

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF PLACER

JUN 26 2007

JOHN MENDES  
EXECUTIVE OFFICER & CLERK  
By M. Baxley, Deputy

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SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF PLACER

PEOPLE OF THE STATE OF CALIFORNIA,  
by and through Attorney General of California,  
Edmund G. Brown Jr., and PEOPLE OF THE  
STATE OF CALIFORNIA, by and through the  
Attorney General of California on behalf of he  
State Air Resources Board and the Placer  
County Air Pollution Control District,  
  
Plaintiffs,  
  
vs  
  
SIERRA PACIFIC INDUSTRIES, INC.,  
  
Defendant.

Case No. SCV 17449  
STIPULATED JUDGMENT

This Stipulated Judgment is entered into by and between Edmund G. Brown, Jr.,  
Attorney General of the State of California on behalf of the People, the California Air Resources  
Board (ARB), and the Placer County Air Pollution Control District (PCAPCD) (together,  
Plaintiffs) and Sierra Pacific Industries, Inc. (SPI).

1 **RECITALS**

2 A. The People brought this action pursuant to Government Code section 12607,  
3 Health and Safety Code sections 41513, 42402, 42402.1, 42402.2, 42402.3, and 42402.4, and  
4 Business and Professions Code sections 17203, 17204, and 17206, by the Attorney General in  
5 the name of the People and on behalf of the ARB and the PCAPCD.

6 B. Plaintiffs filed a Complaint on July 19, 2004; a First Amended Complaint on  
7 August 20, 2004; and a Second Amended Complaint on January 16, 2007 (collectively, the  
8 "Complaint"). Plaintiffs alleged, among other things, that SPI committed numerous violations of  
9 the air quality laws at four saw mill facilities in Lincoln, Loyalton, Quincy, and Susanville, from  
10 1999 through 2005. Discovery has been extensive, and the trial is scheduled to begin on June 25,  
11 2007.

12 C. The PCAPCD has sent SPI Notices of Violation (including, without limitation,  
13 NOVs 2159, 2160, 2161, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2309, 2789, 2491, 2790,  
14 2791, and 2820) that remain unresolved.

15 D. After arms-length negotiations, Plaintiffs and SPI have reached and entered into a  
16 settlement agreement by way of this Stipulated Judgment in a good faith effort to avoid the  
17 additional uncertainty and expense of protracted litigation. Plaintiffs believe that this settlement  
18 is in the best interests of the people of the State of California.

19 **TERMS**

20 THEREFORE, Plaintiffs and SPI, through their counsel, stipulate as follows:

21 1. Jurisdiction

22 This Court has jurisdiction over the subject matter of this action and the parties to  
23 this Stipulated Judgment.

24 2. Penalties and Costs

25 SPI is obligated to pay the sum set forth below, within thirty days after entry of  
26 this Stipulated Judgment, in a total amount of \$8,485,000, in the method set forth in Paragraph 3,  
27 below, as follows:

1 (a) \$2,442,500 (payable to the State Treasurer) as a civil penalty to the Air  
2 Resources Board;

3 (b) \$2,742,500 (payable to Placer County Air Pollution Control District) as a civil  
4 penalty to the PCAPCD; and

5 (c) \$2,600,000 (payable to the Air Resources Board) as reimbursement for  
6 attorneys' fees and costs of the Air Resources Board and

7 (d) \$700,000 (payable to Placer County Air Pollution Control District) as  
8 reimbursement for attorneys' fees and costs of the PCAPCD,

9 which together shall constitute full satisfaction of all claims of Plaintiffs or their counsel for  
10 attorneys' fees and costs in connection with the matters settled.

11 3. Method of Payment

12 Payments required by Paragraph 2, above, shall be by four certified or cashier's  
13 checks and delivered within thirty days after entry of this Stipulated Judgment, to:

14 Denise Hoffman  
15 Deputy Attorney General  
16 Office of the Attorney General  
1300 I Street  
Sacramento, CA 95814.

17 If the required payment has not been delivered within thirty days after entry of  
18 this Stipulated Judgment, the total amount payable shall thereafter be increased by 5%, and  
19 collection remedies may be granted in expedited, summary proceedings conducted in the  
20 exercise of this Court's retained jurisdiction under Code of Civil Procedure section 664.6, as  
21 provided in Paragraph 12.

