA harmless, the MPCA shall give the Regulated Parties notice of any claim or cause of action subject to this Part and the Regulated Parties have the right to participate in the defense against any claim or cause of action. No settlement shall be effective against the Regulated Parties unless the Regulated Parties agree

to the settlement. Nothing herein waives or modifies the provisions of the Minnesota Tort Claims Act, Minn. Stat. §§ 3.732, et seq., and other applicable law.

Part 25. SUCCESSORS, AGENTS AND CONTRACTORS. This Agreement shall be binding upon the Regulated Parties and its successors and assigns and upon the MPCA, its successors and assigns. If the Regulated Parties sell or otherwise convey or assign any of its right, title or interest in the Facility, the conveyance shall not release the Regulated Parties 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 Parties shall ensure that the Regulated Parties' agents, contractors and subsidiaries comply with the terms and conditions of this Agreement.

Part 26. AMENDMENTS. Except with respect to extensions of schedules granted under Part 15 and approved submittals under Part 18, this Agreement may be amended only by written agreement between the parties.

Part 27. EFFECTIVE DATE. This Agreement shall be effective on the date it is signed by the MPCA.


Part 28. TERMINATION. The provisions of this Agreement shall be deemed satisfied and terminated when the Regulated Parties receive written notice from the MPCA that the Regulated Parties have demonstrated, to the satisfaction of the MPCA, that all terms of the Agreement have been completed.

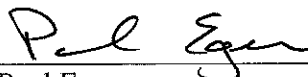
Part 29. SURVIVAL. The provisions of Parts 2, 11, 12, 17, 20, 21, 22, 23, 24, 25, and 29 of this Agreement and the rights, duties and obligations of the MPCA and the Regulated Parties created in those provisions shall survive termination of this Agreement.

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

FIBROMINN BIOMASS POWER PLANT

**STATE OF MINNESOTA
POLLUTION CONTROL AGENCY**

By: 
Name: Carl W. Strickler
Title: COO
Date: 11/30/09

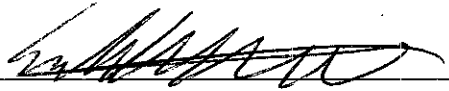
By: 
Paul Eger
Commissioner
Date: 12/11/09

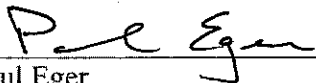
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FIBROMINN BIOMASS POWER PLANT

**STATE OF MINNESOTA
POLLUTION CONTROL AGENCY**

By: 

By: 
Paul Eger
Commissioner

Name: Edward Niblock

Title: Secretary Fibrowatt

Date: Nov 30, 2009

Date: 12/11/09


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FIBROMINN BIOMASS POWER PLANT

**STATE OF MINNESOTA
POLLUTION CONTROL AGENCY**

By: 

By: 
Paul Eger
Commissioner

Name: Lee Muller
Executive Vice President
Title: M.A. POWERMINN 9090 LLC

Date: 1/30/09

Date: 12/11/09

ATTACHMENT A

Supplemental Environmental Project (SEP) Description:

Installation of an in-situ spectroscopic sulfur dioxide (SO₂) gas analyzing monitor in the spray dryer absorber (SDA) inlet duct of the Regulated Parties facility. The SDA inlet location was chosen as this location provides the harshest operating conditions for a continuous emission monitor, since the fuel gas being analyzed has not been treated in the SDA or fabric filter.

SEP Goals:

To directly measure reactive gases in real time; to potentially measure multiple reactive gases; to achieve high reliability and accuracy; and help demonstrate the feasibility of this monitoring methodology.

SEP Duration:

12 month minimum verification program. The start date shall be the first day after the gas analyzer has been certified.

Monitor Information:

The GM32 gas analyzer as manufactured by SICK MAIHAK, GmgH, or similar, will be installed. The purpose of this gas analyzer is to measure SO₂ emissions. Under the temperature range at the SDA inlet, the GM32 gas analyzer also has the capability, as a process measurement operator tool, to measure nitrogen oxide and ammonia in addition to SO₂.

Verification Program:

The term of the verification program for the in-situ gas analyzer will be 12 months in duration. This shall begin following the in-situ gas analyzer certification. A Certification Test (which includes a Relative Accuracy Test Audit (RATA)) will be performed during the in-situ gas analyzer commissioning process. On-going RATA's will be performed as required. Currently, there is a RATA scheduled for June 2010 for the entire facility. The Regulated Party may conduct a RATA specific to the monitor at this time. Whether or not the RATA is completed at this time, on-going quality analysis/quality control of the monitor must be completed in compliance with all applicable requirements. The cost of the Certification Test, as well as part of the first RATA will be calculated into the total cost of this SEP. The Regulated Party must maintain documentation of the calculation used, or an itemized receipt, in order to determine the cost of the first RATA. Future RATA's cost will not be considered in the total cost of this SEP. The in-situ monitor will be in simultaneous operation with the existing SO₂ monitor.

Schedule:

The in-situ monitoring equipment will be ordered within three weeks after entering into a Stipulation Agreement. Start up and commissioning of the monitor will occur within 12 weeks after placing the order.

Cost Summary Estimation:

SO ₂ In-Situ monitor equipment	\$54,000
Installation	\$16,000
System Commissioning	\$10,000
Total	\$80,000