

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-190882

**EXHIBIT TO
TESTIMONY OF**

David C. Gomez

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

*Montana DEQ vs. Talen Montana, LLC, Complaint & Application for Injunction,
dated November 25, 2019*

January 10, 2020

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MONTANA 16TH JUDICIAL DISTRICT COURT FOR ROSEBUD COUNTY

MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

vs.

TALEN MONTANA, LLC, a Delaware
Limited Liability Company,

Defendant.

a. Case No. DV-

Judge:

COMPLAINT & APPLICATION FOR INJUNCTION

Plaintiff Montana Department of Environmental Quality (Department) hereby alleges and complains against defendant Talen Montana, LLC (Talen), as follows:

II. PARTIES

1. Plaintiff is a department of the executive branch of state government, created and existing under § 2-15-3501, MCA.

2. Defendant Talen is a limited liability company organized in Delaware. It is a person as defined by § 75-2-103(15), MCA.

3. Talen operated, at all times relevant to this complaint, a facility in Colstrip, Rosebud County, Montana.

III. JURISDICTION AND VENUE

4. The Department is charged with the administration and enforcement of the Clean Air Act of Montana, codified at Title 75, chapter 2, parts 1-4, MCA. The Montana Board of Environmental Review is required by §§ 75-2-203, 211, and 217, MCA, to adopt, and has adopted, rules that provide for the establishment of ambient air quality standards, emission levels, and the issuance of construction and operating permits.

5. The Department is authorized by § 75-2-413, MCA, and Title 27, chapter 19, parts 1-4, MCA, to seek civil penalties from, and injunctions against, persons who violate the Clean Air Act of Montana, administrative rules adopted pursuant to it, or a permit issued under it.

6. Talen holds a Montana Air Quality Permit (MAQP), #0513-10, for the Colstrip facility, which consists of four electrical generating units (EGUs). This will be referred to as Colstrip. MAQP #0513-10 was issued pursuant to the Montana Clean Air Act at § 75-2-211, MCA, and ARM Title 17, chapter 8, subchapter 7. That facility also holds a Title V operating permit, #OP0513-14, which was issued under the Clean Air Act of Montana at § 75-2-217, MCA, and ARM Title 17, chapter 8, subchapter 12. During the period relevant to this action, Colstrip's Title V operating permit #OP0513-14 expired and a new permit became effective July 17, 2018; however, the provisions of the permit relevant to this action remained the same prior to and after July 17, 2018. The analogous federal law and regulations are found at Title V of the Federal Clean Air Act, 42 U.S.C. §§ 7661-7661f, and regulations found in 40 C.F.R. Part 70. Operating permits issued pursuant to ARM Title 17, chapter 8, subchapter 12, MCA, are commonly referred to as Title V operating permits, and are referred to as Title V operating permits in this complaint.

7. Because the Department is alleging that Talen violated the Clean Air Act of Montana, implementing administrative rules, and Title V operating permit #OP0513-14 at Colstrip, the Department is authorized to file this action, and this Court has jurisdiction to issue an injunction and assess penalties, under §§ 75-2- 413, MCA.

8. In a civil action brought under the Clean Air Act of Montana, a person found to have violated the Act or a rule, order, or permit adopted under it is subject to a civil penalty not to exceed \$10,000 per violation. Each day of violation constitutes a separate violation. Section 75-2- 413(1)(a), MCA.

9. Venue is proper in Rosebud County because the violations alleged in this complaint occurred in that county. § 75-2-413(2)(b), MCA.

IV. NATURE OF CLAIM

10. The Department alleges that Talen failed to operate its Colstrip facility in continuous compliance with an applicable emission standard and provided an improper certification of compliance with all conditions of an applicable regulation. The Department is seeking penalties of up to \$10,000 per day and injunctive relief under § 75-2-412 and 413, MCA.

V. CLAIMS FOR RELIEF

First Cause of Action -Operating While Out of Compliance with an Emission Standard

11. The Department realleges ¶¶ 1-10 and incorporates them into this cause of action as if fully set forth in it

12. The four electrical generating units (Units) at Colstrip are subject to 40 C.F.R. Part 63, Subpart UUUUU - National Emission Standards for Hazardous Air Pollutants: Coal- and Oil- Fired Electric Utility Steam Generating Units, also commonly referred to as the federal

Mercury and Air Toxics Standard (MATS). This subpart was incorporated by reference into ARM 17.8.302, and is administered by the Department under ARM Title 17, chapter 8, subchapter 3.

13. Section III.B.5 and III.C.15 of Talen's Title V Operating Permit #OP0513-14 require compliance with the MATS emission limits at all times except during periods of startup and shutdown.

14. Talen elected to demonstrate compliance with the MATS emission limits via emissions averaging of all four Units, as allowed for by MATS at 40 C.F.R. § 63.10009. Talen submitted a proposed emission averaging plan to the Department which was approved on November 17, 2015. Talen must calculate the weighted 30-boiler operating day rolling average emissions rate (WAER) in accordance with Equation 2a of MATS using data from all four units, as described at 40 C.F.R. § 63.10009(b)(2), which is incorporated into ARM 17.8.302. Talen has been utilizing this compliance strategy since demonstrating initial compliance on September 8, 2016.