22 4. Supplemental Environmental Projects

23 SPI is also mandated to spend no less than \$4,500,000 on Supplemental  
24 Environmental Projects (SEPs) as described further in Attachment A, incorporated by reference.  
25 SPI agrees to carry out SEPs 1 through 10 as described, and to carry out some or all of the other  
26 SEPs as described; but the obligation to do so will end when SPI has spent \$4,500,000 in the  
27 aggregate on all listed SEPs. The SEPs are to be completed within 36 months (or 48 months,  
28 with regard to SEP number 4) of the date of this Stipulated Judgment. During that period, SPI

1 will report to ARB and, with regard to any SEP at the Lincoln facility, to the PCAPCD in writing  
2 during January and July of each year on activities on the SEPS, and Plaintiffs will respond in  
3 writing within 15 days if they have objections to any matter reported. On or before March 31 of  
4 each year, SPI shall submit to counsel for Plaintiffs a written accounting for the amounts that SPI  
5 spent on SEPs in the prior calendar year. Plaintiffs shall give SPI written notice of any item of  
6 cost that they do not accept for credit against the SEPS cost obligation within 60 days after  
7 receiving SPI's accounting. If the parties disagree about what is required by any SEP  
8 commitment or about SPI's compliance with its SEPs obligations, the disagreement shall be  
9 decided by the Honorable Eugene F. Lynch, acting as a single arbitrator, according to JAMS  
10 arbitration rules. If at the end of the time allowed for SPI to carry out the SEPS, SPI has spent  
11 less than \$4,500,000 on the SEPs, SPI shall be required to pay in cash the amount of the shortfall  
12 between what it spent on SEPs and \$4,500,000.

13 5. Submittals and Notices

14 Unless otherwise stated herein, all submittals and notices from SPI pursuant to  
15 this Stipulated Judgment shall be sent to:

16 Aron Livingston  
17 Air Resources Board  
18 1001 "I" Street  
19 Sacramento, CA 95814

20 If related to the Lincoln Facility:

21 Todd Nishikawa  
22 Placer County Air Pollution Control District  
23 3091 County Center Drive, Suite 240  
24 Auburn, CA 95603

25 Unless otherwise stated herein, all submittals and notices from SPI pursuant to  
26 this Stipulated Judgment shall be sent to:

27 George Emmerson  
28 Sierra Pacific industries  
P.O. Box 496028  
Redding, California 96049-6028

David H. Dun  
Dun & Martinek LLP  
2313 I Street  
Eureka, California 95501

1                   6.       Scope of Stipulated Judgment

2                   This Stipulated Judgment shall apply to and be binding upon SPI and its officers,  
3 directors, agents, receivers, trustees, employees, contractors, consultants, successors, and  
4 assignees, including but not limited to individuals, partners, and subsidiary and parent  
5 corporations, and upon Plaintiffs and any successor agency that may have responsibility for and  
6 jurisdiction over the subject matter of this Stipulated Judgment.

7                   7.       Stipulated Judgment Does Not Bind Any Other Agency

8                   This Stipulated Judgment is made and entered into by and on behalf of the ARB  
9 and the PCAPCD only. Except as expressly provided in this Stipulated Judgment, including  
10 without limitation the release of Matters Covered pursuant to Paragraph 8 herein, nothing in this  
11 Stipulated Judgment is intended or shall be construed to preclude the Attorney General from  
12 exercising his or her authority as an independent Constitutional officer under any law, statute, or  
13 regulation. Furthermore, except as expressly provided in this Stipulated Judgment, including  
14 without limitation the release of Matters Covered pursuant to Paragraph 8 herein, nothing in this  
15 Stipulated Judgment is intended or shall be construed to preclude any state, local, or federal  
16 agency, board, department, office, commission, or entity from exercising its authority under any  
17 law, statute, regulation, or ordinance.

