

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

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UNITED STATES OF AMERICA,)	
)	
and)	
)	
THE STATE OF INDIANA,)	
)	
Plaintiffs,)	
)	Civil Action No. 18-cv-35
v.)	
)	
INDIANA HARBOR COKE COMPANY,)	
)	
and)	
)	
SUNCOKE ENERGY, INC.,)	
)	
and)	
)	
COKENERGY, LLC,)	
)	
Defendants.)	
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COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting on behalf of the Administrator of the United States Environmental Protection Agency (“U.S. EPA”), and the State of Indiana (“Indiana”), by the authority of the Attorney General of Indiana, acting at the request of the Indiana Department of Environmental Management (“IDEM”), allege as follows:

Nature of Action

1. This civil action comprises claims brought by the United States and Indiana against three Defendants, Indiana Harbor Coke Company (“Indiana Harbor Coke”), Cokenergy,

LLC (“Cokenergy”), and SunCoke Energy, Inc. (“SunCoke”). The claims relate to the Indiana Harbor Coking Facility (“Indiana Harbor Facility” or “Facility”) in East Chicago, Indiana, owned and operated by IHCC, Cokenergy, and SunCoke. The Facility is used by the Defendants to manufacture metallurgical coke and to produce electricity from the resulting waste gases using heat recovery steam generators.

2. For over a decade, Defendants and their Indiana-Harbor-based cokemaking operation have violated air pollution control laws aimed at protecting health and the environment. Those violations include illegal emission of waste gases, lead, sulfur dioxide, and particulate matter; opacity exceedances; departures from good air pollution control practices; and various failures in monitoring, measuring, recording, and reporting of operational parameters and performance important to compliance with the air pollution control laws.

3. The United States asserts claims in this action under the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7401 *et seq.* The United States seeks injunctive relief and civil penalties against IHCC, Cokenergy, and SunCoke, for violations of the CAA and its implementing regulations.

4. Indiana asserts claims in this action under Title 326 of the Indiana Administrative Code (“IAC”). Indiana seeks injunctive relief and civil penalties against IHCC, Cokenergy, and SunCoke for violations of IAC Title 326 and the rules adopted thereunder. Indiana also asserts claims under Section 304(a)(1) of the Clean Air Act, 42 U.S.C. § 7604(a)(1), and Ind. Code §§ 13-13-5-1 and 13-13-5-2.

Jurisdiction and Venue

5. This Court has jurisdiction over the subject matter of this action pursuant to Sections 113(b) of the CAA, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

6. This Court has supplemental jurisdiction over the state law claims asserted by Indiana pursuant to 28 U.S.C. § 1367(a) because the State claims are related to the federal claims and form part of the same case or controversy.

7. Venue is proper in this District pursuant to Sections 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391 and 1395, because the violations at the Facility have occurred and are occurring in Lake County, Indiana, which is located in this District.

Parties

8. Plaintiffs are the United States, on behalf of U.S. EPA, and the State of Indiana, on behalf of IDEM.

9. Authority to bring this action for the United States is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519 and Section 305 of the CAA, 42 U.S.C. § 7605.

10. Authority to bring this action for the People of the State of Indiana is vested in the Indiana Attorney General. The Indiana Attorney General is the chief legal officer of the State of Indiana having the powers and duties prescribed by the law, Ind. Code § 4-6-1-6 (2013). Pursuant to Ind. Code § 13-13-5-1 (2013), IDEM is charged with the administration and enforcement of the requirements for air pollution control for Indiana for all purposes of the CAA.

11. Defendant Cokenergy is a limited liability company under the laws of the State of Delaware with its principal place of business in Indiana. Cokenergy is an owner and operator of

the Indiana Harbor Facility within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C § 7412(a)(9), and its implementing regulations, and the IAC, codified at 326 Ind. Admin. Code 1-2-51 (2013).

12. Defendant Indiana Harbor Coke Company is a limited partnership company under the laws of the State of Indiana with its principal place of business in Indiana. Indiana Harbor Coke Company is an owner and operator of the Indiana Harbor Facility along with SunCoke within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C § 7412(a)(9), and its implementing regulations, and the IAC at 1-2-51. Indiana Harbor Coke Company and SunCoke are collectively referred to as “IHCC” in this Complaint.

13. Defendant SunCoke is a duly incorporated company in the State of Delaware that has its corporate headquarters in the State of Illinois, with a principal business address of 1011 Warrenville Road, Lisle, IL 60532. SunCoke is an owner and operator of the Indiana Harbor Facility along with IHCC within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C § 7412(a)(9), and its implementing regulations, and IAC 1-2-51.

14. SunCoke is the corporate parent of IHCC and, based upon reasonable investigation and the opportunity to take further discovery, exercises pervasive control over the Facility and over IHCC and has participated in, controlled, and/or directed the activities underlying the violations alleged in the Complaint.

Notices

15. In accordance with Section 113(b) of the CAA, 42 U.S.C. § 7413(b), notice of the commencement of this action has been given to IDEM. In accordance with Section 113(a) of the CAA, 42 U.S.C. § 7413(a), U.S. EPA notified the Defendants and the State of Indiana of the

violations of the Indiana State Implementation Plan alleged in this Complaint more than 30 days prior to its filing.

Statutory Background

16. The CAA establishes a regulatory scheme to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

17. Section 108(a) of the CAA, 42 U.S.C. § 7408(a), requires the Administrator of U.S. EPA to promulgate a list of each air pollutant, emissions of which may reasonably be anticipated to endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. Pursuant to Sections 108(a) and 112(b), U.S. EPA has identified, *inter alia*, sulfur dioxide ("SO₂"), particulate matter ("PM"), and lead as such pollutants. *See* 42 U.S.C. §§ 7808, 7412(b) and 40 C.F.R. §§ 50.4, 50.5, 50.6, 50.7, 50.11 and 50.12.

18. Section 109 of the CAA, 42 U.S.C. § 7409, requires the Administrator of U.S. EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS") for those air pollutants for which air quality criteria have been issued pursuant to Section 108 of the CAA, 42 U.S.C. § 7408. The primary NAAQS are to be adequate to protect the public health with an adequate margin of safety, and the secondary NAAQS are to be adequate to protect the public welfare from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air. Pursuant to Section 109 of the CAA, U.S. EPA has promulgated primary and secondary NAAQS for sulfur dioxide, PM and lead. 40 C.F.R. §§ 50.4, 50.5, 50.6, 50.7 and 50.12.

