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10  
11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF PLACER  
13  
14

15 **PEOPLE OF THE STATE OF CALIFORNIA, by**  
**and through the Attorney General of California,**  
16 **Bill Lockyer, and PEOPLE OF THE STATE OF**  
**CALIFORNIA, by and through the Attorney**  
17 **General of California on behalf of the State Air**  
**Resources Board and the Placer County Air**  
18 **Pollution Control District,**

19 Plaintiffs,

20 v.

21 **SIERRA PACIFIC INDUSTRIES, INC.,**

22 Defendant.  
23  
24

CASE NO. SCV 17449

**SECOND AMENDED  
COMPLAINT FOR  
PENALTIES, INJUNCTION  
AND OTHER EQUITABLE  
RELIEF**

Trial Date: June 18, 2007  
Action Filed: July 19, 2004

25 This action is brought against defendant, Sierra Pacific Industries, Inc. (SPI), pursuant  
26 to Government Code section 12607, Health and Safety Code (Health & Saf. Code) sections  
27 41513, 42402, 42402.1, 42402.2, 42402.3, and 42402.4, and Business and Professions Code  
28 (Bus. & Prof. Code) sections 17203, 17204, and 17206 by the Attorney General in the name of

1 the People of the State of California and for the People of the State of California on behalf of the  
2 State Air Resources Board, and the Placer County Air Pollution Control District. Plaintiffs are  
3 referred to collectively as the “People”. Except as otherwise specified, each cause of action is  
4 brought by the People.

### 5 INTRODUCTION

6 1. Defendant SPI burns wood to generate electricity at its facilities in Lincoln,  
7 Quincy, Loyalton, and Susanville. The industrial boilers at those locations are subject to air  
8 pollution permits under state and federal law. Those permits set emission limits, require use of  
9 specified pollution control equipment, and impose a system of continuous monitoring and  
10 reporting.

11 2. On hundreds of days in 1999, through 2005, SPI polluted the air with smog-  
12 forming oxides of nitrogen (NO<sub>x</sub>), carbon monoxide, and particulate matter far in excess of  
13 permit limits. In many cases, those emissions were not reported as required, preventing the air  
14 districts from promptly addressing the situation. Further investigation revealed that crucial  
15 pollution control equipment had been disconnected during those periods. To mask pollution at  
16 its Lincoln facility, SPI tampered with the monitoring equipment so that it would indicate much  
17 lower emissions; Despite SPI’s tampering, the monitoring system reveals hundreds of violations.  
18 The true extent of violations will never be known.

### 19 PARTIES

20 3. The People seek relief from SPI’s unlawful business practices and from its  
21 violations of the Health & Safety Code and local rules and permits relating to the protection of  
22 air quality. Government Code section 12607 provides that the Attorney General may seek  
23 equitable relief in the name of the People of the State of California for the protection of natural  
24 resources of the state from pollution or impairment. Business & Professions Code section 17204  
25 provides that actions to prohibit unfair competition may be brought by the Attorney General in  
26 the name of the People of the State of California. Health & Safety Code sections 42403 and  
27 42405 provide that actions to recover civil penalties against any person who violates any  
28 provision of part 4, division 26 of the Health & Safety Code (Nonvehicular Air Pollution Control

1 Laws), or any order, rule, regulation, or permit of the ARB or of an air pollution control district  
2 (article 3, chapter 4, part 4, division 26 of the Health & Safety Code) may be brought by the  
3 Attorney General in the name of the People of the State of California and by the People of the  
4 State of California on behalf of an air pollution control district and/or the ARB.

5 4. SPI is a California corporation, doing business in the State of California, and a  
6 person as defined in Health & Safety Code section 39047.

7 **JURISDICTION AND VENUE**

8 5. Jurisdiction over this complaint is appropriate in the Superior Court for the State  
9 of California, because the complaint seeks an injunction and seeks in excess of \$50,000.00 in  
10 civil penalties. Venue is appropriate pursuant to Code of Civil Procedure section 393 because  
11 Placer County is the county in which the causes of action alleged in this complaint, or some part  
12 thereof, arose against the defendant.

13 **GENERAL ALLEGATIONS**

14 6. The citations to laws, permits, and orders in this complaint are to those laws,  
15 permits, and orders in effect during all times relevant to the allegations in this complaint.

16 7. Unless otherwise indicated, all facts stated in this complaint are alleged on  
17 information and belief.

18 8. SPI operates sawmills and power plants in California. The sawmills produce  
19 lumber and other products for use by the construction industry. The power plants are authorized  
20 to use wood waste to fuel boilers that generate steam which is used in wood-drying kilns and to  
21 produce electricity. The electricity is used to power the sawmill operations and sold for a profit  
22 by SPI. During all relevant times, SPI operated power plants at the following locations:

23 Railroad Avenue in Loyalton, California (Loyalton Facility.)

24 1445 North Highway 65, Lincoln, California (Lincoln Facility)

25 Sunkist Drive, Susanville California (Susanville Facility)

26 1538 Lee Road, Quincy, California (Quincy Facility)

27 9. During all relevant times, the Loyalton, Lincoln, Susanville, and Quincy Facilities  
28 were subject to federal, state and local laws, orders, and permits. SPI violated those laws, orders,

1 and permits at each facility, as alleged below. As a result of these violations, SPI gained an  
2 economic benefit including, but not limited to, avoiding costs necessary to achieve and maintain  
3 compliance and earning profits that would not have been made but for the violations.

4 10. SPI signed two agreements to toll the statute of limitations applicable to the  
5 violations alleged in this complaint from May 1, 2003 until July 22, 2004.

6 **1<sup>st</sup> CAUSE OF ACTION [STATEWIDE]**  
7 **INJUNCTION**

8 11. The preceding paragraphs are re-alleged as though fully set forth herein.

9 12. California Government Code section 12607 provides, “[T]he Attorney General  
10 may maintain an action for equitable relief in the name of the People of the State of California  
11 against any person for the protection of the natural resources of the state from pollution,  
12 impairment, or destruction.”

13 13. Pursuant to Health & Safety Code section 41513, the People are entitled to, and  
14 seek, preliminary and permanent injunctive relief enjoining SPI from committing further  
15 violations. Pursuant to the express terms of Health & Safety Code section 41513, the People are  
16 not required to allege facts necessary to show, or tending to show, the lack of an adequate  
17 remedy at law or to show, or tending to show, irreparable damage or loss.

18 14. SPI has demonstrated an almost continuous pattern of violating state law and  
19 district orders, rules, and regulations at many of its facilities, creating a threat to air quality in  
20 California.

21 15. In order to protect state natural resources, the Attorney General is entitled to an  
22 order requiring defendant to undertake any work necessary to prevent further harm to air quality.  
23 Such work must be performed in conformance with applicable law and under the supervision of  
24 all appropriate regulatory authorities, including but not limited to the ARB and the Placer  
25 County Air Pollution Control District (Placer Air District). In light of the widespread pattern of  
26 violations, the Court should appoint a monitor, at SPI’s expense, to supervise SPI power plants,  
27 to take all actions necessary to ensure that SPI minimizes emissions, and to report to the Court  
28 on a quarterly basis.

16. Pursuant to Health & Safety Code section 41513, the People are entitled to, and

1 seek, permanent injunctive relief enjoining SPI from committing further violations. Pursuant to  
2 the express terms of Health & Safety Code section 41513, the People are not required to allege  
3 facts necessary to show, or tending to show, the lack of an adequate remedy at law or to show, or  
4 tending to show, irreparable damage or loss.

5 **2<sup>nd</sup> CAUSE OF ACTION [LINCOLN]**  
6 **CIVIL PENALTIES FOR FAILURE**  
7 **TO MINIMIZE AIR POLLUTANT EMISSIONS**

8 17. The preceding paragraphs are re-alleged as though fully set forth herein.

9 18. Condition 11 of the Authority to Construct and Temporary Permit to Operate  
10 #AC99-32 issued by the Placer Air District on November 19, 1999 (“Lincoln Temporary Permit  
11 to Operate”) requires that the NOx Out Urea Injection System be maintained and operated  
12 whenever wood-waste boilers nos. 1 and 2 are operating. Condition 7 of the Permit to Operate  
13 issued August 10, 2000 by the Placer Air District (“Lincoln Permit to Operate”) requires that all  
14 equipment, facilities and systems installed or used to achieve compliance with the terms and  
15 conditions of that permit be maintained in good working order and operated as efficiently as  
16 possible to minimize air pollutant emissions. The NOx Out Urea Injection System is used to  
17 minimize air pollutant emissions and to achieve compliance with the terms and conditions of  
18 those permits.

19 19. SPI violated condition 11 of the Lincoln Temporary Permit to Operate and  
20 condition 7 of the Lincoln Permit to Operate by either failing to operate its NOx Out Urea  
21 Injection System at the Lincoln Facility, or by failing to operate the system efficiently to  
22 minimize air pollutant emissions. Since approximately November 1999, SPI either failed to  
23 operate the NOx Out Urea Injection System at the Lincoln Facility, operated it without all  
24 required urea injectors in place, or operated it in an ineffective manner. In March, 2001, SPI  
25 admitted that it failed to operate the NOx Out Urea Injection System as required by the Lincoln  
26 Temporary Permit to Operate and the Lincoln Permit to Operate. In addition, on June 19, 2003,  
27 and September 17, 2003, Placer Air District inspectors inspected the Lincoln Facility and, on  
28 both occasions, observed that the NOx Out Urea Injection System was operating without all  
required urea injectors in place.

1 20. Before March 15, 2001, the People did not possess information that could have  
2 led them to discover any sooner that the NOx Out Urea Injection System had not been operated  
3 or had not been operated efficiently to minimize emissions since November 1999.