18                   8.       Plaintiffs' Release of SPI

19                   Plaintiffs shall and do release, discharge and covenant not to sue or to take  
20 administrative action against SPI for Matters Covered. "Matters Covered" are the causes of  
21 action alleged in the Second Amended Complaint and all claims that could have been brought  
22 based on information reasonably available to Plaintiffs before the date of entry of this Stipulated  
23 Judgment regarding violations of the Health & Safety Code Division 26, rules, or air quality  
24 permits applicable to the SPI facilities that have been subject to claims in the Complaint; all  
25 claims under the Business & Professions Code based on such violations; and all violations  
26 covered by the Notices of Violation described in the Recital paragraphs above. This Stipulated  
27 Judgment shall not act to release from liability any person or entity other than SPI, its parent or  
28 wholly owned subsidiaries, and, to the extent that they would be legally entitled to be

1 indemnified by SPI for such liability, SPI's officers, employees, and agents. Payment by SPI  
2 pursuant to this Stipulated Judgment shall be deemed the recovery of civil penalties as to all  
3 Matters Covered for purposes of precluding monetary awards pursuant to the California Business  
4 and Professions Code, as provided in Health and Safety Code section 42400.6, and for purposes  
5 of precluding subsequent criminal action as provided in Health and Safety Code section  
6 42400.7(a).

7 9. SPI shall certify that it has taken reasonable and thorough measures to ensure, and  
8 that its management believes, that the following activities are not occurring at any SPI facility:  
9 tampering with any air pollutant emission monitoring system; knowing falsification of any  
10 documents required by law to be kept, and violations of Penal Code section 136.1; and that it  
11 will continue to take reasonable and thorough steps so that those activities will not occur in the  
12 future.

13 10. During the year following entry of the Stipulated Judgment, SPI shall provide 16  
14 hours of ARB-supervised or approved training to each of its boiler operators and co-generation  
15 supervisors at its Quincy and Lincoln facilities.

16 11. Reservation of Rights

17 Plaintiffs, on the one hand, and SPI, on the other hand, reserve their respective  
18 rights to initiate judicial or administrative action against each other for any matter not released  
19 by this Stipulated Judgment. Nothing in this Stipulated Judgment shall constitute or be  
20 construed as a satisfaction or release from liability for any conditions or claims arising as a result  
21 of past, current, or future operations or activities of SPI that are not Matters Covered released  
22 pursuant to Paragraph 8 of this Stipulated Judgment. Nothing herein is intended or shall be  
23 construed as a waiver of Plaintiffs' right to institute and prosecute proceedings to compel  
24 compliance with this Stipulated Judgment.

25 12. Jurisdiction, Interpretation

26 The Honorable Charles D. Wachob shall retain jurisdiction to interpret, modify  
27 and enforce the terms and conditions of this Stipulated Judgment pursuant to Code of Civil  
28 Procedure section 664.6. This Stipulated Judgment shall be deemed to have been drafted equally

1 by the parties, and shall not be interpreted for or against either party on the ground that any such  
2 party drafted it. This Stipulated Judgment shall be governed by and construed in accordance  
3 with the laws of the State of California.

4 13. Integration

5 This Stipulated Judgment contains all of the terms and conditions agreed upon by  
6 the parties relating to the matters covered by this Stipulated Judgment, and supersedes any and  
7 all prior and contemporaneous agreements, negotiations, correspondence, understandings, and  
8 communications of the parties, whether oral or written, respecting the matters covered by this  
9 Stipulated Judgment, except for matters incorporated by reference or by operation of law  
10 applicable according to the terms of this Stipulation of Judgment. This Stipulated Judgment may  
11 be amended or modified only by a writing signed by the parties or their authorized  
12 representatives, and then by order of the Court.

13 14. Knowing, Voluntary Agreement

14 Each party to this Stipulated Judgment acknowledges that it has been represented  
15 by legal counsel, and that each party has reviewed, and has had the benefit of legal counsel's  
16 advice concerning, all of the terms and conditions of this Stipulated Judgment.

17 15. Authority to Execute

18 Each party to this Stipulated Judgment represents and warrants that the person who  
19 has signed this Stipulated Judgment on its behalf is duly authorized to enter into this Stipulated  
20 Judgment, and to bind that party to the terms and conditions of this Stipulated Judgment.

21 16. Parties to Bear Their Own Costs and Attorneys Fees

22 Except as provided in Paragraph 2, each party to this Stipulated Judgment shall  
23 bear its own respective costs and attorneys' fees in connection with this matter, including costs  
24 and fees associated with negotiating and seeking court approval of this Stipulated Judgment, and  
25 with actions brought to enforce the terms of this Stipulated Judgment or to declare rights  
26 hereunder.