15. The Department has determined, based on its review of the prescriptive rule language of MATS for how to utilize Equation 2a for demonstrating ongoing compliance, that each unit must independently contribute its emissions to the equation based on its preceding 30-boiler operating days and emission rate from its most recent test. 40 C.F.R. § 63.10009(2), as incorporated into ARM 17.8.302. MATS defines a boiler operating day as a 24-hour period that begins at midnight and ends the following midnight during which any fuel is combusted at any time in the unit, excluding startup periods or shutdown periods. It is not necessary for the fuel to be combusted the entire 24-hour period. 40 C.F.R. § 63.10042, as incorporated into ARM 17.8.302.

16. Sections III.B.5 and III.C.15 of Talen's Title V operating permit #OP0513-14 and 40 C.F.R. § 63.10009(e) require that the WAER for the facility must meet the emission limits contained in MATS at all times, except during periods of startup and shutdown.

17. Sections III.B.5 and III.C.15 of Talen's Title V operating permit #OP0513-14 describe the pollutant emission rates with which Talen must comply. These sections allow total filterable particulate matter (PM) to be monitored as a surrogate for non-mercury metals, which are hazardous air pollutants (HAP). Accordingly, Talen elected to utilize the corresponding PM emission limit to demonstrate compliance with the non-mercury metal HAP limit during its initial compliance demonstration on September 8, 2016. The weighted 30-boiler operating day rolling average PM emission rate for the facility is therefore subject to the PM emission limit of 0.030 pounds per million British thermal units (lbs/MMBtu). #OP0513-14, § III.C.15.a.

18. Talen's weighted 30-boiler operating day rolling average PM emission rate for the facility exceeded the PM emission limit when calculated using the results of emissions testing conducted on June 21, 2018 on Unit 3, as confirmed in the MATS semiannual report dated July 31, 2018 and the stack test report dated August 20, 2018. The weighted 30-boiler operating day rolling average PM emission rate on June 21, 2018 was calculated to be 0.035 lbs/MMBtu as a result of this emissions test, as confirmed by the data provided by Talen on September 17, 2018.

19. On June 26, 2018, Talen completed a PM emissions test on Unit 4 and the weighted 30-boiler operating day rolling average emission rate for the facility exceeded the applicable limit, as confirmed in the MATS semiannual report dated July 31, 2018 and the stack test report dated August 20, 2018. The weighted 30-boiler operating day rolling average PM emission rate for the facility on June 26, 2018 was calculated to be 0.041 lbs/MMBtu as a result of this emissions test, as confirmed by the data provided by Talen on September 17, 2018.

20. Talen received the emissions test results for both Units 3 and 4 on June 28, 2018. Unit 3 was shut down on June 28, 2018 and Unit 4 was shut down on June 29, 2018. Talen reported the issue to the Department in accordance with its Title V operating permit #OP0513-14.

21. On August 24, 2018, Talen provided a de minimis notification, in accordance with ARM 17.8.745(1)(b), for installation of scrubber flow distribution plates in the Unit 3 and 4 scrubbers. The scrubber flow distribution plates were designed to help balance the flow distribution to help reduce potential carryover of scrubber liquor droplets. By letter dated August 27, 2018, the Department confirmed its determination that the information submitted by Talen met the definition of de minimis under ARM 17.8.745 and that Talen's notification satisfied the requirements of ARM 17.8.745(1)(b) and (d).

22. In response to the Department's request for information dated August 31, 2018, Talen provided a response to the Department on September 17, 2018 describing its investigation into the cause of the deviation from compliance with the PM emission limit. The correspondence explained that Talen kept Unit 3 off-line from June 28 through July 8, 2018, and kept Unit 4 off-line from June 29 through July 17, 2018, to verify that operational procedures were followed and to conduct inspections and maintenance in several areas of operation, including the coal mills, boilers, ductwork, scrubbers, and stacks. Talen performed cleaning, adjustments, and repairs as needed to these inspected areas. Additionally, Talen brought in experts and conducted investigations into the following four main areas: a) the compliance test method; b) fuel quality; c) boiler combustion; and d) scrubber performance. While the investigation did not reveal an obvious single candidate as the root cause of the PM noncompliance, the provided information stated that flue gas flow through the mist eliminator

portions of the venturi scrubbers for Units 3 and 4 was not optimally balanced, despite meeting manufacturer specifications. This may have resulted in areas of higher flue gas flows and potential “carry-over” of droplets from the wet scrubbing process. These droplets contain solids that may contribute to PM emissions. Talen’s de minimis notification of installation of flow distribution plates, as described in ¶ 21 above, was designed to address this issue.

23. The Department received a final source test report on October 24, 2018 documenting the compliance testing performed on all four units for PM for the third quarter of 2018. Talen remained out of compliance with the PM emission limit until a PM emissions test on September 6, 2018, for Unit 4 brought the weighted-average emission rate into compliance with the limit. The weighted 30-boiler operating day rolling average PM emission rate for that date was calculated to be 0.030 lbs/MMBtu as a result of this emissions test.