4 21. SPI violated Condition 7 of the Lincoln Permit to Operate by failing to operate  
5 the number two (2) field of the electrostatic precipitator (ESP) for wood-waste boilers nos.1 and  
6 2. Placer Air District inspectors discovered that the number two (2) field of the ESP for wood-  
7 waste boilers nos.1 and 2 did not operate from on or about December 4, 2001, through December  
8 15, 2001. According to a SPI employee, the number two (2) field had an electrical problem.  
9 The ESP is a unit permitted under the Lincoln Permit to Operate and is installed and used to  
10 achieve compliance with the terms and conditions of that permit.

11 22. Pursuant to Health & Safety Code section 42402, subdivision (b)(1), SPI is  
12 strictly liable for civil penalties in an amount of up to \$10,000 per day for each violation of  
13 condition 11 of the Lincoln Temporary Permit to Operate and condition 7 of the Lincoln Permit  
14 to Operate.

15 **3<sup>rd</sup> CAUSE OF ACTION [LINCOLN]**  
16 **CIVIL PENALTIES FOR EMITTING EXCESSIVE NO<sub>x</sub>**

17 23. The preceding paragraphs are re-alleged as though fully set forth herein.

18 24. Condition 1 of the Lincoln Temporary Permit to Operate and condition 8 of the  
19 Lincoln Permit to Operate, prohibit the discharge of air contaminants to the atmosphere in excess  
20 of applicable emission limits set forth in those permits. The emission limits for the air  
21 contaminant NO<sub>x</sub> are set forth in conditions 15.C. and 13 of the Lincoln Temporary Permit to  
22 Operate and the Lincoln Permit to Operate, respectively. The emission limits are: (a) the more  
23 stringent of 46 pounds per hour or 115 parts per million corrected to 12% carbon dioxide, over a  
24 three hour period; (three-hour limit) and (b) the more stringent of 40 pounds per hour or 100  
25 parts per million corrected to 12% carbon dioxide, over a twenty-four hour period (24-hour  
26 limit).

27 25. SPI violated the three-hour limit on at least 413 occasions on 180 different days  
28 after January 1, 2000.

1           26. SPI violated the 24-hour limit on at least 69 occasions on 69 different days after  
2 January 1, 2000.

3           27. SPI willfully and intentionally emitted levels of NOx in excess of the limitations  
4 described above. On or about November 1, 1999, SPI willfully and intentionally disabled its  
5 NOx Out Urea Injection System at the Lincoln Facility. The NOx Out Urea Injection System is  
6 equipment that eliminates, reduces, or controls the emission of NOx to the atmosphere.  
7 Beginning approximately November 1, 1999, NOx Out Urea Injection System at the Lincoln  
8 Facility was not operated or was not operated efficiently to minimize NOx emissions. Beginning  
9 November 1, 1999, SPI intentionally failed to operate the NOx Out Urea Injection System at the  
10 Lincoln Facility or operated it without the urea injection pumps or any or all required urea  
11 injectors in place. In addition, from approximately June 1999 through March 2001, SPI  
12 manipulated its Continuous Emission Monitoring System (“CEMS”) in order to hide the fact that  
13 it was emitting NOx at levels in excess of such limits.

14           28. SPI knew or should have known that it was emitting air contaminants at levels in  
15 excess of the NOx limits since its own CEMS data showed a multitude of violations over a  
16 period of three years. SPI’s failure to review its own CEMS data, detect the 482 emissions that  
17 exceeded the NOx limits, and take corrective action was knowing, and intentional.

18           29. Despite an earlier request, SPI did not provide relevant raw CEMS data to the  
19 People until August 30, 2001, and September 20, 2001. Within the applicable three-year  
20 limitation period SPI signed a tolling agreement, and this action was timely filed thereafter.

21           30. Pursuant to Health and Safety Code section 42402.3, subdivision (a), SPI is liable  
22 for civil penalties of up to \$75,000 per day for each violation of conditions 1 and 15.C. of the  
23 Lincoln Temporary Permit to Operate and conditions 8 and 13 of the Lincoln Permit to Operate.

24           31. In accordance with the proof at trial, alternatively, each and every violation set  
25 forth in this cause of action constitutes a:

26           (a) violation for which SPI is strictly liable for a civil penalty of up to \$1,000 or  
27 \$10,000 per day for each violation pursuant to Health & Safety Code section 42402, subdivisions  
28 (a) or (b)(1);

1 (b) negligent emission of an air contaminant, for which SPI is liable for a civil penalty  
2 of up to \$25,000 per day for each violation pursuant to Health & Safety Code section 42402.1;  
3 or

4 (c) knowing emission of an air contaminant, for which SPI failed to take corrective  
5 action within a reasonable period of time under the circumstances, and for which SPI is liable for  
6 a civil penalty of up to \$40,000 per day for each violation pursuant to Health & Safety Code  
7 section 42402.2.

8 **4<sup>th</sup> CAUSE OF ACTION [LINCOLN]**  
9 **CIVIL PENALTIES FOR EXCESS OPACITY**

10 32. The preceding paragraphs are re-alleged as though fully set forth herein.

11 33. Condition 1 of the Lincoln Temporary Permit to Operate and Condition 8 of the  
12 Lincoln Permit to Operate prohibit the discharge of air contaminants to the atmosphere in excess  
13 of applicable emission limits set forth in those permits. Rule 202, Regulation 2 of the Placer Air  
14 District Rules and conditions 15.a. and 25 of the Lincoln Temporary Permit to Operate and the  
15 Lincoln Permit to Operate, respectively, prohibit the discharge into the atmosphere from any  
16 single source of emission, any air contaminant for a period or periods aggregating more than  
17 three (3) minutes in any one (1) hour which is as dark or darker in shade as that designated as  
18 No. 1 on the Ringelmann Chart (20% opacity).

19 34. SPI violated Rule 202, Regulation 2 of the Placer Air District Rules and either  
20 condition 15.a. of the Lincoln Temporary Permit to Operate or condition 25 of the Lincoln  
21 Permit to Operate, in that data recorded by its Continuous Opacity Monitoring System  
22 (“COMS”) shows that beginning January 1, 2000, SPI discharged air contaminants from the  
23 Lincoln Facility into the atmosphere that were as dark or darker in shade as that designated as  
24 No. 1 on the Ringelmann Chart (20% opacity), for a period or periods aggregating more than  
25 three (3) minutes in any one (1) hour, on at least 168 occasions on 52 different days. SPI knew  
26 or should have known that it was discharging air contaminants in excess of the opacity limits  
27 since its own CEMS data showed a multitude of violations over a period of more than three  
28 years. SPI failed to take corrective action.



1           35. Despite an earlier request, SPI did not provide the People with relevant COMS  
2 data until February 11, 2002. Within the applicable three year limitations period, SPI signed the  
3 tolling agreements. Before receiving and reviewing the raw COMS data, the People did not  
4 possess information that could have led them to discover any sooner that SPI was discharging air  
5 contaminants in excess of the opacity limits.

6           36. Pursuant to Health & Safety Code section 42402.1, subdivision (a), SPI is liable  
7 for civil penalties of up to \$25,000 per day for each violation of rule 202, regulation 2 of the  
8 Placer Air District Rules, condition 15.a. of the Lincoln Temporary Permit to Operate, or  
9 condition 25 of the Lincoln Permit to Operate.

10           37. In accordance with the proof at trial, alternatively, each and every violation set  
11 forth in this cause of action constitutes a:

12           (a) violation for which SPI is strictly liable for a civil penalty of up to \$1,000 or  
13 \$10,000 per day for each violation pursuant to Health & Safety Code section 42402, subdivisions  
14 (a) or (b)(1);

15           (b) knowing emission of an air contaminant as to which SPI failed to take corrective  
16 action within a reasonable period of time under the circumstances, and for which SPI is liable for  
17 a civil penalty of up to \$40,000 per day for each violation pursuant to Health & Safety Code  
18 section 42402.2; or

19           (c) willful and intentional emission of an air contaminant, for which SPI is liable for a  
20 civil penalty of up to \$75,000 per day for each violation pursuant to Health & Safety Code  
21 section 42402.3.

22   **5<sup>th</sup> CAUSE OF ACTION [LINCOLN]**  
23   **CIVIL PENALTIES FOR EXCESSIVE CARBON MONOXIDE EMISSIONS**

24           38. The preceding paragraphs are re-alleged as though fully set forth herein.

25           39. Condition 1 of the Lincoln Temporary Permit to Operate prohibits the discharge  
26 of air contaminants to the atmosphere in excess of applicable emission limits set forth in that  
27 permit. The emission limits for the air contaminant carbon monoxide in condition 15.C. of the  
28 Lincoln Temporary Permit to Operate is: a) the more stringent of 360 pounds per hour or 1500  
parts per million corrected to 12% carbon dioxide, over an eight (8) hour period; and b) the more

1 stringent of 240 pounds per hour or 1000 parts per million corrected to 12% carbon dioxide, over  
2 a 24 hour period.

3 40. SPI violated conditions 1 and 15.C. of the Lincoln Temporary Permit to Operate  
4 by discharging carbon monoxide into the atmosphere from the Lincoln Facility at levels in  
5 excess of the more stringent of 360 pounds per hour or 1500 parts per million corrected to 12%  
6 carbon dioxide over an eight hour period. Data recorded by SPI's CEMS show that during the  
7 period  
8 January 3, 2000 through September 28, 2000, SPI discharged carbon monoxide in excess of this  
9 limit on at least 44 occasions on 38 different days.

10 41. SPI violated conditions 1 and 15.C. of the Lincoln Temporary Permit to Operate  
11 by discharging carbon monoxide into the atmosphere from the Lincoln Facility at levels in  
12 excess of the more stringent of 240 pounds per hour or 1000 parts per million corrected to 12%  
13 carbon dioxide, over a 24 hour period. Data recorded by SPI's CEMS show that during the  
14 period January 3, 2000 through September 28, 2000, SPI discharged carbon monoxide in excess  
15 of this limit on at least 48 occasions on 48 different days.