State Implementation Plans

19. To achieve the objectives of the NAAQS and the CAA, Section 110 of the CAA, 42 U.S.C. § 7410, requires each State to adopt and submit to U.S. EPA for approval a plan that provides for the attainment and maintenance of the NAAQS in each air quality control region within each state. This plan is known as a State Implementation Plan (“SIP”).

20. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, Indiana adopted and submitted to U.S. EPA various regulations that have been approved by U.S. EPA and which, taken together, constitute the SIP for the State of Indiana (“Indiana SIP”).

21. On July 16, 2002, U.S. EPA approved the revised Opacity Regulations at 326 IAC Rule 5, as part of the Indiana SIP. 67 Fed. Reg. 46589. 326 IAC 5-1-2(2) limits opacity from facilities in Lake County to 20% in any one 6-minute average, and to 60% for more than a cumulative total of 15 minutes as measured according to 40 C.F.R. Part 60, Appendix A, Method 9, or 15 one-minute non-overlapping integrated averages for a continuous opacity monitor in a six hour period.

22. On September 26, 2005, U.S. EPA approved 326 IAC 7-4, Sulfur Dioxide Rules, as part of the Indiana SIP. 70 Fed. Reg. 56129. 326 IAC 7-4.1 sets forth the SO₂ emission limitations for Lake County emission sources. 326 IAC 7-4.1-8(b) limits bypass venting emissions at the Facility to a “maximum of nineteen percent (19%) of the coke oven waste gases leaving the common tunnel . . . on a twenty-four (24) hour basis and fourteen percent (14%) on an annual basis.”

23. Pursuant to Section 113 of the CAA, 42 U.S.C. § 7413(a) and (b), SIP requirements approved by U.S. EPA are federally enforceable. 40 C.F.R. § 52.23 states, in part, “failure to comply with any . . . approved regulatory provision of a State implementation plan . . .

shall render the person or the governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action” under Section 113 of the CAA, 42 U.S.C. § 7413. 40 C.F.R. § 52.23.

Title V Operating Permit Requirements

24. Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires that each state develop and submit to U.S. EPA an operating permit program that meets the requirements of Title V. Title V of the CAA requires “major sources” of air pollution to obtain an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable CAA requirements. Sections 501-507 of the CAA, 42 U.S.C. §§ 7661, 7661(a)-(f). A Title V operating permit consolidates all of a major stationary source’s state and federal CAA obligations into one permit. Section 502(f) of the CAA, 42 U.S.C. § 7661a(f).

25. “Major source” is defined as, among other things, any source that directly emits or has the potential to emit 100 tons or more per year of any regulated air pollutant. 42 U.S.C. § 7661(2); 40 C.F.R. § 70.2. SO₂ and PM are regulated air pollutants. 40 C.F.R. § 70.2.

26. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), U.S. EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a Title V permit program to be administered by any state or local air pollution control agency. 57 Fed. Reg. 32250 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

27. The requirements of Part 70 apply to any major source located in a state that has received whole or partial approval of its Title V program and, among other things, any source subject to a standard or other requirement under Section 112 of the CAA, 40 C.F.R. §70.3.

28. Indiana received interim approval from EPA for its Title V operating permit program in November 1995, effective December 1995, and final approval in December 2001. 60 Fed. Reg. 57188 (1995) and 66 Fed. Reg. 62969 (2001). Indiana's federally-approved Title V regulations are found at 326 IAC 2-7.

29. Pursuant to 40 C.F.R. 70.6(a)(3)(iii), IDEM is required to, among other things, incorporate all applicable reporting requirements into a Title V permit.

30. Rule 326 IAC 2-7-6 sets forth requirements by which a Title V source must demonstrate compliance, including submission of compliance certifications with terms and conditions contained in a Part 70 permit.

31. CAA Section 502(a), 42 U.S.C. § 7661a(a), the implementing regulations at 40 C.F.R. § 70.7(b), and Indiana's Title V operating permit program regulations have at all relevant times made it unlawful for any person to violate any requirement of a permit issued under Title V or to operate any source subject to Title V except in compliance with a permit issued by a permitting authority under Title V.

National Emission Standards for Hazardous Air Pollutants

32. Section 112(b) of the CAA, 42 U.S.C. § 7412(b), establishes a list of 188 hazardous air pollutants ("HAPs") believed to cause adverse health or environmental effects. Under Section 112(b)(2) of the Act, 42 U.S.C. § 7412(b)(2), U.S. EPA periodically reviews the list of hazardous air pollutants and, where appropriate, revises the list by rule.

33. Section 112(c) of the CAA, 42 U.S.C. § 7412(c), requires U.S. EPA to publish a list of all categories and subcategories of major sources and certain area sources of the HAPs listed pursuant to 42 U.S.C. § 7412(b).

34. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), requires U.S. EPA to promulgate regulations establishing emission standards for each category and subcategory of major sources and area sources of HAPs. These emission standards are called the National Emission Standards for Hazardous Air Pollutants (“NESHAPs”). Numerous “source categories” are regulated under the NESHAPs, including coke oven batteries (40 C.F.R. Part 63, Subparts L and CCCCC).

35. The NESHAPs apply to specific categories of stationary sources that emit HAPs, 40 C.F.R. § 63.1, including “major sources,” which are sources or groups of stationary sources located within a contiguous area and under common control that emit or have the potential to emit ten tons per year or more of any HAP, or twenty-five tons per year or more of any combination of HAPs. 42 U.S.C. § 7412(a)(1) and 40 C.F.R. § 63.2. An “area source” is any stationary source of HAPs that is not a major source. 42 U.S.C. § 7412(a)(2) and 40 C.F.R. § 63.2. A “stationary source” is any building, structure, facility, or installation that emits or may emit any air pollutant. 42 U.S.C. § 7412(a)(3) (by reference to 42 U.S.C. § 7411(a)(3)) and 40 C.F.R. § 63.2.

36. Section 113(a)(3) and (b) of the CAA, 42 U.S.C. § 7413(a)(3) and (b), prohibit violations of any NESHAP regulation. Thus, a violation of a NESHAP regulation is a violation of the CAA.