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17. Counterparts

This Stipulated Judgment may be executed by the parties in counterpart originals with the same force and effect as if fully and simultaneously executed as a single, original document.

18. Waiver of Appeal Right; Reservation of Right to Appeal Collateral Orders

The parties agree to waive their right to appeal from this Stipulated Judgment. Nothing in this Stipulated Judgment shall be construed as a waiver of any party's right to appeal from an order that arises from an action to enforce the terms of this Stipulated Judgment.

19. Effective Date

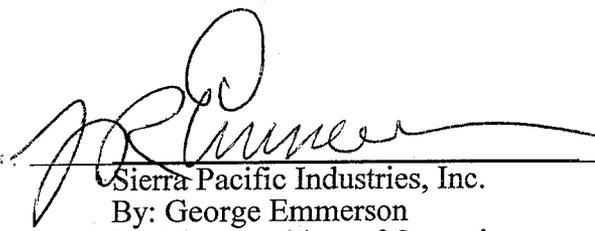
The effective date of this Stipulated Judgment shall be the date that it is signed by the Judge of the Superior Court.

20. No Third Party Benefits

This Stipulated Judgment is made for the sole benefit of the parties, and no other person or entity shall have any rights or remedies under or by reason of this Stipulated Judgment, unless otherwise expressly provided for herein.

IT IS SO STIPULATED.

Dated: June 22, 2007

  
\_\_\_\_\_  
Sierra Pacific Industries, Inc.  
By: George Emmerson  
Its: Vice President of Operations

Dated: \_\_\_\_\_, 2007

\_\_\_\_\_  
Office of the Attorney General  
By:

Dated: \_\_\_\_\_, 2007

\_\_\_\_\_  
Air Resources Board  
By:  
Its:

Dated: \_\_\_\_\_, 2007

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Placer County Air Pollution Control  
District  
By:  
Its:

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IT IS SO STIPULATED.

Dated: June \_\_, 2007

Sierra Pacific Industries, Inc.  
By: George Emmerson  
Its: Vice President of Operations

Dated: June 22, 2007

  
Office of the Attorney General  
By: Denise Ferkich Hoffman  
Deputy Attorney General

Dated: June 22, 2007

  
Air Resources Board  
By: David Aron Livingston  
Its: Senior Staff Counsel

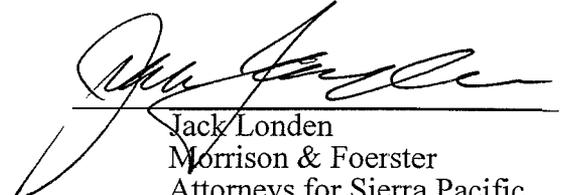
Dated: June 22, 2007

  
Placer County Air Pollution Control  
District  
By: Thomas J. Christofk  
Its: Air Pollution Control Officer

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APPROVED AS TO FORM:

Dated: June 22, 2007

  
\_\_\_\_\_  
Jack Londen  
Morrison & Foerster  
Attorneys for Sierra Pacific  
Industries, Inc.

Dated: June \_\_\_\_, 2007

\_\_\_\_\_  
Denise Ferkich Hoffman  
Deputy Attorney General  
Attorney for Plaintiffs People  
of the State of California, et  
al.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2007

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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APPROVED AS TO FORM:

Dated: June \_\_\_\_, 2007

\_\_\_\_\_  
Jack Londen  
Morrison & Foerster  
Attorneys for Sierra Pacific  
Industries, Inc.

Dated: June 27, 2007

  
\_\_\_\_\_  
Denise Ferkich Hoffman  
Deputy Attorney General  
Attorney for Plaintiffs People  
of the State of California, et  
al.

IT IS SO ORDERED.

Dated: 6/26/07, 2007

**Charles Wachob**  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

## **Attachment A: SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

### **1. CEMS/COMS Enhancements at Quincy and Lincoln.** Estimated cost: \$400,000.

Complete monitoring instrumentation for the Riley boiler at the Quincy facility which includes monitors for steam flow, CO, Opacity, O<sub>2</sub>, CO<sub>2</sub>, NO<sub>x</sub>, and Particulate Matter (PM). PM CEMS at the Lincoln facility. The PM monitor must use an accepted, reliable, and accurate technology. The parties will investigate and discuss using an extractive beta-gauge system for PM monitoring. If the parties do not agree on equipment for PM monitoring, the parties will engage a mutually acceptable independent expert or experts (with their cost credited to the SEPs cost requirement) to determine whether there is PM monitoring technology that is accepted, reliable, and accurate for this application, and if so to recommend the PM monitoring technology; and SPI will install and employ that technology.