16 42. From approximately June 1999 through March 2001, SPI manipulated its CEMS  
17 in order to hide the fact that it was emitting carbon monoxide in excess of the emission limits  
18 stated in its permit. Thus, SPI knowingly discharged carbon monoxide in violation of its permit.  
19 SPI knew or should have known that it was emitting air contaminants in excess of the carbon  
20 monoxide limits since its own CEMS data showed a multitude of violations over a period of nine  
21 months. SPI failed to take corrective action.

22 43. Despite an earlier request, SPI did not provide relevant raw CEMS data to the  
23 People until August 30, 2001, and September 20, 2001. Within the applicable three-year  
24 limitation period SPI signed a tolling agreement, and this action was timely filed thereafter.

25 44. Pursuant to Health & Safety Code section 42402.2, subdivision (a), SPI is liable  
26 for civil penalties of up to \$40,000 per day for each violation of conditions 1 and 15.C. of the  
27 Lincoln Temporary Permit to Operate.

28 45. In accordance with the proof at trial, alternatively, each and every violation set

1 forth in this cause of action constitutes a:

2 (a) violation for which SPI is strictly liable for a civil penalty of up to \$1,000 or  
3 \$10,000 per day for each violation pursuant to Health & Safety Code section 42402, subdivisions  
4 (a) or (b)(1);

5 (b) negligent emission of an air contaminant, for which SPI is liable for a civil penalty  
6 of up to \$25,000 per day for each violation pursuant to Health & Safety Code section 42402.1;  
7 or

8 (c) willful and intentional emission of an air contaminant, for which SPI is liable for a  
9 civil penalty of up to \$75,000 per day for each violation pursuant to Health & Safety Code  
10 section 42402.3.

11 **6<sup>th</sup> CAUSE OF ACTION [LINCOLN]**  
12 **DISCHARGING EXCESS PM-10**

13 46. The preceding paragraphs are re-alleged as though fully set forth herein.

14 47. Condition 1 of the Lincoln Temporary Permit to Operate prohibits the discharge  
15 of air contaminants to the atmosphere in excess of applicable emission limits set forth in that  
16 permit. The emission limit for the air contaminant particulate matter (PM-10) set forth in  
17 condition 15.C. of the Lincoln Temporary Permit to Operate is the more stringent of 7.25 pounds  
18 per hour or .015 grains per dry standard cubic foot of gas corrected to 12% carbon dioxide.

19 48. SPI violated conditions 1 and 15.C. of the Lincoln Temporary Permit to Operate  
20 on two separate occasions on June 29, 2000, by exceeding the applicable emission limits for PM-  
21 10 at the Lincoln Facility.

22 49. Condition 8 of the Lincoln Permit to Operate prohibits the discharge of air  
23 contaminants to the atmosphere in excess of applicable emission limits set forth in that permit.  
24 The emission limit for PM-10 set forth in condition 23 of the Lincoln Permit to Operate is .012  
25 grains per dry standard cubic foot of gas corrected to 12% carbon dioxide.

26 50. On or about May 16 and 17, 2001, SPI violated conditions 8 and 23 of the  
27 Lincoln Permit to Operate by exceeding applicable emission limits for PM-10 at the Lincoln  
28 Facility.



1           55. SPI violated section 301, rule 501, regulation 5 of the Placer Air District Rules  
2 and Conditions 6 and 11 of the Lincoln Temporary Permit to Operate by disabling its NOx Out  
3 Urea Injection System at the Lincoln Facility without obtaining authorization from the Placer  
4 County Air Pollution Control Officer. In approximately November 1999, SPI removed urea  
5 injectors from its NOx Out Urea Injection System at the Lincoln Facility without obtaining  
6 authorization from the Placer County Air Pollution Control Officer. Subsequent to the removal  
7 of the injectors, the urea metering pumps in the system were disconnected without authorization.  
8 The NOx Out Urea Injection System that was disabled at the Lincoln Facility was equipment  
9 that eliminated, reduced or controlled the issuance of NOx, an air contaminant.

10           56. Before March 15, 2001, the People did not possess information that could have  
11 led them to discover any sooner that the NOx Out Urea Injection System was disabled in  
12 November 1999.

13           57. SPI violated section 301, rule 501, regulation 5 of the Placer Air District Rules  
14 and condition 5 of the Lincoln Permit to Operate by altering its Ash Removal System for wood-  
15 waste boilers nos. 1 and 2 at the Lincoln Facility without obtaining authorization from the Placer  
16 County Air Pollution Control Officer. On or about March 7, 2001 and April 2, 2001, ARB Air  
17 Pollution Specialists and an inspector from the Placer Air District inspected the Lincoln Facility  
18 and observed that the Ash Removal System had been disconnected. The Ash Removal System  
19 for wood-waste boilers nos. 1 and 2 that was disconnected at the Lincoln Facility was equipment  
20 that eliminated, reduced or controlled the issuance of air contaminants.

21           58. SPI violated section 301, rule 501, regulation 5 of the Placer Air District Rules  
22 and condition 5 of the Lincoln Permit to Operate by replacing its disconnected Ash Removal  
23 System for wood-waste boilers nos. 1 and 2 without authorization from the Placer County Air  
24 Pollution Control Officer. During an inspection on December 4, 2001, Placer Air District  
25 inspectors learned that SPI installed a new Ash Removal System and began operating it on  
26 November 12, 2001. The new Ash Removal System for wood-waste boilers nos. 1 and 2 that  
27 was built at the Lincoln Facility is equipment that eliminates, reduces or controls the issuance of  
28 air contaminants.

1 59. Pursuant to Health & Safety Code section 42402, subdivision (b)(1), SPI is  
2 strictly liable for civil penalties in an amount of up to \$10,000 per day for each violation of  
3 Section 301 of rule 501, regulation 5 of the Placer Air District Rules, condition 6 of the Lincoln  
4 Temporary Permit to Operate, condition 7 of the Lincoln Temporary Permit to Operate, and  
5 condition 5 of the Lincoln Permit to Operate.

6 **8<sup>th</sup> CAUSE OF ACTION [LINCOLN]**  
7 **NUISANCE**

8 60. The preceding paragraphs are re-alleged as though fully set forth herein.

9 61. Rule 205, regulation 2 of the Placer Air District Rules and Health & Safety Code  
10 section 41700 prohibit a person from discharging quantities of air contaminants or other material  
11 which cause injury, detriment, nuisance or annoyance to any considerable number of persons or  
12 to the public, or which endanger the comfort, repose, health or safety of any such persons or the  
13 public, or which cause, or have a natural tendency to cause, injury or damage to business or  
14 property.

15 62. SPI violated rule 205, regulation 2 of the Placer Air District Rules and Health &  
16 Safety Code section 41700 by discharging air contaminants or other material that caused a  
17 nuisance. SPI repeatedly discharged ash material and soot from the Lincoln Facility, which was  
18 deposited on surfaces, including private automobiles, located outside residences next to the  
19 Lincoln Facility. The dust and soot endangered the comfort, repose, health or safety of the  
20 community near the Lincoln Facility and had a natural tendency to cause, injury or damage to  
21 business or property.

22 63. Pursuant to Health & Safety Code section 42402, subdivision (b)(1), SPI is  
23 strictly liable for civil penalties in an amount of up to \$10,000 per day for each violation of rule  
24 205, regulation 2 of the Placer Air District Rules and Health & Safety Code section 41700.

25 **9<sup>th</sup> CAUSE OF ACTION [LINCOLN]**  
26 **CIVIL PENALTIES FOR FALSIFYING**  
27 **DOCUMENTS WITH THE INTENT TO DECEIVE**

28 64. The preceding paragraphs are re-alleged as though fully set forth herein.

65. On a daily basis from approximately June 1999 through March 2001, while acting

1 within the scope of their employment, certain SPI employees manipulated SPI's CEMS, causing  
2 it to record air emission levels for NOx and carbon monoxide that were lower than the actual  
3 emission levels for those air contaminants. Those employees manipulated the CEMS in an  
4 attempt to generate data showing that the air emission levels were within the emission level  
5 limits imposed by SPI's facility permits issued pursuant to state and federal law. Those  
6 employees knew that the recorded data was to be submitted to the Placer Air District. During  
7 this time, SPI managers had already been told of the CEMs manipulation.

8           66. Nevertheless, SPI prepared and submitted daily and quarterly emissions reports  
9 and quarterly monitoring system performance reports, as required by Section 502.3 of Rule 233  
10 of the Placer Air District Rules, containing the false data to the Placer County Air Pollution  
11 Control Officer. SPI, through its employees, prepared and submitted these reports to the Placer  
12 County Air Pollution Control Officer in order to deceive the Officer by making him believe that  
13 the emission levels were lower than the actual emissions. Until March, 2001, the People did not  
14 know that the data generated by the CEMS were inaccurate.

15           67. Health & Safety Code section 42402.4 provides that any person who knowingly  
16 and with intent to deceive, falsifies any document required to be kept pursuant to any provision  
17 of Nonvehicular Air Pollution Control Laws, or any rule, regulation, permit, or order of the ARB  
18 or of an air pollution control district, is liable for a civil penalty of up to \$35,000.

19           68. SPI violated Health & Safety Code section 42402.4 in that it knowingly, with  
20 intent to deceive, created daily and quarterly reports for the period June 1999 through March  
21 2001 that were required to be kept and were submitted to the Placer County Air Pollution  
22 Control Officer during and after that period.

23           69. Before March 15, 2001, the People did not possess information that could have  
24 led them to discover any sooner that the quarterly reports for the period June 1999 through  
25 March 2001 were false.