NESHAPs for Coking Facilities

37. Pursuant to Section 112(d) of the CAA, on October 27, 1993 and April 14, 2003, U.S. EPA promulgated the NESHAPs for Coke Oven Batteries (Subpart L) and Coke Ovens: Pushing, Quenching, and Battery Stacks (Subpart CCCCC), at 40 C.F.R. § 63.300 *et seq.* and 40 C.F.R. § 63.7280 *et seq.* respectively. *See* 58 Fed. Reg. 57911 and 68 Fed. Reg. 18008. The

Indiana Harbor Facility's coke oven batteries are "affected sources," according to 40 C.F.R. § 63.300, 40 C.F.R. § 63.7281, and 40 C.F.R. § 63.7282, and are therefore subject to Subpart L and Subpart CCCCC. 40 C.F.R. Part 63, Subparts L and CCCCC, are incorporated by reference as 326 IAC 20-3 and 326 IAC 20-74, respectively.

38. 40 C.F.R. § 63.303 sets forth requirements related to emissions from coke ovens. Section 63.303(b) provides that the owner or operator must ensure that there is "(i) 0.0 percent leaking oven doors . . . or (ii) [t]he owner or operator shall monitor and record, once per day for each day of operation, the pressure in each oven or in a common battery tunnel to ensure that the ovens are operated under a negative pressure."

39. 40 C.F.R. § 63.303(c)(1)-(2) requires the owner or operator to observe each coke oven door after charging and record the oven number of any door from which visible emissions occur. The regulation further requires: "[I]f a coke oven door leak is observed at any time during the coking cycle, the owner or operator shall take corrective action and stop the leak within 15 minutes from the time the leak is first observed. No additional leaks are allowed from doors on that oven for the remainder of that oven's coking cycle."

40. 40 C.F.R. § 63.6(e) requires that at all times the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

Federal and State Enforcement Provisions

41. Section 113(a)(1) and (3) of the CAA, 42 U.S.C. § 7413(a)(1) and (3), authorizes U.S. EPA to bring a civil action in accordance with CAA Section 113(b) whenever, on the basis of any information available, U.S. EPA finds any person has violated or is in violation of any

other requirement or prohibition of, among other things: (1) Title V of the CAA, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; (2) the federally enforceable provisions of the Indiana SIP or any permit issued thereunder; and (3) the NESHAP requirements promulgated pursuant to Section 112 of the CAA, 42 U.S.C. § 7412.

42. Section 304(a)(1) of the CAA, 42 U.S.C. § 7604(a)(1), authorizes Indiana to commence a civil action against any person who is alleged to have violated an emission standard or limitation under the CAA.

43. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, the United States may seek injunctive relief and civil penalties of up to \$32,500 per day for each violation from March 16, 2004, through January 12, 2009; up to \$37,500 per day for each such violation occurring from January 13, 2009, through November 2, 2015; and up to \$93,750 per day for each such violation occurring on or after November 3, 2015. Pursuant to Ind. Code §§ 13-13-5-1, 13-13-5-2, and 13-30-4-1, Indiana may seek injunctive relief and civil penalties not to exceed \$25,000 per day of any violation of air pollution control laws in a civil action commenced in any court with jurisdiction.

General Allegations

The Indiana Harbor Facility

44. The Indiana Harbor Facility manufactures metallurgical coke – a low volatile, carbonaceous material produced by destructive distillation of various blends of bituminous coal in banks, or batteries, of high temperature ovens, heated to approximately 2000° F. Each coke oven battery at the Indiana Harbor Facility operates continuously throughout the year for a total of up to 8,760 hours/year. During normal operation, the waste gases resulting from the coking

process are routed to one of sixteen heat recovery steam generators (“HRSGs”), which produce energy while cooling the gases enough to allow them to be routed through the pollution control equipment without damaging the equipment. After treatment, the gases are routed the main waste gas stack for emission into the atmosphere. The main waste gas stack is referred to as Stack 201 in the Permits. The Indiana Harbor Facility also includes sixteen bypass vent stacks, where waste gases are sometimes emitted without heat transfer at a HRSG and without treatment to remove pollutants from the gas.

45. The Indiana Harbor Facility includes 267 heat recovery coke ovens arranged into four batteries designated as Batteries A, B, C, and D. Each oven connects to the Facility’s common waste gas tunnel. Waste gas from the coke ovens travels through the common tunnel to one of the HRSGs and then to pollution control equipment and the main waste gas stack.

46. IHCC is primarily responsible for the coke ovens and the cokemaking process at the Indiana Harbor Facility.

47. Cokenergy operates the sixteen HRSGs, as well as additional components of the Indiana Harbor Facility, including pollution control equipment such as the flue gas desulfurization unit (“FGD”), the baghouse, and the associated main waste gas stack. The HRSGs combine water with the hot gases from the common tunnel to create steam, which Cokenergy sells as a separate product. As a result of this process, the gases are cooled from about 2000° F to 400° F prior to entry into the pollution control equipment.

48. All 267 ovens, sixteen HRSGs, associated bypass vents, FGD and baghouse were constructed in 1997 and commenced operation (with all pollution control equipment) in February, 1998.

49. The Indiana Harbor Facility emits HAPs and other pollutants, including SO₂, PM, and lead.

50. Coke oven gases produced during the coking process contain human carcinogens, including polynuclear aromatic hydrocarbons and volatile organic compounds, such as benzene, toluene and xylene. Long-term exposure to coke oven gases in humans can result in an increased risk of cancer of the lung, trachea, bronchus, kidney, and prostate. Other health effects can include conjunctivitis, severe dermatitis, and lesions of the respiratory system and digestive system.

51. SO₂ contributes to acid rain and exacerbates respiratory illness, particularly in children and the elderly. SO₂ also contributes to the formation of particulate matter by reacting with other chemicals in the air to form tiny sulfate particles.

52. PM can travel through the air in varying sizes and become embedded in human lungs, and once embedded can also travel to the bloodstream. Exposure to PM pollution has been linked to decreased lung function, aggravated asthma, and premature death in people with heart or lung disease.

53. Even low levels of lead in the bloodstream of children can result in behavior and learning problems, lower IQ and hyperactivity, slowed growth, hearing problems, and anemia. Lead can accumulate over time in the body, where it is stored in bones along with calcium. During pregnancy, lead is released from bones as maternal calcium and is used to help form the bones of the fetus. Lead can also cross the placental barrier exposing the fetus to lead and resulting in serious effects to the mother and her developing fetus, including: reduced growth of the fetus and premature birth. Adults exposed to lead can suffer from: cardiovascular effects,

increased blood pressure/incidence of hypertension, decreased kidney function, and reproductive problems (in both men and women).