### **2. Certification of Emission Level Alarms.**

SPI will certify within 30 days after the date of entry of the Stipulated Judgment, and thereafter at least annually that alarms are installed at the Quincy, Loyalton, and Lincoln facilities and are set to sound when regulated air contaminants are approaching permit limits, and that the alarms are in good working order (it being understood that no testing that would require equipment to be taken off line before a scheduled shutdown will be done for purposes of the initial certification). The certification criteria will be stated in specific, objective terms to avoid any basis for disagreement about what constitutes compliance.

### **3. Remote data polling system at Quincy and Lincoln.** Estimated cost: \$50,000

Remote data polling system for CO, NO<sub>x</sub>, opacity, and stack parameters, including remote data acquisition via internet or other means of near real-time communication, and time-data graphical display enhancements for all contaminants measured by the CEMS at Quincy facility; and add PM monitoring data (see item 1 above) to remote data polling at Lincoln facility.

### **4. Environmental Audits.** Estimated Cost: \$600,000

SPI will retain an independent auditor acceptable to both sides to conduct industry-standard audits of environmental compliance (air, water, and hazardous materials) at two facilities every year. Such an audit will be conducted every other year at both Lincoln and Quincy, and every other year at two other cogen facilities located in California. At least two audits total shall be conducted at each of the Quincy and Lincoln facilities, provided that this requirement may be completed within 48 months of the date of the Stipulated Judgment, and if so the cost of doing so will be credited against the aggregate SEPS cost requirement notwithstanding that the cost is not incurred within the 36-month period otherwise required for carrying out SEPs. Air elements of the workplans for audits at the SPI Lincoln facility will be provided to the Placer County Air Pollution Control District, and all other air elements of the workplans for audits will be provided to the State Air Resources Board, for their review and comment. SPI will provide copies of the air elements of the audit reports to ARB and, as to SPI's Lincoln facility, to Placer County Air Pollution Control District.

5. **Ammonia Injection System Optimization Study at Lincoln.** Estimated cost: \$100,000  
SPI will obtain an objective, independent expert study of the system for the injection of ammonia, including identification of appropriate set point levels for injection to achieve NOx reduction without creating excess ammonia slip. SPI will not be required by this agreement or by the results of the study to make changes to equipment. The levels established by such study would generate objective criteria for injection of ammonia in lieu of reliance on the application of "duty to minimize" permit language to ammonia injection. If there is disagreement about the validity of the study or the implications of its findings, independent experts designated by the parties will resolve any such questions. Any costs of such experts will be credited toward the aggregate SEPs cost requirement.
6. **Ash Containment at Quincy.** Estimated Cost: \$300,000  
SPI will construct and modify equipment at Quincy to enhance containment of dust and soot. More specifically, SPI will install an ash system at Quincy similar to the ash system that was installed at Lincoln such that the fly ash is loaded directly into trucks, reducing fugitive dust and soot.
7. **Boiler System Modifications at Quincy.** Estimated Cost: To Be Supplied by SPI  
SPI will develop a plan for making boiler system changes to address the problems caused by a common feed from both boilers to the turbine at Quincy, with the cost of those changes included among the SEPs. If SPI's plan is approved by the responsible air district and ARB, SPI will make the changes, with the actual cost to be credited against the aggregate \$4,500,000 in SEP costs. If SPI makes a proposal that is not approved, SPI will not be required under the Settlement Agreement to carry out a change to the Quincy boilers that SPI does not agree with, and will use other projects to satisfy the aggregate SEPs cost requirement.
8. **Monthly Excess Emissions Reports to George Emmerson.**  
George Emmerson will receive a monthly report from every SPI co-generation facility in California that lists the number and cause of excess emissions during the month and the corrective action taken to address the exceedances. Requirements for the contents of the report will be written in clear and objective terms so that SPI will be able to ensure that it is complying. The criteria will be such that the reports will contain specified discussion of the maintenance needed and performed on equipment (including boilers and air pollution control equipment) relevant to controlling regulated emissions at the co-generation facilities.
9. **Biomass Project.** Estimated cost (if implemented): up to \$1,000,000  
SPI commits to work with the Placer County APCO, the Placer County Executive Office Biomass Coordinator, and United States Forest Service (USFS) Representatives to identify appropriate existing timber sale contract(s) between the USFS and SPI within the Tahoe National Forest, Plumas National Forest, El Dorado National Forest, and Lake Tahoe Basin Management Unit for an expansion of biomass utilization opportunities. The proposed SEP is to encourage biomass utilization through the removal and use of the biomass generated through these contracts as fuel at an SPI facility for value added energy in lieu of otherwise burning the biomass at the harvest site, which might normally