26           70. In violation of Health & Safety Code section 42402.4, SPI, through its employees,  
27 knowingly, and with the intent to deceive, prepared and submitted the false data that was  
28 generated as a result of the manipulation of the CEMS for the period of approximately June 1999

1 through March 2001. Therefore, SPI is liable for civil penalties in an amount of up to thirty-five  
2 thousand dollars for each day as to which false records were created.

3 **10<sup>th</sup> CAUSE OF ACTION [LINCOLN]**  
4 **CIVIL PENALTIES FOR FALSIFYING REQUIRED SOURCE TESTS**

5 71. The preceding paragraphs are re-alleged as though fully set forth herein.

6 72. SPI is required to perform an annual performance source test that verified the  
7 accuracy of the CEMS, and measured particulate matter, which was not continuously monitored.  
8 The permit requires the tests to “be conducted based on representative performance” of the  
9 facility, using methods set forth in the Code of Federal Regulations. Those detailed methods are  
10 “designed to aid in the representative measurement of pollutant emissions” from stationary  
11 sources. (40 C.F.R. part 60, app. A-1, Method 1, ¶ 2.1.) The performance source tests required  
12 in the permit, reflect a federal requirement that such testing be conducted “based on  
13 representative performance of the affected facility.” (40 C.F.R. § 60.8 (c).)

14 73. On or about four occasions, SPI intentionally skewed the results of performance  
15 source tests at Lincoln by using especially clean-burning fuel that was not representative of  
16 normal operations.

17 74. As part of each of those deceptive performance source tests, SPI created a false,  
18 intentionally deceptive document for which SPI is liable for a civil penalty of \$35,000 pursuant  
19 to Health & Safety Code section 42402.4.

20 75. Alternatively, each of those deceptive performance source tests constitutes a  
21 violation of the Lincoln Permit to Operate, for which SPI is strictly liable for a civil penalty of  
22 up to \$10,000 per day for each violation pursuant to Health & Saf. Code section 42402,  
23 subdivision (b)(1).

24 **11<sup>th</sup> CAUSE OF ACTION [LINCOLN]**  
25 **CIVIL PENALTIES FOR FAILURE TO MAINTAIN AND**  
26 **IMPLEMENT AN OPERATION AND MAINTENANCE PLAN**

27 76. The preceding paragraphs are re-alleged as though fully set forth herein.

28 77. Section 503 of Rule 501, Regulation 5 of the Placer Air District Rules requires  
permitted facilities to maintain operation and maintenance plans for all add-on capture and  
control equipment, and to provide them to the Placer County Air Pollution Control Officer upon



1 request.

2 78. SPI violated section 503 of Rule 502, Regulation 5 of the Placer Air District  
3 Rules by not maintaining operation and maintenance plans for its add-on capture and control  
4 equipment. On or about March 7, 2001, ARB Air Pollution Specialists and an inspector from the  
5 Placer Air District inspected the Lincoln Facility and discovered that SPI did not maintain such  
6 plans. When asked to provide the inspectors with a copy of SPI's operation and maintenance  
7 plans for its add-on capture and control equipment, SPI employees responded that the plans do  
8 not exist.

9 79. Pursuant to Health and Safety Code section 42402, subdivision (a), SPI is strictly  
10 liable for a civil penalty of up to \$1,000 per day for each violation of section 503 of Rule 502,  
11 Regulation 5 of the Placer Air District Rules.

12 **12<sup>th</sup> CAUSE OF ACTION [LINCOLN]**  
13 **CIVIL PENALTIES FOR FAILING TO FILE**  
14 **ACCURATE QUARTERLY REPORTS**

15 80. The preceding paragraphs are re-alleged as though fully set forth herein.

16 81. Section 502.3 of Rule 233, Regulation 2 of the Placer Air District Rules requires  
17 that quarterly reports be submitted to the Placer County Air Pollution Control Officer. Those  
18 reports must comply with 40 Code of Federal Regulations (C.F.R.) part 60, § 60.7(c) and (d). 40  
19 C.F.R. § 60.7(c)(1) requires the quarterly reports to include information showing the magnitude  
20 of excess emissions; and 40 C.F.R. § 60.7(c)(4) requires the reports to state affirmatively that no  
21 excess emissions have occurred or the CEMS have not been inoperative, repaired, or adjusted,  
22 when such is the case.

23 82. SPI violated section 502.3, Rule 233, Regulation 2 of the Placer Air District Rules  
24 by submitting quarterly reports for the period January 2000 through December 2001 that did not  
25 comply with the required federal regulations. Quarterly reports submitted by SPI for the year  
26 2000 did not identify when excess emissions occurred or did not occur.

27 83. SPI, through its employees who were acting within the scope of their authority,  
28 violated Health & Safety Code section 42303.5 in that it submitted inaccurate  
quarterly reports for the period April 2001 through December 2001. These quarterly reports,

1 which were signed by SPI employees certifying that they were accurate, include summaries that  
2 understated the number of days during the reporting period on which SPI emitted NOx and  
3 carbon monoxide in excess of limits set forth in SPI's facility permits.

4 84. Pursuant to Health & Safety Code section 42402, subdivision (b)(1), SPI is  
5 strictly liable for civil penalties in an amount of up to \$10,000 per day for each inaccurate  
6 quarterly report.

7 **13<sup>th</sup> CAUSE OF ACTION [LINCOLN]**  
8 **CIVIL PENALTIES FOR VIOLATING VARIANCE #01-07**

9 85. The preceding paragraphs are re-alleged as though fully set forth herein.

10 86. Variance #01-07 issued by the Placer County Air Pollution Control District  
11 Hearing Board on June 12, 2001, required SPI to perform a relative accuracy test after the  
12 installation of its new NOx monitor by no later than September 12, 2001. Variance #01-07 is an  
13 order of the Placer Air District.

14 87. SPI violated a condition of Variance #01-07 by failing to perform the required  
15 relative accuracy test of its new NOx monitor by September 12, 2001. The relative accuracy test  
16 was not performed until December 4, 2001.

17 88. Pursuant to Health & Safety Code section 42402, subdivision (b)(1), subdivision  
18 (b)(1), SPI is strictly liable for civil penalties in an amount of up to \$10,000 per day for each  
19 violation of a condition of Variance #01-07.

20 **14<sup>th</sup> CAUSE OF ACTION [LINCOLN]**  
21 **CIVIL PENALTIES FOR FAILING TO PROMPTLY**  
22 **REPORT VIOLATIONS**

23 89. The preceding paragraphs are re-alleged as though fully set forth herein.

24 90. Health & Safety Code section 42706 requires that any violation of any emission  
25 standard to which a stationary source is required to conform, as indicated by the records of the  
26 monitoring device, shall be reported to the local air pollution control district 96 hours after such  
27 occurrence. SPI violated Health & Safety Code section 42706 by failing to report violations of  
28 emission standards to the Placer Air District within 96 hours.

91. Data recorded by SPI's CEMS show that beginning January 3, 2000, SPI violated

1 its emission standards by discharging air contaminants from the Lincoln Facility into the  
2 atmosphere in excess of permissible opacity limits on at least 168 occasions on 52 different days.  
3 SPI failed to report 80 of these occurrences to the Placer Air District. The Lincoln Facility is a  
4 stationary source that is required to conform to these opacity emission standards.

5 92. Data recorded by SPI's CEMS show that beginning January 3, 2000, SPI violated  
6 its emission standards by emitting carbon monoxide into the atmosphere from the Lincoln  
7 Facility at levels in excess of permissible emission limits on at least 92 occasions on 86 different  
8 days. SPI failed to report 68 of these occurrences to the Placer Air District . The Lincoln  
9 Facility is a stationary source that is required to conform to these carbon monoxide emission  
10 standards.

11 93. Data recorded by SPI's CEMS show that, beginning January 1, 2000, SPI violated  
12 its emission standards by emitting NOx into the atmosphere from the Lincoln Facility at levels in  
13 excess of permissible emission limits on at least 482 occasions on 249 different days. SPI failed  
14 to report 384 of these occurrences to the Placer Air District. The Lincoln Facility is a stationary  
15 source that is required to conform to these NOx emission standards.

16 94. Despite an earlier request, SPI did not provide relevant CEMS opacity data to the  
17 People until February 11, 2002. Other relevant raw CEMS data was provided on August 30,  
18 2001, and September 20, 2001. Within the applicable three-year limitations period, SPI signed  
19 the tolling agreements, and this action was timely filed thereafter.

20 95. Pursuant to Health & Safety Code section 42402, subdivision (b)(1), SPI is  
21 strictly liable for civil penalties in an amount of up to \$10,000 per day for each violation of  
22 Health & Safety Code section 42706.

23 **15<sup>th</sup> CAUSE OF ACTION [SUSANVILLE]**  
24 **CIVIL PENALTIES FOR EXCESS OPACITY**  
**[By the Attorney General in the name of the People of the State of California]**

25 96. The preceding paragraphs are re-alleged as though fully set forth herein.

26 97. Health & Safety Code section 41701, rule 4:0 of the Lassen County Air Pollution  
27 Control District ("Lassen Air District") Rules, and paragraph VI.A.1. of the Major Operating  
28 Permit issued by the Lassen Air District ("Susanville Operating Permit") prohibit the discharge

1 into the atmosphere, from any source, any air contaminant for a period or periods aggregating  
2 more than three minutes in any one hour which is as dark or darker in shade as that designated as  
3 No. 2 on the Ringelmann Chart (40% opacity).