54. Each Defendant is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

55. Each Defendant is an “owner or operator” of the Indiana Harbor Facility within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), and the Indiana SIP, 326 IAC 1-2-51.

56. The Indiana Harbor Facility is a “stationary source” within the meaning of Section 112(a)(3) of the CAA, 42 U.S.C. § 7412(a)(3), subject to one or more NESHAPs found at 40 C.F.R. Part 63.

57. The Indiana Harbor Facility is a “major source” as defined by Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), and the Indiana SIP, for SO₂ and PM emissions.

58. The Indiana Harbor Facility is a “major emitting facility,” as defined by Section 169(1) of the CAA, 42 U.S.C. § 7479(1).

Permits

59. IDEM issued separate minor source Construction Permits (“1998 Permits”) to Indiana Harbor Coke and Cokenergy’s predecessor on February 26, 1998, based on each entity’s separate ownership, responsibilities and obligations related to the Indiana Harbor Facility. IDEM issued a modification to both 1998 Permits on November 30, 2001 (“2001 Permits”).

60. The IHCC permit obligations were reflected in Construction Permits CP 089-9236. The 2001 Permits incorporated the Indiana SIP conditions regulating the permitted sources of SO₂, PM, and coke oven gas air emissions at the Facility.

61. The Cokenergy permit obligations were reflected in Construction Permits CP 089-9237. The 2001 Permits limited opacity, SO₂, and PM emissions at the facility.

62. IHCC was issued Title V Operating Permit T089-11311-00382 on September 22, 2006, by IDEM through its approved Title V permit program. IHCC's Title V permit incorporates general Title V permitting conditions, including the Quarterly Deviation and Compliance Monitoring Requirements of 326 IAC 2-7-5; SIP conditions; a combined PM limit from vent stacks of 36.1 lbs/hr; conditions limiting coke oven waste gases leaving the common tunnel venting to the atmosphere to a maximum of 19 percent on a 24 hour basis and 14 percent on an annual basis; conditions limiting SO₂ emissions from all 16 bypass vent stacks, plus the main waste gas stack, to 1,656 lbs/hr; conditions limiting PM emissions at each vent stack to 11.875 lbs/hr and a combined PM emissions limit from all vent stacks to 36.1 lbs/hr; and a requirement that "waste gases shall not be routed directly to the atmosphere unless they first pass through the common tunnel afterburner." Also, IHCC's Title V Permit incorporated by reference NESHAP Subparts L and CCCCC. IDEM has subsequently issued Title V permits to IHCC in 2006, 2011, and 2014 that are substantially similar to the 2006 IHCC Title V Permit (together referenced as "IHCC Title V Permit" or "IHCC Permit").

63. IDEM, through its approved Title V permit program, issued Title V Operating Permit T089-11135-00383 to Cokenergy on June 29, 2006, to operate, among other things, a spray dryer absorber system, baghouse, and main waste gas stack. The Cokenergy permit incorporates general Title V permitting conditions, including the Quarterly Deviation and Compliance Monitoring Requirements of 2-7-5 and the Emergency Provision of 2-7-16; SIP conditions; and conditions limiting (1) main waste gas stack opacity to 20%; (2) SO₂ emissions from all 16 of IHCC's bypass vent stacks, plus the main waste gas stack, to 1,656 lbs/hr; and (3)

PM emissions from the main waste gas stack to 50 lbs/hr. IDEM has subsequently issued Title V permits to Cokenergy in 2011, 2014, and 2016 that are substantially similar to the 2006 Cokenergy Title V Permit (together referenced as “Cokenergy Title V Permit” or “Cokenergy Permit”).

Claims against Defendants Indiana Harbor Coke Company and SunCoke Energy

FIRST CLAIM FOR RELIEF

Excess Bypass Venting – 19% 24-Hour Limit
Asserted by the United States and the State of Indiana

64. Paragraphs 1 through 63 are realleged and incorporated by reference.

65. IHCC’s Title V Permit Part D.1.9(b) and Indiana SIP condition 326 IAC 7-4.1-8 (specific to IHCC) limits bypass venting to 19% of total waste gas vented from the common tunnel, per 24-hour period.

66. During at least 557 days beginning in 2005, IHCC failed to limit bypass venting to 19% of total waste gas vented from the common tunnel per 24-hour period in violation of IHCC’s Title V Permit Part D.1.9(b), Indiana SIP condition 326 IAC 7-4.1-8.

67. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

SECOND CLAIM FOR RELIEF

Excess Bypass Venting – 14% Annual Limit
Asserted by the United States and the State of Indiana

68. Paragraphs 1 through 63 are realleged and incorporated by reference.

69. IHCC’s Title V Permit Parts D.1.9(b) and Indiana SIP condition 326 IAC 7-4.1-8 (specific to IHCC) limit bypass venting to 14% of total waste gas vented from the common tunnel on an annual basis.

70. In 2011, 2012, 2013, and 2014, IHCC failed to limit bypass venting to 14% of total waste gas vented from the common tunnel on an annual basis in violation of IHCC's Title V Permit Part D.1.19(b), Indiana SIP condition 326 IAC 7-4.1-8.

71. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

THIRD CLAIM FOR RELIEF

Excess Combined SO₂ Emissions from Bypass Vent Stacks and the Main Waste Gas Stack Asserted by the United States and the State of Indiana

72. Paragraphs 1 through 63 are realleged and incorporated by reference.

73. IHCC's source specific Indiana SIP condition 326 IAC 7-4.1-8 and IHCC Title V Permit Part D.1.9(a)(5) limit the combined SO₂ emissions from main waste gas stack 201 and the bypass vent stacks to 1,656 lbs/hr averaged over a 24-hour period.

74. On at least 76 days since 2005, IHCC and Cokenergy emitted more than 1,656 lbs/hr of SO₂ emissions averaged over a 24-hour period from combined main waste gas stack 201 and bypass vent stacks in violation of Indiana SIP condition 326 IAC 7-4.1-8 and IHCC's Title V Permit Part D.1.9(a)(5).

75. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

FOURTH CLAIM FOR RELIEF

Excess Combined PM Emissions from Bypass Vent Stacks and the Main Waste Gas Stack Asserted by the United States and the State of Indiana

76. Paragraphs 1 through 63 are realleged and incorporated by reference.

77. IHCC's Title V Permit Part D.1.5(c) limits combined PM emissions from its 16 bypass vent stacks to at or below 36.1 lbs/hr averaged over a 24-hour period.