produce harmful fire and smoke if not used for energy purposes. It is proposed that the project involve a gross cost of \$1,000,000 for all aspects of SPI's involvement, including removal and transportation the biomass waste to an SPI facility. All parties are meant to benefit from this program: The citizens of Placer County will have a lower risk of fire and better quality air, the USFS will be provided a solution to their growing piles of waste material and disposal issues, and SPI will gain access to a closer source of fuel which does not require any commercial transaction fees and be an integral part of a multi-agency coalition that is implementing innovative programs towards the goal of improving air quality in the region. The above mentioned team is planning a community outreach and education program that will highlight programs such as contained within this SEP to advise the public of the benefits of biomass utilization on improving the regions' air quality. If SPI goes forward with the project, the credit against the aggregate SEPs cost requirement will equal the amount by which the gross cost of SPI's participation (up to \$1,000,000) exceeds a reasonable valuation of the economic benefits SPI receives from fuel or timber it acquires by implementing the project. If, on the other hand, after evaluating this proposed SEP in good faith with all parties noted above, SPI determines that the project is not feasible to perform or that its expected benefits will not justify SPI's participation, and an alternate biomass utilization project is not defined and agreed upon within a reasonable time, reserving to SPI the right to determine whether the benefits justify its participation, then the aggregate SEP's cost requirement would be satisfied with other projects set forth in this agreement. The goal is to jointly develop a practical, feasible biomass project that benefits all parties as each of the parties brings vast experience and knowledge to the table in this critical field of renewable green energy.

**10. Quarterly Placer Air District APCO Meetings.** Estimated Cost: \$250,000

Placer Air District APCO Tom Christofk commits to conduct a meeting at least quarterly with SPI management, to be attended twice a year by George Emmerson or Mark Emmerson, to review all pending issues, including questions of interpretation, NOVs, and effective relations between Placer Air District and SPI. The meetings will work toward prompt resolution of any disputes, including establishing objective criteria for compliance with permit conditions. Up to \$250,000 will be available for SPI to fund expenditures as SEP costs credited toward the aggregate cost requirement, to pay for engineering and technical expenses to make mutually agreed changes or to obtain technical information from experts on issues being discussed. If after engaging in these discussions, there is a disagreement on a technical issue, at SPI's request Placer Air District will identify a qualified independent expert who will confer on the issue with an independent designated by SPI and, if they do not reach an agreed conclusion, select a third independent expert to consult on the issue. These independent experts' conclusions will be reported to SPI and Placer Air District. The reasonable costs of these experts will be paid by SPI, and will not be credited against the aggregate SEPs cost requirement.

**As Needed to Meet Aggregate Cost Requirement:**

**11. Fuel Storage and Feed System Enhancements at Quincy.** Estimated cost: \$1,400,000

SPI will enhance the fuel storage structure and fuel feed system to shelter fuel and reduce boiler upsets caused by fuel feed disruptions. The credit against the aggregate SEPs cost

requirement will include only costs not already incurred. SPI is willing to provide more information on what the project would include.

12. **Upgrade Trucks.** Estimated cost: \$3,000,000

SPI will replace 28 Tier 0 Over the Road trucks with 2008 models or later. The Tier 0 engines of the replaced trucks will not be resold or reused and will be scrapped.

13. **ESP System at Sonora.** Estimated cost: \$1,000,000.

SPI will install an ESP at the cogen facility in Sonora, California. The Sonora Air District has requested that SPI install an ESP, and SPI has responded that it will do so when it receives the entitlements for a development adjacent to the mill. There is no deadline or timetable for this process. As a SEP, SPI will commit to constructing the ESP within 36 months, eliminating the condition of obtaining entitlements for a new development.