4           98. SPI violated Health & Safety Code section 41701, rule 4:0 of the Lassen Air  
5 District Rules, and paragraph VI.A.1. of the Susanville Operating Permit by discharging air  
6 contaminants into the atmosphere that were as dark or darker in shade as that designated as No. 2  
7 on the Ringelmann Chart (40% opacity) for a period or periods aggregating more than three (3)  
8 minutes in any one (1) hour. Data recorded by SPI's CEMS and reports submitted by SPI to the  
9 Lassen Air District show that, beginning May 1, 1999, such discharges occurred on at least 72  
10 occasions on 45 different days. These discharges did not occur during the normal startup or  
11 shutdown of the boiler. Pursuant to paragraph VIII.A.2. of the Susanville Operating Permit,  
12 each of these discharges constitutes a violation of the permit.

13           99. SPI knew that it was discharging air contaminants into the atmosphere in excess  
14 of the 40% opacity limit on the days set forth above, since on at least 103 occasions during the  
15 period May 14, 1999, through March 7, 2001, it reported instances where it was discharging air  
16 contaminants in excess of the opacity limit. SPI knew that the facility had opacity problems and  
17 that its ESP was damaged. SPI waited an unreasonable period of time before taking necessary  
18 corrective action to repair the ESP. SPI continued to operate its boiler even though it knew that  
19 it been repeatedly discharging air contaminants in excess of the opacity limit and despite the fact  
20 that its emission control device was damaged. SPI failed to take any action to prevent the  
21 discharge of air contaminants at excessive levels until April 18, 2001. SPI's failure to take  
22 corrective action was knowing and intentional.

23           100. On May 31, 2000, SPI provided the ARB with records from its boiler stack  
24 opacity monitor that cover the period May 1, 1999, through April 22, 2000. Records covering  
25 other periods of time were received on December 18, 2000, March 9, 2001, and April 19, 2001.  
26 Before the ARB received the boiler stack opacity monitor records on these dates, the Attorney  
27 General did not possess information that could have led him to discover any sooner that SPI  
28 discharged air contaminants in excess of the opacity limits as alleged above. This cause of

1 action is timely.

2 101. Pursuant to Health & Saf. Code section 42402.2, subdivision (a), SPI is liable for  
3 civil penalties of up to \$40,000 per day for each violation of Health & Saf. Code section 41701,  
4 rule 4:0 of the Lassen Air District Rules, and paragraph VI.A.1. of the Susanville Operating  
5 Permit.

6 102. In accordance with the proof at trial, alternatively, each and every violation set  
7 forth in this cause of action constitutes a:

8 (a) violation for which SPI is strictly liable for a civil penalty of up to \$1,000 or  
9 \$10,000 per day for each violation pursuant to Health & Saf. Code section 42402, subdivisions  
10 (a) or (b)(1);

11 (b) negligent emission of an air contaminant, for which SPI is liable for a civil  
12 penalty of up to \$25,000 per day for each violation pursuant to Health & Saf. Code section  
13 42402.1; or

14 (c) willful and intentional emission of an air contaminant, for which SPI is liable for  
15 a civil penalty of up to \$75,000 per day for each violation pursuant to Health & Saf. Code  
16 section 42402.3.

17 **16<sup>th</sup> CAUSE OF ACTION [SUSANVILLE]**  
18 **CIVIL PENALTIES FOR ILLEGAL USE OF DIESEL GENERATORS**  
19 **[By the Attorney General in the name of the People of the State of California]**

20 103. The preceding paragraphs are re-alleged as though fully set forth herein.

21 104. Section V.C. of the Susanville Operating Permit limits operation of the “Diesel  
22 Standby Generator” to “supply supplemental power to the facility for startup and internal load.  
23 Use of the generator for the purpose of providing supplemental peak power generation when the  
24 boiler is operational is prohibited.”

25 105. During each summer in June, July, and August, SPI routinely operated the diesel  
26 generators during the hours of PG&E’s peak electrical demand to provide supplemental peak  
27 power generation at times when the boiler was operational.

28 106. Each day on which SPI used the standby generators in that fashion constitute a  
separate, intentional violation of the permit, making SPI liable for a civil penalty of \$75,000 per

1 day pursuant to Health & Saf. Code section 42402.3.

2 107. Alternatively, each violation set forth in this cause of action constitutes a:

3 (a) violation for which SPI is strictly liable for a civil penalty of up to \$1,000 or  
4 \$10,000 per day for each violation pursuant to Health & Saf. Code section 42402, subdivisions  
5 (a) or (b)(1);

6 (b) negligent emission of an air contaminant, for which SPI is liable for a civil  
7 penalty of up to \$25,000 per day for each violation pursuant to Health & Saf. Code section

8 42402.1; or (c) a violation SPI was aware of but took no corrective action, for which  
9 SPI is liable for civil penalties of up to \$40,000 per day pursuant to Health & Saf. Code section  
10 42402.2, subdivision (a).

11 **17<sup>th</sup> CAUSE OF ACTION [SUSANVILLE]**  
12 **CIVIL PENALTIES FOR FALSIFYING REQUIRED SOURCE TESTS**  
13 **[By the Attorney General in the name of the People of the State of California]**

14 108. The preceding paragraphs are re-alleged as though fully set forth herein.

15 109. SPI's Susanville Operating Permit, section VII.C., required SPI to perform an  
16 annual performance source test that verified the accuracy of the CEMS, and measured particulate  
17 matter, which was not continuously monitored. The permit requires the tests to "be conducted  
18 based on representative performance" of the facility, using methods set forth in the Code of  
19 Federal Regulations. Those detailed methods are "designed to aid in the representative  
20 measurement of pollutant emissions" from stationary sources. (40 C.F.R. part 60, app. A-1,  
21 Method 1, ¶ 2.1.) The performance source tests required in the permit, reflect a federal  
22 requirement that such testing be conducted "based on representative performance of the affected  
23 facility." (40 C.F.R. § 60.8 (c).)

24 110. On at least four occasions, SPI intentionally skewed the results of performance  
25 source tests at Susanville by using especially clean-burning fuel that was not representative of  
26 normal operations, and substituting different boiler operators than those normally scheduled.

27 111. As part of each of those deceptive performance source tests, SPI created a false,  
28 intentionally deceptive document for which SPI is liable for a civil penalty of thirty-five  
thousand dollars pursuant to Health & Safety Code section 42402.4.

1 112. Alternatively, each of those deceptive performance source tests constitutes a  
2 violation of the Susanville Operating Permit, for which SPI is strictly liable for a civil penalty of  
3 up to \$10,000 per day for each violation pursuant to Health & Saf. Code section 42402,  
4 subdivision (b)(1).

5 **18<sup>th</sup> CAUSE OF ACTION [SUSANVILLE]**  
6 **CIVIL PENALTIES FOR FAILURE TO PROMPTLY REPORT VIOLATIONS**  
7 **[By the Attorney General in the name of the People of the State of California]**

8 113. The preceding paragraphs are re-alleged as though fully set forth herein.

9 114. Health & Safety Code section 42706 requires that any violation of any emission  
10 standard to which a stationary source is required to conform, as indicated by the records of the  
11 monitoring device, shall be reported to the local air pollution control district within 96 hours  
12 after such occurrence.

13 115. SPI violated Health & Safety Code section 42706 by failing to report violations  
14 of emission standards to the Lassen Air District within 96 hours. Data recorded by SPI's CEMS  
15 and reports submitted by SPI to the Lassen Air District show that, beginning May 1, 1999, SPI  
16 violated applicable emission standards by discharging air contaminants into the atmosphere from  
17 the Susanville Facility at levels in excess of the opacity limit described above. SPI failed to  
18 report at least 46 of these occasions on 16 different days to the Lassen Air District within 96  
19 hours as required by Health & Safety Code section 42706. The Susanville Facility is a stationary  
20 source that must conform to the opacity emission standards.

21 116. On May 31, 2000, SPI provided the ARB with records from its boiler stack  
22 opacity monitor that cover the period May 1, 1999, through April 22, 2000. Records covering  
23 other periods of time were received on December 18, 2000, March 9, 2001, and April 19, 2001.  
24 Before the ARB received the boiler stack opacity monitor records on these dates, the Attorney  
25 General did not possess information that could have led him to discover any sooner that SPI was  
26 discharging air contaminants in excess of the opacity limits. Since the Attorney General did not  
27 know that there were excess emissions during this time period, the Attorney General could not  
28 have known that SPI had systematically failed to report these excess emissions. Even with the  
exercise of reasonable diligence, the Attorney General could not have discovered these facts any

1 sooner.

2 117. Pursuant to Health & Saf. Code section 42402, subdivision (b)(1), SPI is strictly  
3 liable for civil penalties in an amount of up to \$10,000 per day for each violation of Health &  
4 Saf. Code section 42706.

5 **19<sup>th</sup> CAUSE OF ACTION [SUSANVILLE]**  
6 **CIVIL PENALTIES FOR FAILURE TO OPERATE ESP**  
7 **[By the Attorney General in the name of the People of the State of California]**

8 118. The preceding paragraphs are re-alleged as though fully set forth herein.

9 119. Paragraph V.A.3. of the Susanville Operating Permit requires that SPI's ESP be  
10 continuously operated during any fuel combustion (except during start up) for the control of  
11 particulate emissions from the boiler. Paragraph I.M. of the Susanville Operating Permit  
12 requires that the equipment, facilities and systems installed or used to achieve compliance with  
13 the terms and conditions of the permit shall at all times, to the extent practicable, including  
14 periods of startup, shutdown, and malfunction, be maintained in a manner consistent with good  
15 air pollution control practices.

16 120. SPI violated paragraphs V.A.3. and I.M. of the Susanville Operating Permit by  
17 operating its Susanville Facility boiler when the ESP was damaged. On or about October 2000,  
18 the ESP overheated and was damaged. Nevertheless, for six (6) months, SPI continued to  
19 operate its boiler despite the fact that its ESP was damaged. Operating the boiler with a damaged  
20 ESP for six (6) months was not consistent with good air pollution control practices. The ESP is  
21 equipment that is used to control the levels of emission of air contaminants and did not perform  
22 this function properly while it was damaged. By operating its boiler while the ESP was  
23 damaged, SPI discharged air contaminants in violation of applicable emission limits established  
24 by the Susanville Operating Permit, Lassen Air District Rules, and state law.