78. During at least 573 days beginning in September 2005, IHCC failed to limit combined PM emissions from its 16 vent stacks to 36.1 lbs/hr averaged over a 24-hour period in violation of IHCC's Title V Permit Part D.1.5(c).

79. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

FIFTH CLAIM FOR RELIEF

**Excess PM Emissions from Bypass Vent Stacks
Asserted by the United States and the State of Indiana**

80. Paragraphs 1 through 63 are realleged and incorporated by reference.

81. IHCC's Title V Permit Part D.1.5(b) limits condensable and filterable PM emissions per bypass vent stack to 11.875 lbs/hr, averaged over a 24-hour period.

82. During one or more days beginning on or about November 2014, IHCC failed to limit PM emissions from its bypass vent stacks to below 11.875 lbs/hr in violation of IHCC's Title V Permit Part D.1.5(b).

83. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

SIXTH CLAIM FOR RELIEF

**Failure to Report Deviations and Failures to Certify
Compliance Accurately in Title V Deviation Reports
Asserted by the United States and the State of Indiana**

84. Paragraphs 1 through 63 are realleged and incorporated by reference.

85. Pursuant to 40 C.F.R. § 70.6 (a)(3)(iii) , 40 C.F.R. § 70.6 (c)(3)(iii), and Parts B.9 and C.19 of IHCC's Title V Permit, IHCC, as a Title V source, is required to submit compliance certification reports on a quarterly and annual basis certifying the compliance status of the Facility. IHCC must include "any deviation from permit requirements and the response steps taken."

86. On one or more occasions since 2005, IHCC failed to include all deviations in its Title V Deviations Reports.

87. The IHCC Title V Permit Part B.11 and Indiana SIP condition 326 IAC 2-7-16 set out reporting and other requirements in order for IHCC to claim that certain deviations are due to emergencies within the meaning of 326 IAC 2-7-1(12). On one or more occasions since 2005, IHCC failed to inform IDEM in accordance with its Permit of all deviations for which it claimed an emergency under Part B.11 of the IHCC Permit.

88. The failure to accurately certify compliance status in Title V Deviation Reports is a violation of the IHCC Title V Permit and Section 502 of the CAA, 42 U.S.C. § 7661a(a), 40 C.F.R. 70.6 (a)(3)(iii)(B), and 40 C.F.R. § 70.6 (c)(5)(iii)(C).

89. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

SEVENTH CLAIM FOR RELIEF

Excess Opacity in Pushing, Charging, Coking, and Venting Operations and Failure to Minimize Charging and Pushing Emissions
Asserted by the United States and the State of Indiana

90. Paragraphs 1 through 63 are realleged and incorporated by reference.

91. IHCC's Title V Permit Part C.5(k) and Indiana SIP condition 326 IAC 6.8-10-3(9) limit opacity from charging, pushing, and coking operations to 20% in any 3-minute averaging period. IHCC's Title V Permit Part C.1(a) and Indiana SIP condition 326 IAC 5-1-2 limit opacity from the bypass vents and main waste gas stack to 20% in any 6-minute averaging period.

92. IHCC's Title V Permit Part D.1.6(a)(2) and the Indiana SIP at 326 IAC 6.8-9-3 require that charging emissions that escape the oven door be minimized by collecting in a mobile

hood, which is connected to the charging/pushing unit, and exhausting through the charging stacks.

93. IHCC's Title V Permit Part D.1.6(b) and the Indiana SIP at 326 IAC 6.8-9-3 require that pushing emissions that escape the cokeside oven door be minimized by collecting such emissions in a stationary shed, which runs the length of the coke oven battery, and exhausted through the pusher stack.

94. On numerous occasions since 2005, IHCC failed to minimize charging emissions that escaped the oven door by collecting such emissions in a mobile hood, in violation of IHCC's Title V Permit Part D.1.6(a)(2) and the Indiana SIP at 326 IAC 6.8-9-3.

95. On numerous occasions since 2005, IHCC failed to minimize pushing emissions that escaped the cokeside oven door by collecting in a stationary shed, in violation of IHCC's Title V Permit Part D.1.6(b) and the Indiana SIP at 326 IAC 6.8-9-3.

96. On at least 1,305 occasions since 2005, opacity from charging, pushing, and/or coking exceeded 20% as a 3-minute average in violation of IHCC's Title V Permit Part C.5(k), Indiana SIP condition 326 IAC 6.8-10-3(9), and federal NESHAP regulations at 40 C.F.R. § 63.6(e).

97. On numerous occasions since 2005, opacity from one or more bypass vent stacks and the push/charge machine baghouse stack exceeded 20% as a 6-minute average in violation of IHCC's Title V Permit Part C.1(a), Indiana SIP condition 326 IAC 5-1-2, and federal NESHAP regulations at 40 C.F.R. § 63.6(e).

98. On numerous occasions since 2005, opacity from the main waste gas stack exceeded 20% as a 6-minute average in violation of IHCC's Title V Permit Part C.1(a), Indiana SIP condition 326 IAC 5-1-2, and federal NESHAP regulations at 40 C.F.R. § 63.6(e).

99. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

EIGHTH CLAIM FOR RELIEF

Failure to Limit Lead Emissions

Asserted by the United States and the State of Indiana

100. Paragraphs 1 through 63 are realleged and incorporated by reference.

101. IHCC's Title V Permit Part D.1.4(a) limits lead emissions from the main waste gas stack and 16 bypass vent stacks to 0.19 lbs/hr, averaged over a six-hour period.

102. On at least 395 occasions since 2005, IHCC failed to limit lead emissions from the main waste gas stack and 16 bypass vent stacks to 0.19 lbs/hr, averaged over a six-hour period, in violation of IHCC's Title V Permit Part D.1.4(a).

103. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

NINTH CLAIM FOR RELIEF

Failure to Operate and Maintain Facility for Minimizing Emissions

Asserted by the United States and the State of Indiana

104. Paragraphs 1 through 63 are realleged and incorporated by reference.

105. The federal NESHAP requirements found at 40 C.F.R. §63.6(e)(1)(i), incorporated by reference in Subparts L and CCCCC, require that IHCC operate any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions at all times, including periods of startup, shutdown, and malfunction.