25 121. Pursuant to Health & Safety Code section 42402, subdivision (b)(1), SPI is  
26 strictly liable for civil penalties in an amount of up to \$10,000 per day for each violation of  
27 paragraphs V.A.3. and I.M. of the Susanville Operating Permit.

28 122. In accordance with the proof at trial, alternatively, each and every violation set  
forth in this cause of action constitutes a:



1 (a) violation for which SPI is strictly liable for a civil penalty of up to \$1,000 per day  
2 for each violation pursuant to Health & Safety Code section 42402, subdivision (a);

3 (b) negligent emission of an air contaminant, for which SPI is liable for a civil  
4 penalty of up to \$25,000 per day for each violation pursuant to Health & Safety Code section  
5 42402.1;

6 (c) knowing emission of an air contaminant, for which SPI failed to take corrective  
7 action within a reasonable period of time under the circumstances, and for which SPI is liable for  
8 a civil penalty of up to \$40,000 per day for each violation pursuant to Health & Safety Code  
9 section 42402.2; or

10 (d) willful and intentional emission of an air contaminant, for which SPI is liable for  
11 a civil penalty of up to \$75,000 per day for each violation pursuant to Health & Safety Code  
12 section 42402.3.

13 **20<sup>th</sup> CAUSE OF ACTION [SUSANVILLE]**  
14 **CIVIL PENALTIES FOR FAILURE TO SUBMIT REQUIRED REPORTS**  
15 **[By the Attorney General in the name of the People of the State of California]**

16 123. The preceding paragraphs are re-alleged as though fully set forth herein.

17 124. Paragraph VIII.A.1. of the Susanville Operating Permit requires that SPI submit  
18 a written report of excess emissions every calendar quarter.

19 125. SPI violated paragraph VIII.A.1. of the Susanville Operating Permit by failing to  
20 submit a written quarterly report to the Lassen Air District for the following quarters: the 2<sup>nd</sup>,  
21 3<sup>rd</sup>, 4<sup>th</sup> quarters of 2000; and the 1<sup>st</sup> quarter of 2001. SPI discharged air contaminants in excess  
22 of the opacity limits imposed by state law, the Susanville Operating Permit, and the Lassen Air  
23 District Rules during this time period. The files maintained by the Lassen Air District for the  
24 Susanville Facility indicate that such reports were not submitted.

25 126. Paragraph VIII.D. of the Susanville Operating Permit requires that SPI submit a  
26 compliance certification to the Lassen County Air Pollution Control Officer on an annual basis.

27 127. SPI violated paragraph VIII.D. of the Susanville Operating Permit by failing to  
28 submit a compliance certification to the Lassen County Air Pollution Control Officer for the year  
2000.

1           128. Pursuant to Health & Saf. Code section 42402, subdivision (b)(1), SPI is strictly  
2 liable for civil penalties in an amount of up to \$10,000 for each missing or late report.

3                                   **21<sup>st</sup> CAUSE OF ACTION [QUINCY]**  
4                                   **CIVIL PENALTIES FOR EXCESS NO<sub>x</sub> EMISSIONS**  
5                                   **[By the Attorney General in the name of the People of the State of California]**

6           129. The preceding paragraphs are re-alleged as though fully set forth herein.

7           130. Condition 28 of Permit to Operate No. 98-21-04 (“Quincy Permit to Operate”)  
8 issued by the Northern Sierra Air Quality Management District (“Northern Sierra Air District”)  
9 prohibits the discharge of air contaminants to the atmosphere from the Zurn boiler in excess of  
10 applicable emission limits set forth in that permit. The emission limits for the air contaminant  
11 NO<sub>x</sub> in condition 28.B. the Quincy Permit to Operate was 56.4 pounds per hour or 115 parts per  
12 million, averaged over 3 hours, corrected to 12% carbon dioxide.

13           131. SPI violated condition 28 by discharging NO<sub>x</sub> into the atmosphere from the Zurn  
14 boiler at the Quincy Facility at levels in excess of 56.4 pounds per hour or 115 parts per million,  
15 corrected to 12% carbon dioxide, averaged over 3 hours. On at least 31 occasions on 3 different  
16 days beginning May 1, 2000, the Zurn boiler at the Quincy Facility discharged NO<sub>x</sub> at levels in  
17 excess of the emission limits set forth in the Quincy Operating Permit. SPI knew or should have  
18 known that it was emitting NO<sub>x</sub> at levels in excess of the emission limits; SPI failed to take  
19 corrective action.

20           132. Pursuant to Health & Saf. Code section 42402.2, subdivision (a), SPI is liable for  
21 civil penalties of up to \$40,000 per day for each violation of Condition 28.

22           133. In accordance with the proof at trial, alternatively, each and every violation set  
23 forth in this cause of action constitutes a:

24           (a) violation for which SPI is strictly liable for a civil penalty of up to \$1,000 or  
25 \$10,000 per day for each violation pursuant to Health & Saf. Code section 42402, subdivisions  
26 (a) or (b)(1);

27           (b) negligent emission of an air contaminant, for which SPI is liable for a civil  
28 penalty of up to \$25,000 per day for each violation pursuant to Health & Saf. Code section  
42402.1; or

1 ///

2 ///

3 (c) willful and intentional emission of an air contaminant, for which SPI is liable for  
4 a civil penalty of up to \$75,000 per day for each violation pursuant to Health & Saf. Code  
5 section 42402.3.

6 **22<sup>nd</sup> CAUSE OF ACTION [QUINCY]**  
7 **CIVIL PENALTIES FOR EXCESS OPACITY**  
8 **[By the Attorney General in the name of the People of the State of California]**

9 134. The preceding paragraphs are re-alleged as though fully set forth herein.

10 135. Rule 202 of the Northern Sierra Air District Rules, and condition 15 of the  
11 Quincy Permit to Operate prohibit the discharge into the atmosphere, from any source, any air  
12 contaminant for a period or periods aggregating more than three minutes in any one hour which  
13 is as dark or darker in shade as that designated as No. 1 on the Ringelmann Chart (20% opacity).

14 136. SPI violated Rule 202 and condition 15 by discharging air contaminants into the  
15 atmosphere that were as dark or darker in shade as that designated as No. 1 on the Ringelmann  
16 Chart (20% opacity) for a period or periods aggregating more than three (3) minutes in any one  
17 (1) hour. Data recorded by SPI's CEMS and reports submitted by SPI to the Northern Sierra Air  
18 District show that, beginning about July 8, 1999 such discharges occurred on numerous days.  
19 These discharges did not occur during the normal startup or shutdown of the boiler. Each of  
20 these discharges constitutes a violation of the permit.

21 137. SPI knew that it was discharging air contaminants into the atmosphere in excess  
22 of the 20% opacity limit on the days set forth above, and in fact reported numerous instances  
23 where it was discharging air contaminants in excess of the opacity limit. SPI knew that the  
24 facility had opacity problems, but SPI waited an unreasonable period of time before taking  
25 necessary corrective action. SPI's failure to take corrective action was knowing and intentional.

26 138. Pursuant to Health & Saf. Code section 42402.2, subdivision (a), SPI is liable for  
27 civil penalties of up to \$40,000 per day for each violation of the Quincy Permit to Operate.

28 139. In accordance with the proof at trial, alternatively, each and every violation set  
forth in this cause of action constitutes a:

1 (a) violation for which SPI is strictly liable for a civil penalty of up to \$1,000 or  
2 \$10,000 per day for each violation pursuant to Health & Saf. Code section 42402, subdivisions  
3 (a) or (b)(1);

4 (b) negligent emission of an air contaminant, for which SPI is liable for a civil  
5 penalty of up to \$25,000 per day for each violation pursuant to Health & Saf. Code section  
6 42402.1; or (c) willful and intentional emission of an air contaminant, for which SPI is  
7 liable for a civil penalty of up to \$75,000 per day for each violation pursuant to Health & Saf.  
8 Code section 42402.3.

9 **23<sup>rd</sup> CAUSE OF ACTION [QUINCY]**  
10 **CIVIL PENALTIES FOR EXCESS CARBON MONOXIDE EMISSIONS**  
11 **[By the Attorney General in the name of the People of the State of California]**

12 140. The preceding paragraphs are re-alleged as though fully set forth herein.

13 141. Condition 28 of the Authority to Construct No. 98-21-04 (“Quincy Authority to  
14 Construct”) and the Quincy Permit to Operate prohibits the discharge of air contaminants to the  
15 atmosphere from the Zurn boiler in excess of applicable emission limits set forth in that permit.  
16 The emission limits for the air contaminant carbon monoxide in condition 28.F. of the Quincy  
17 Authority to Construct and the Quincy Permit to Operate is 282.0 pounds per hour or 963.0 parts  
per million, averaged over three (3) hours, corrected to 12% carbon dioxide.

18 142. SPI violated condition 28 by discharging carbon monoxide into the atmosphere  
19 from the Quincy Facility at levels in excess of 282.0 pounds per hour or 963.0 parts per million,  
20 corrected to 12% carbon dioxide, averaged over three (3) hours. On at least 25 occasions on 10  
21 different days beginning May 1, 2000, the Quincy Facility discharged carbon monoxide at levels  
22 in excess of the emission limits set forth in the Quincy Authority to Construct and the Quincy  
23 Operating Permit. SPI knew or should have known that it was emitting carbon monoxide at  
24 levels in excess of the emission limits since its own quarterly reports revealed such violations.

25 143. Pursuant to Health & Saf. Code section 42402.2, subdivision (a), SPI is liable  
26 for civil penalties of up to \$40,000 per day for each violation of Condition 28.

27 144. In accordance with the proof at trial, alternatively, each and every violation set  
28 forth in this cause of action constitutes a:

1 (a) violation for which SPI is strictly liable for a civil penalty of up to \$1,000 or  
2 \$10,000 per day for each violation pursuant to Health & Saf. Code section 42402, subdivisions  
3 (a) or (b)(1);

4 (b) negligent emission of an air contaminant, for which SPI is liable for a civil  
5 penalty of up to \$25,000 per day for each violation pursuant to Health & Saf. Code section  
6 42402.1; or

7 (c) willful and intentional emission of an air contaminant, for which SPI is liable for  
8 a civil penalty of up to \$75,000 per day for each violation pursuant to Health & Saf. Code  
9 section 42402.3.

10 **24<sup>th</sup> CAUSE OF ACTION [QUINCY]**  
11 **CIVIL PENALTIES FOR FALSIFYING REQUIRED SOURCE TESTS**  
12 **[By the Attorney General in the name of the People of the State of California]**

13 145. The preceding paragraphs are re-alleged as though fully set forth herein.

14 146. SPI is required to perform an annual performance source test to verify the  
15 accuracy of the CEMS, and to measure particulate matter, which was not continuously  
16 monitored. The tests must “be conducted based on representative performance” of the facility,  
17 using methods set forth in the Code of Federal Regulations. Those detailed methods are  
18 “designed to aid in the representative measurement of pollutant emissions” from stationary  
19 sources. (40 C.F.R. part 60, app. A-1, Method 1, ¶ 2.1.) The performance source tests required  
20 in the permit, reflect a federal requirement that such testing be conducted “based on  
21 representative performance of the affected facility.” (40 C.F.R. § 60.8 (c).)

22 147. On at least four occasions, SPI intentionally skewed the results of performance  
23 source tests at Quincy by using especially clean-burning fuel that was not representative of  
24 normal operations, and substituting different boiler operators than those normally scheduled.

25 148. As part of each of those deceptive performance source tests, SPI created a false,  
26 intentionally-deceptive document for which SPI is liable for a civil penalty of thirty-five  
27 thousand dollars pursuant to Health & Safety Code section 42402.4.

28 149. Alternatively, each of those deceptive performance source tests constitutes a  
violation of the Quincy Permit to Operate, for which SPI is strictly liable for a civil penalty of

1 up to \$10,000 per day for each violation pursuant to Health & Saf. Code section 42402,  
2 subdivision (b)(1).

3 **25<sup>th</sup> CAUSE OF ACTION [QUINCY]**  
4 **CIVIL PENALTIES FOR FAILURE TO PROMPTLY REPORT VIOLATIONS**  
5 **[By the Attorney General in the name of the People of the State of California]**

6 150. The preceding paragraphs are re-alleged as though fully set forth herein.

7 151. Health & Safety Code section 42706 and condition 29 of the Quincy Authority to  
8 Construct and the Quincy Permit to Operate require that any violation of any emission standard  
9 to which a stationary source is required to conform, as indicated by the records of the monitoring  
10 device, shall be reported to the local air pollution control district within 96 hours after such  
11 occurrence.

12 152. SPI violated Health & Safety Code section 42706 and condition 29 of the Quincy  
13 Authority to Construct and the Quincy Permit to Operate by violating emission standards for  
14 carbon monoxide and/or NOx and failing to report these violations to the Northern Sierra Air  
15 District within 96 hours. The Quincy Facility is a stationary source that is required to conform to  
16 these emission standards for carbon monoxide and NOx. SPI failed to report these occurrences  
17 within 96 hours.

18 153. Pursuant to Health & Saf. Code section 42402, subdivision (b)(1), SPI is strictly  
19 liable for civil penalties in an amount of up to \$10,000 per day for each violation of Health &  
20 Saf. Code section 42706.

21 **26<sup>th</sup> CAUSE OF ACTION [LOYALTON]**  
22 **CIVIL PENALTIES FOR EXCESS NO<sub>x</sub> EMISSIONS**  
23 **[By the Attorney General in the name of the People of the State of California]**

24 154. The preceding paragraphs are re-alleged as though fully set forth herein.

25 155. Condition 26.B. of Permit No. 88-19-01 issued by the Northern Sierra Air  
26 District to SPI for the Loyalton Facility (Loyalton District Permit to Operate) prohibits the  
27 discharge of NOx to the atmosphere at levels in excess of 50.75 pounds per hour (averaged over  
28 eight hours) or 80 parts per million volume corrected to 12% carbon dioxide (averaged over  
eight hours), at 88,597 dry standard cubic foot per minute (dscfm) exhaust gas. Condition IX.E.  
of the PSD Permit No. NSR 4-4-4, SAC 87-01 issued by the United States Environmental

1 Protection Agency to SPI for the Loyalton Facility (Loyalton PSD Permit to Operate) prohibits  
2 the discharge of NO<sub>x</sub> to the atmosphere at levels in excess of the more stringent 36.9 pounds per  
3 hour or 0.110 pounds per million British Thermal Unit (MMBtu), averaged over three (3) hours.  
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5           156. Condition 4 of the Loyalton District Permit to Operate requires SPI to comply at  
6 all times with all applicable Northern Sierra Air District, state, and federal laws, rules,  
7 regulations, and permit conditions governing air pollution. Condition 4 also provides that  
8 whenever there is a conflict between the Northern Sierra Air District, state and/or federal laws,  
9 rules, regulations, or permit conditions, the more stringent shall apply. There is a conflict  
10 between the Loyalton District Permit to Operate and the Loyalton PSD Permit to Operate with  
11 respect to the maximum emission levels for NO<sub>x</sub>, and the Loyalton PSD Permit to Operate  
12 establishes the more stringent condition.

13           157. SPI violated condition 4 of the Loyalton District Permit to Operate and condition  
14 IX.E. of the Loyalton PSD Permit to Operate by discharging NO<sub>x</sub> into the atmosphere from the  
15 Loyalton Facility at levels in excess of the more stringent 36.9 pounds per hour or 0.110 pounds  
16 per MMBtu, averaged over three (3) hours on at least two (2) instances beginning October 22,  
17 2001. SPI knew or should have known that it was emitting NO<sub>x</sub> at levels in excess of the  
18 emission limits. SPI did not take effective corrective action.

19           158. Pursuant to Health & Saf. Code section 42402.2, subdivision (a), SPI is liable for  
20 civil penalties of up to \$40,000 per day for each violation of the Loyalton PSD Permit.

21           159. In accordance with the proof at trial, alternatively, each and every violation set  
22 forth in this cause of action constitutes a:

23           (a) violation for which SPI is strictly liable for a civil penalty of up to \$1,000 or  
24 \$10,000 per day for each violation pursuant to Health & Saf. Code section 42402, subdivisions  
25 (a) or (b)(1) or;

26           (b) negligent emission of an air contaminant, for which SPI is liable for a civil  
27 penalty of up to \$25,000 per day for each violation pursuant to Health & Saf. Code section  
28 42402.1.





1 a civil penalty of up to \$75,000 per day for each violation pursuant to Health & Saf. Code  
2 section 42402.3.

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1                                   **28<sup>th</sup> CAUSE OF ACTION [LOYALTON]**  
2                                   **CIVIL PENALTIES FOR FAILURE TO PROMPTLY REPORT VIOLATIONS**  
3                                   **[By the Attorney General in the name of the People of the State of California]**

4                                   165. The preceding paragraphs are re-alleged as though fully set forth herein.

5                                   166. Health & Safety Code section 42706 and condition 27 of the Loyalton District  
6 Permit to Operate require any violation of any emission standard to which a stationary source is  
7 required to conform, as indicated by the records of the monitoring device, to be reported to the  
8 local air pollution control district within 96 hours after such occurrence.

9                                   167. SPI violated Health & Safety Code section 42706 and condition 27 of the  
10 Loyalton District Permit to Operate by violating the emission standards for opacity, carbon  
11 monoxide, and/or NOx, as described above, and failing to report these violations to the Northern  
12 Sierra Air District within 96 hours.

13                                   168. Pursuant to Health & Saf. Code section 42402, subdivision (b)(1), SPI is strictly  
14 liable for civil penalties in an amount of up to \$10,000 per day for each violation of Health &  
15 Saf. Code section 42706.

16                                   **29<sup>th</sup> CAUSE OF ACTION [LOYALTON]**  
17                                   **CIVIL PENALTIES FOR USING FORBIDDEN FUEL**  
18                                   **[By the Attorney General in the name of the People of the State of California]**

19                                   169. The preceding paragraphs are re-alleged as though fully set forth herein.

20                                   170. Condition IX.D.2. of the Loyalton PSD Permit to Operate prohibits using treated  
21 wood as a fuel by the Loyalton Facility and condition 29 of the Loyalton District Permit to  
22 Operate prohibits using fuel other than non-chemically treated wood, free of plastic, non-wood  
23 construction materials, and resin binders in the combustion unit at the Loyalton Facility.

24                                   171. SPI violated condition IX.D.2. of the Loyalton PSD Permit to Operate and  
25 condition 29 of the Loyalton District Permit to Operate by using treated wood as fuel for the  
26 combustion unit. On or about January 29, 2002, an ARB Air Pollution Specialist conducted an  
27 inspection of the Loyalton Facility and observed treated wood material in the wood storage piles  
28 that provide the fuel for the combustion unit. The treated wood consisted of pieces of wafer  
board that had resin (urea formaldehyde) impregnated in it.

                                  172. Pursuant to Health & Saf. Code section 42402, subdivision (b)(1), SPI is strictly

1 liable for civil penalties in an amount of up to \$10,000 per day for each violation of condition  
2 IX.D.2. of the Loyalton PSD Permit to Operate and condition 29 of the Loyalton District Permit  
3 to Operate.