106. At times relevant to this Complaint, IHCC failed to take adequate steps to operate and maintain Facility equipment, including process and pollution control equipment. Failure to properly operate and maintain Facility equipment in order to adequately minimize emissions and

bring the Facility into continuous compliance is a violation of the federal NESHAP requirements found at 40 C.F.R. § 63.6(e)(1)(i).

107. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

TENTH CLAIM FOR RELIEF
Emissions from Leaking Coke Ovens
Asserted by the United States and the State of Indiana

108. Paragraphs 1 through 63 are realleged and incorporated by reference.

109. 40 C.F.R. § 63.303 provides that the owner or operator must ensure that there are “(i) 0.0 percent leaking oven doors . . . or (ii) [t]he owner or operator shall monitor and record, once per day for each day of operation, the pressure in each oven or in a common battery tunnel to ensure that the ovens are operated under a negative pressure.” 40 C.F.R. § 63.303(c)(1)-(2) requires the owner or operator to observe each coke oven door after charging and record the oven number of any door from which visible emissions occur and further states: “[I]f a coke oven door leak is observed at any time during the coking cycle, the owner or operator shall take corrective action and stop the leak within 15 minutes from the time the leak is first observed. No additional leaks are allowed from doors on that oven for the remainder of that oven’s coking cycle.” IHCC’s Title V Permit Part D.1.9(b) and Indiana SIP condition 326 IAC 7-4.1-8 provide that waste gases “shall not be routed directly to the atmosphere unless they first pass through the common tunnel afterburner.”

110. On at least 7,938 occasions since 2005, IHCC experienced coke oven leaks and/or failed to operate under a negative pressure, in violation of 40 C.F.R. § 63.303, IHCC’s Title V Permit Part D.1.9(b) and E.2.2, Indiana SIP condition 326 IAC 20-3, and Indiana SIP condition 326 IAC 7-4.1-8.

111. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

ELEVENTH CLAIM FOR RELIEF

Coke Pile Fires

Asserted by the United States and the State of Indiana

112. Paragraphs 1 through 63 are realleged and incorporated by reference.

113. IHCC's Title V Permit Part C.2 provides that IHCC "shall not open burn any material except as provided in 326 IAC 4-1-3, 326 IAC 4-1-4 or 326 IAC 4-1-6."

114. On at least one occasion since 2005, IHCC reported that hot coke caught a coke pile on fire, in violation of IHCC's Title V Permit Part C.2., Indiana SIP condition 326 IAC 4-1-2, and 40 C.F.R. § 63.6(e).

115. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

TWELVTH CLAIM FOR RELIEF

Failure to Comply with Continuous Compliance Plan

Asserted by the United States and the State of Indiana

116. Paragraphs 1 through 63 are realleged and incorporated by reference.

117. IHCC's Title V Permit Part C.11(a) and Indiana SIP provision 326 IAC 6.8-8 *et seq.* require IHCC to maintain and comply with a Continuous Compliance Plan, which includes requirements for inspections, monitoring, and record keeping.

118. On at least two occasions since 2005, IHCC failed to comply with its Continuous Compliance Plan, in violation of IHCC's Title V Permit Part C.11(a) and Indiana SIP provision 326 IAC 6.8-8 *et seq.*

119. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

THIRTEENTH CLAIM FOR RELIEF

Failure to Take and/or Record Response Steps
Asserted by the United States and the State of Indiana

120. Paragraphs 1 through 63 are realleged and incorporated by reference.

121. IHCC's Title V Permit Part C.15 provides that, upon detecting an excursion or an exceedance of a permit limitation, IHCC shall take reasonable response steps to restore operation of the emissions unit as expeditiously as practicable and shall record the reasonable response steps taken.

122. On at least 95 occasions since 2005, IHCC failed to take reasonable response steps and/or failed to record those response steps in violation of IHCC's Title V Permit Part C.15.

123. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

FOURTEENTH CLAIM FOR RELIEF

Failure to Submit Timely Reports
Asserted by the United States and the State of Indiana

124. Paragraphs 1 through 63 are realleged and incorporated by reference.

125. IHCC's Title V Permit Part C.19 requires IHCC to submit Quarterly Deviation and Compliance Monitoring Reports no later than 30 days after the end of the reporting period.

126. On at least three occasions since 2005, IHCC failed to submit timely reports in violation of IHCC's Title V Permit Part C.19.

127. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

FIFTEENTH CLAIM FOR RELIEF

Excess PM Emissions from Coke Crusher and Screener Station
Asserted by the United States and the State of Indiana

128. Paragraphs 1 through 63 are realleged and incorporated by reference.
129. IHCC's Title V Permit Part D.1.5(a)(9) limits PM emissions from the coke crusher and screener station (Stack ID 265) to 1.34 lbs/hr.
130. On at least two occasions since 2005, IHCC failed to limit PM emissions from the coke crusher and screener station to 1.34 lbs/hr, in violation of IHCC's Title V Permit Part D.1.5(a)(9).
131. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

SIXTEENTH CLAIM FOR RELIEF

Excess Opacity at the Coke Oven Shed
Asserted by the United States and the State of Indiana

132. Paragraphs 1 through 63 are realleged and incorporated by reference.
133. IHCC's Title V Permit Part D.1.6(b) and Indiana SIP condition 326 IAC 6.8-9-3 limit opacity from the coke oven shed to 20% in any one 3-minute averaging period.
134. On at least 99 occasions since 2005, IHCC failed to limit the opacity of visible emissions escaping the coke oven shed to 20% as a 3-minute average, in violation of IHCC's Title V Permit Part D.1.6(b) and Indiana SIP condition 326 IAC 6.8-9-3.
135. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

SEVENTEENTH CLAIM FOR RELIEF

Failure to Operate Baghouses in Accordance with Permit
Asserted by the United States and the State of Indiana

136. Paragraphs 1 through 63 are realleged and incorporated by reference.

137. IHCC's Title V Permit Parts D.1.12 and D.1.14 require IHCC to operate the baghouses for its pushing and charging machines at all times that the associated units are in operation. The baghouses must be operated within certain pressure drop ranges and at a minimum fan amperage.

138. On at least 761 occasions since 2005, IHCC failed to operate the baghouses for its pushing and charging machines at all times that the associated units are in operation in accordance with its Permit, in violation of IHCC's Title V Permit Parts D.1.12 and D.1.14.

139. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

EIGHTEENTH CLAIM FOR RELIEF

**Failure to Shut Down a Failed Baghouse
Asserted by the United States and the State of Indiana**

140. Paragraphs 1 through 63 are realleged and incorporated by reference.

141. IHCC's Title V Permit Part D.1.17 requires IHCC to immediately shut down a failed single compartment baghouse and the associated process, and not re-start until the failed unit had been repaired or replaced. Operations may continue only if the event qualifies as an emergency and IHCC satisfies the requirements of the emergency provisions of its Title V Permit.

142. On at least one occasion since 2005, IHCC failed to immediately shut down a failed single compartment baghouse and the associated process and not re-start the unit until the failed unit had been repaired or replaced, in violation of IHCC's Title V Permit Part D.1.17.

143. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

NINETEENTH CLAIM FOR RELIEF

Failure to Record Temperature of the Common Tunnel
Asserted by the United States and the State of Indiana

144. Paragraphs 1 through 63 are realleged and incorporated by reference.

145. IHCC's Title V Permit Part D.1.18 requires IHCC to monitor and record the temperature of the common tunnel duct at least once per day.

146. On at least twelve days since 2005, IHCC failed to monitor and/or record the temperature of the common tunnel duct, in violation of IHCC's Title V Permit Part D.1.18.

147. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

TWENTIETH CLAIM FOR RELIEF

Failure to Take Reasonable Response Steps for Temperature of the Common Tunnel
Asserted by the United States and the State of Indiana

148. Paragraphs 1 through 63 are realleged and incorporated by reference.

149. IHCC's Title V Permit Part D.1.18 requires IHCC to take reasonable response steps if the temperature of the common tunnel duct is outside the normal range of 1200-2400 degrees Fahrenheit.

150. On at least 70 occasions since 2005, IHCC failed to take reasonable response steps when the temperature of the common tunnel duct was outside the normal range of 1200-2400 degrees Fahrenheit, in violation of IHCC's Title V Permit Part D.1.18.

151. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

TWENTY-FIRST CLAIM FOR RELIEF

Failures to Comply With Work Practice Plan
Asserted by the United States and the State of Indiana

152. Paragraphs 1 through 63 are realleged and incorporated by reference.

153. IHCC's Title V Permit Part E.2.2(d) and 40 C.F.R. § 63.306 require IHCC to develop and follow a written emissions control work practice plan for each coke oven battery that includes, among other things, procedures for limiting emissions.

154. On at least 125 occasions since 2005, IHCC failed to document the uptake damper position, in violation of its work practice plan, IHCC's Title V Permit Part E.2.2(d), 40 C.F.R. § 63.306, and Indiana SIP condition 326 IAC 20-3.

155. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

TWENTY-SECOND CLAIM FOR RELIEF

**Failure to Operate Screening Station in Accordance with Operation and Maintenance Plan
Asserted by the United States and the State of Indiana**

156. Paragraphs 1 through 63 are realleged and incorporated by reference.

157. IHCC's Title V Permit Part E.3.2(h) and 40 C.F.R. § 63.7300 require IHCC to prepare and operate at all times according to a written operation and maintenance plan addressing capture systems and pollution control equipment at the Facility.

158. On at least one occasion since 2005, IHCC failed to operate its screening station in accordance with its operation and maintenance plan, in violation of IHCC's Title V Permit Part E.3.2(h), 40 C.F.R. § 63.7300, and Indiana SIP condition 326 IAC 20-74.

159. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

TWENTY-THIRD CLAIM FOR RELIEF

**Failure to Inspect and/or Record Coke Oven Leaks
Asserted by the United States and the State of Indiana**

160. Paragraphs 1 through 63 are realleged and incorporated by reference.

161. Pursuant to IHCC's Title V Permit Part E.3.2(f) and 40 C.F.R. § 63.7293, IHCC must visually inspect each oven prior to pushing.

162. On at least 266 occasions since 2005, IHCC visually failed to inspect ovens prior to pushing, in violation of IHCC's Title V Permit Part E.3.2(f), 40 C.F.R. § 63.7293, and Indiana SIP condition 326 IAC 20-74.

163. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

TWENTY-FOURTH CLAIM FOR RELIEF

Failure to Equip and/or Wash Quench Baffles
Asserted by the United States and the State of Indiana

164. Paragraphs 1 through 63 are realleged and incorporated by reference.

165. IHCC's Title V Permit Part E.3.2(g) and 40 C.F.R. § 63.7295 require IHCC to equip each quench tower with baffles and wash the baffles in each quench tower once each day that the tower is used to quench coke.

166. On at least 20 occasions since 2005, IHCC failed to equip its quench tower with baffles and/or wash the baffles once each day, in violation of IHCC's Title V Permit Part E.3.2(g), 40 C.F.R. § 63.7295, and Indiana SIP condition 326 IAC 20-74.

167. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

TWENTY-FIFTH CLAIM FOR RELIEF

Failure to Monitor and/or Maintain Records of Fan Motor Amperages
Asserted by the United States and the State of Indiana

168. Paragraphs 1 through 63 are realleged and incorporated by reference.

169. IHCC's Title V Permit Part E.3.2(t) and 40 C.F.R. § 63.7333 require IHCC to check the fan motor amperages at least every eight hours and to maintain the daily average amperage at or above a minimum level.

170. On at least 30 occasions since 2005, IHCC failed to monitor and/or maintain records of fan motor amperages, in violation of IHCC's Title V Permit Part E.3.2(t), 40 C.F.R. § 63.7333, and Indiana SIP condition 326 IAC 20-74.

171. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

TWENTY-SIXTH CLAIM FOR RELIEF

**Failure to Maintain Records of Visual Inspections of Ovens Prior to Pushing
Asserted by the United States and the State of Indiana**

172. Paragraphs 1 through 63 are realleged and incorporated by reference.

173. IHCC's Title V Permit Part E.3.2(u) and 40 C.F.R. § 63.7334 require IHCC to maintain records that document each visual inspection of an oven prior to pushing and that the oven was not pushed, unless there was no smoke in the open space above the coke bed and there was an unobstructed view of the door on the opposite side of the oven.

174. On at least 870 occasions since 2005, IHCC failed to maintain records that document each visual inspection of an oven prior to pushing, in violation of IHCC's Title V Permit Part E.3.2(u), 40 C.F.R. § 63.7334, and Indiana SIP condition 326 IAC 20-74.