4 **30<sup>th</sup> CAUSE OF ACTION [STATEWIDE]**  
5 **INJUNCTION, CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF**  
6 **FOR UNLAWFUL BUSINESS PRACTICES**  
7 **[By the Attorney General in the name of the People of the State of California]**

8 173. The preceding paragraphs are re-alleged as though fully set forth herein.

9 174. SPI, beginning at a time unknown to the Attorney General, engaged in the  
10 following acts or practices in violation of Bus. & Prof. Code section 17200 et seq.:

11 (A) SPI violated Condition 7 of the Lincoln Permit to Operate by failing to minimize  
12 emissions.

13 (B) SPI violated conditions 1 and 15.C. of the Lincoln Temporary Permit to Operate  
14 and conditions 8 and 13 of the Lincoln Permit to Operate by emitting NOx from the Lincoln  
15 Facility in excess of emission limits set forth in those permits.

16 (C) SPI violated Rule 202, Regulation 2 of the Placer Air District Rules and either  
17 condition 15.a. of the Lincoln Temporary Permit to Operate or condition 25 of the Lincoln  
18 Permit to Operate, by discharging air contaminants into the atmosphere from the Lincoln Facility  
19 that were as dark or darker in shade as that designated as No. 1 on the Ringelmann Chart (20%  
20 opacity) for a period or periods aggregating more than three (3) minutes in any one (1) hour.

21 (D) SPI violated conditions 1 and 15.C. of the Lincoln Temporary Permit to Operate  
22 by emitting carbon monoxide from the Lincoln Facility in excess of emission limits set forth in  
23 that permit.

24 (E) SPI violated conditions 1 and 15.C. of the Lincoln Temporary Permit to Operate  
25 by emitting excess PM-10.

26 (F) SPI violated Health & Safety Code section 42402.4 by knowingly, and with intent  
27 to deceive, falsifying documents required to be kept pursuant to a rule, regulation, permit, or  
28 order of the Placer Air District.

(G) SPI violated Health & Safety Code section 42402.4 by knowingly, and with intent

1 to deceive, conducting and reporting false performance source tests at Lincoln.

2 (H) SPI violated the PSD Permit for Lincoln by emitting CO in excess of the  
3 maximum allowed 24-hour average [1000 ppm or 240 lbs/hr] on numerous days in 2000, 2001,  
4 2002, and 2003.

5 (I) SPI violated the PSD Permit for Lincoln by emitting CO in excess of the  
6 maximum allowed 8-hour average [1500 ppm or 360 lbs/hr] on numerous days in 2000, 2001,  
7 2002, and 2003.

8 (J) SPI violated Health & Safety Code section 41701, rule 4:0 of the Lassen Air  
9 District Rules, and paragraph VI.A.1. of the Susanville Operating Permit by discharging air  
10 contaminants into the atmosphere from the Susanville Facility that were as dark or darker in  
11 shade as that designated as No. 2 on the Ringelmann Chart (40% opacity) for a period or periods  
12 aggregating more than three (3) minutes in any one (1) hour.

13 (K) SPI violated paragraphs V.A.3. and I.M. of the Susanville Operating Permit by  
14 operating its Susanville Facility boiler when the ESP was damaged.

15 (L) SPI violated paragraph V.C. of the Susanville Operating Permit by operating its  
16 standby diesel generators to provide supplemental peak power when the boiler was operational.

17 (M) SPI violated condition 28 of the Quincy Permit to Operate by emitting carbon  
18 monoxide from the Quincy Facility in excess of emission limits set forth in that permit.

19 (N) SPI violated condition 28 of the Quincy Permit to Operate by emitting NOx from  
20 the Quincy Facility in excess of emission limits set forth in that permit.

21 (O) SPI violated Northern Sierra Air District Rule 202 and condition 15 of the Quincy  
22 Permit to Operate by discharging air contaminants into the atmosphere from the Quincy Facility  
23 that were as dark or darker in shade as that designated as No. 1 on the Ringelmann Chart (20%  
24 opacity) for a period or periods aggregating more than three (3) minutes in any one (1) hour.

25 (P) SPI violated Health & Safety Code section 42402.4 by knowingly, and with intent  
26 to deceive, conducting and reporting false performance source tests at Quincy.

27 (Q) SPI violated condition IX.E. of the Loyalton PSD Permit to Operate by emitting  
28 NOx from the Loyalton Facility in excess of emission limits set forth in that permit.

1 (R) SPI violated condition IX.F. of the Loyalton PSD Permit to Operate by emitting  
2 carbon monoxide from the Loyalton Facility in excess of emission limits set forth in that permit.

3 (S) SPI violated condition IX.D.2. of the Loyalton PSD Permit to Operate and  
4 condition 29 of the Loyalton District Permit to Operate by using treated wood as fuel for the  
5 combustion unit.

6 175. Each incident of the acts described in the preceding paragraph constitutes a  
7 separate violation. SPI is liable for civil penalties in an amount of up to two thousand and five  
8 hundred dollars (\$2,500) for each violation. Each violation occurred within four years of SPI's  
9 tolling agreements.

10 176. Penalties under the Unfair Competition Law (UCL) (Bus. & Prof. Code § 17000  
11 et seq.) are cumulative to penalties under most other laws, including Health & Safety Code  
12 sections 42402.1, 42402.2, 42402.3, 42402.4. But penalties for violations of 42402 may be  
13 collected under that statute, or the UCL, but not both. (*See* Health & Saf. Code § 42400.6.) In  
14 the event a monetary penalty for violations pursuant to Health & Safety Code section 42402, in  
15 the alternative, the Attorney General seeks a monetary penalty for those violations pursuant to  
16 the UCL.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, the People pray for judgment against the defendant, and each of them,  
19 as follows:

20 1. Pursuant to Government Code section 12607, Health & Safety Code section 41513 and  
21 Business & Professions Code section 17203, restrain and enjoin SPI and its officers, directors,  
22 principals, agents, representatives, employees, successors, and assignees, and all persons,  
23 corporations and other entities acting by, through, under or on behalf of SPI, or acting in concert  
24 or participation with SPI, from directly or indirectly engaging in or performing any of the acts  
25 alleged in the causes of action set forth in this complaint;

26 2. Grant such other and further relief as the nature of this case may require and this court  
27 deems proper to fully and successfully dissipate the effect of the unlawful business acts and  
28 practices complained of in this complaint including appointing a monitor, at SPI's expense, to

1 supervise and report on SPI's compliance with the Court's judgment;

2 3. Grant civil penalties against SPI pursuant to Health & Safety Code sections 42402,  
3 42402.1, 42402.2, 42402.3, and 42402.4, in an amount according to proof, for violations alleged  
4 in this complaint;

5 4. Grant civil penalties against SPI pursuant to Business & Professions Code section  
6 17206, in an amount according to proof, for violations alleged in the 30<sup>th</sup> cause of action of this  
7 complaint;

8 5. Order disgorgement of all revenues and avoided costs attributable to power plant  
9 operations on days when it should not have been operating;

10 6. In the event this court does not impose a monetary penalty pursuant to Health & Safety  
11 Code section 42402 for violations alleged in this complaint, grant civil penalties against SPI for  
12 those violations pursuant to Business & Professions Code section 17206, in an amount according  
13 to proof;

14 7. Grant the People all costs of investigating and prosecuting the action, including expert  
15 fees.

16 8. Grant the Attorney General's costs and attorneys' fees pursuant to Code of Civil  
17 Procedure section 1021.8.

18 9. Grant such other and further relief as the court deems just and proper.

19

20 Dated: January 16, 2007.

21

Respectfully submitted,

22

BILL LOCKYER  
Attorney General of the State of California

23

*William N. Brieger*  
DRLH

24

25

WILLIAM N. BRIEGER  
Special Counsel to Public Rights  
Attorneys for Plaintiffs

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willtoc.wpd

1 **DECLARATION OF SERVICE**

2 Case Name: **People of the State of California v. Sierra Pacific Industries**

3 No.: **Placer County Superior Court Case No. SCV 17449**

4 I declare that I am employed in the County of Sacramento, California. I am over the age  
5 of 18 years and not a party to the within entitled cause: my business address is 1300 I Street,  
6 Sacramento, California 95814. I am readily familiar with the business practice, at my place of  
7 business, for the collection and processing of correspondence for mailing with the United States  
8 Postal Service. Correspondence so collected and processed is deposited with the postal service  
9 in the ordinary course of business on the same day on which it is placed for mailing.

10 On January 16, 2007, I served the following document: **SECOND AMENDED**  
11 **COMPLAINT FOR PENALTIES, INJUNCTION AND OTHER EQUITABLE RELIEF**  
12 on the parties in said action as follows:

13  
14 XX **(Electronic Mail)** by email, as shown below:

15 Schatterjee@mofocom

16 JLonden@mofocom

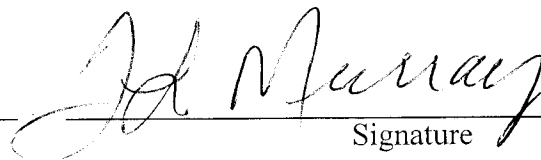
17  
18 XX **(REGULAR MAIL)** by placing a true copy thereof enclosed in a sealed envelope  
19 in the internal mail collection system, addressed as shown below:

20 Somnath Raj Chatterjee  
21 Morrison & Foerster LLP - San Francisco  
425 Market Street  
San Francisco, CA 94105-2482

22 I declare under penalty of perjury the foregoing is true and correct and that this  
23 declaration was executed on January 16, 2007, at Sacramento, California.

24  
25  
26  
27 TERRY L. MURRAY

Typed Name



Signature