175. The violations set forth above subject IHCC to injunctive relief and to civil penalties as set forth in Paragraph 43.

Claims against Defendant Cokenergy

TWENTY-SEVENTH CLAIM FOR RELIEF

Excess Opacity at the Main Waste Gas Stack
Asserted by the United States and the State of Indiana

176. Paragraphs 1 through 63 are realleged and incorporated by reference.

177. Indiana SIP 326 IAC 5-1-2 and Cokenergy's Title V Permit Part C.1(a) limit opacity from main waste gas stack 201 to 20% in any one 6-minute averaging period.

178. On at least 176 occasions since 2005, Cokenergy failed to limit opacity from the main waste gas stack to 20% in any one 6-minute averaging period, in violation of 326 IAC 5-1-2 and Cokenergy's Title V Permit Part C.1(a).

179. The violations set forth above subject Cokenergy to injunctive relief and to civil penalties as set forth in Paragraph 43.

TWENTY-EIGHTH CLAIM FOR RELIEF

Excess Opacity at ES 201 Main Waste Gas Stack
Asserted by the United States and the State of Indiana

180. Paragraphs 1 through 63 are realleged and incorporated by reference.

181. Indiana SIP condition 326 IAC 5-1-2 and Cokenergy's Title V Permit Part C.1(b) provides that opacity from main waste gas stack ES 201 shall not exceed 60% for more than a cumulative total of 15 minutes, or 15 one-minute, non-overlapping integrated averages, in a six-hour period, as measured according to 40 C.F.R. 60, Appendix A, Method 9.

182. On May 11, 2008, Cokenergy exceeded the opacity limits of 60% for more than a cumulative total of 15 minutes, or 15 one-minute, non-overlapping integrated averages, in a six-hour period.

183. Cokenergy's failures to limit opacity to at or below 60% for more than a cumulative total of 15 minutes, or 15 one-minute, non-overlapping integrated averages, in a six

hour period constitutes a violation of Indiana SIP condition 326 IAC 5-1-2 and Cokenergy's Title V Permit Part C.1(b).

184. The violations set forth above subject Cokenergy to injunctive relief and to civil penalties as set forth in Paragraph 43.

TWENTY-NINTH CLAIM FOR RELIEF

**Excess Combined SO₂ Emissions from Bypass Vent Stacks and the Main Waste Gas Stack
Asserted by the United States and the State of Indiana**

185. Paragraphs 1 through 63 are realleged and incorporated by reference.

186. Cokenergy's Title V Permit Part D.1.2 and Indiana SIP 326 IAC 7-4.1-7 (specific to Cokenergy) limit combined SO₂ emissions from the main waste gas stack and the bypass vent stacks to 1,656 lbs/hr, averaged over 24 hours.

187. On at least 76 occasions since 2005, IHCC and Cokenergy emitted more than 1,656 lbs/hr of SO₂ emissions averaged over 24 hours from combined main waste gas stack 201 and bypass gas vents in violation of Part D.1.2 of its Title V Permit and Indiana SIP condition 326 IAC 7-4.1-7.

188. The violations set forth above subject Cokenergy to injunctive relief and to civil penalties as set forth in Paragraph 43.

THIRTIETH CLAIM FOR RELIEF

**Failure to Report Deviations and Failures to Certify
Compliance Accurately in Title V Deviation Reports
Asserted by the United States and the State of Indiana**

189. Paragraphs 1 through 63 are realleged and incorporated by reference.

190. Pursuant to Section 502 of the CAA, 40 C.F.R. 70.6 (a)(3)(iii) and (c)(5)(iii) requirements, and Cokenergy's Title V Permit Parts B.9 and C.18, Cokenergy is required to submit compliance certification reports on a quarterly and annual basis certifying the compliance

status of the Facility. Cokenergy must include “any deviation from permit requirements and the response steps taken.”

191. On one or more occasions since 2005, Cokenergy failed to include all deviations in its Title V Deviations Reports.

192. The failure to report such deviations in Title V Deviation Reports is a violation of Cokenergy’s Title V Permit Parts B.9 and C.18 and Section 502 of the CAA, 42 U.S.C. § 7661a(a), 40 C.F.R. 70.6 (a)(3)(iii)(B).

193. The violations set forth above subject Cokenergy to injunctive relief and to civil penalties as set forth in Paragraph 43.

THIRTY-FIRST CLAIM FOR RELIEF

Failure to Timely Conduct PM Testing at the Main Waste Gas Stack
Asserted by the United States and the State of Indiana

194. Paragraphs 1 through 63 are realleged and incorporated by reference.

195. Cokenergy’s Title V Permit Part D.1.7(a) and Indiana SIP condition 326 IAC 6.8-9-3 requires Cokenergy to perform PM and PM₁₀ testing on the main waste gas stack at least once every five years.

196. On at least one occasion since 2005, Cokenergy did not timely perform PM and PM₁₀ testing in accordance with the Permit, in violation of Cokenergy’s Title V Permit Part D.1.7(a).

197. The violations set forth above subject Cokenergy to injunctive relief and to civil penalties as set forth in Paragraph 43.

THIRTY-SECOND CLAIM FOR RELIEF

Failure to Timely Submit Test Reports
Asserted by the United States and the State of Indiana

198. Paragraphs 1 through 63 are realleged and incorporated by reference.

199. Cokenergy's Title V Permit Part C.7(c) requires Cokenergy to submit all test results to IDEM so they are received no later than 45 days after the completion of the testing.

200. On at least one occasion since 2005, Cokenergy failed to submit test results in a timely manner to IDEM, in violation of Cokenergy's Title V Permit Part C.7(c).

201. The violations set forth above subject Cokenergy to injunctive relief and to civil penalties as set forth in Paragraph 43.

Prayer for Relief

WHEREFORE, Plaintiff the United States of America and the State of Indiana respectfully request that this Court:

1. Permanently enjoin Defendants from further violations of the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Indiana SIP, IAC Title 326, and their implementing permits and regulations;

2. Order Defendants promptly to take all steps necessary or appropriate to ensure compliance with the foregoing laws, regulations and permits and to mitigate the effects of its past violations;

3. Enter judgment assessing civil penalties against Defendants for up to the amounts provided in the CAA and IAC Title 326;

4. Award Plaintiffs their costs and disbursements in this action; and

5. Award such other relief as this Court may deem just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

s/ Jeffrey H. Wood

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