24. Talen exceeded the PM emission limit from June 21, 2018, through September 5, 2018, a total of 77 consecutive days.

25. Unit 3 testing on September 11, 2018; Unit 2 testing on September 18, 2018; and Unit 1 testing on September 21, 2018 also resulted in calculation of the weighted-average emission rate that was in compliance with the MATS emission standard. Because the September 6, 2018 emission test on Unit 4 was conducted with a temporary flow distribution modification, the Department requested that Talen repeat the test when the final permanent flow distribution plates were installed for that unit. Talen performed this additional compliance test of Unit 4 on September 26, which resulted in calculation of a weighted-average emission rate that complied with the MATS emission standard. These emission rates confirm compliance with the weighted 30-boiler operating day rolling average PM emission limit.

26. The Colstrip facility is an affected source as defined and applied in 40 C.F.R. Part 63.

27. A person who operates an affected source that fails to comply with an applicable requirement of 40 C.F.R. Part 63 that is incorporated by reference into the Administrative Rules of Montana is liable for penalties not to exceed \$10,000 per day. Each day of violation is a separate violation. Section 75-2-413(1), MCA.

28. The Colstrip facility failed to comply with an applicable requirement of 40 C.F.R. Part 63 by exceeding the PM limit, as described in ¶ 17 above. for 77 days.

29. The failure to comply noted in ¶ 28 above violated ARM 17.8.342(1).

30. A person who violates that rule is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation is a separate violation. § 75-2-413(1)(a), MCA.

31. The Department is entitled to injunctive relief for the violations alleged in this claim.

32. Injunctive relief is authorized by Title 27, chapter 19, parts 1-4, MCA, and §§ 27-19-102 and 75-2-412(4), MCA.

Second Cause of Action- Failure to Appropriately Certify a Compliance Report

33. The Department realleges ¶¶ 1-32 and incorporates them into this cause of action as if fully set forth in it.

34. Talen's Title V operating permit #OP0513-14 requires that it submit reports to the Department on a semiannual basis that demonstrate the source's compliance with MATS during the previous semiannual period.

35. Talen's Title V operating permit #OP0513-14 requires that the semiannual reports include a certification by a responsible official of truth, accuracy, and completeness, pursuant to ARM 17.8.1207 and 1213(7)(a), (c) and (d).

36. Talen provided the Department with a semiannual MATS compliance report on July 31, 2018, which covered the period from January 1, 2018 to June 30, 2018. July 31, 2018 is the deadline required by 40 C.F.R. § 63.10031(b)(4). This report did not include a signature by a responsible official on the certification statement as required.

37. Talen provided a certification statement signed by a responsible official for the July 31, 2018 semiannual MATS compliance report on August 1, 2018. This certification statement identified that Talen had demonstrated continuous compliance with all of the applicable emission limits during the report period.

38. The July 31, 2018 semiannual MATS compliance report documented the deviation from continuous compliance with the PM emission limit beginning on June 21, 2018.

39. Because Talen had not been in continuous compliance with the applicable PM emission limit during the report period, the certification statement incorrectly asserted that Talen had complied with the requirement to maintain continuous compliance.

40. Upon initial review of the report, the Department verbally informed Talen of the improper assertion of continuous compliance that had been made in the certification statement.

41. On August 27, 2018, Talen provided the Department a revised, signed certification statement for the semiannual MATS compliance report. The revised statement indicated that Talen had maintained continuous compliance with the applicable emission limits with the exception of the period noted within the report. Until August 27, 2018, Talen did not provide the Department with a signed, accurate, and complete certification.

42. By failing to submit a signed, accurate certification on July 31, 2018, Talen violated ARM 17.8.1207 and its Title V operating permit required pursuant to ARM 17.8.1213(7)(a), (c) and (d) for one day.

43. A person who violates that rule or its permit issued under the Clean Air Act of Montana is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation is a separate violation. Section 75-2-413(1)(a), MCA.

44. Because the appropriate injunctive relief would be to require Talen to provide an appropriate certification that does not incorrectly assert that it demonstrated continuous compliance during the reporting period, and it has done so, no injunctive relief is being requested. Talen corrected the certification of continuous compliance submitted on August 1, 2018.

WHEREFORE, the Department requests this Court to enter judgment for it against Talen for penalties for the violations alleged above that occurred in the two years immediately preceding the filing of this complaint, and for injunctive relief for Claim 1, and for other appropriate relief.

Respectfully submitted November 25, 2019.

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL
QUALITY



By NORMAN J. MULLEN
Attorney for Department

MONTANA SIXTEENTH JUDICIAL DISTRICT COURT, ROSEBUD COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

TALEN MONTANA, LLC, a Delaware
Limited Liability Company,

Defendants.

Case No. DV-
Judge:

**STIPULATION FOR
CONSENT DECREE**

Plaintiff Montana Department of Environmental Quality (Department) and Defendant Talen Montana, LLC (Talen) hereby stipulate as follows concerning the remedies for the violations alleged in the Complaint in this action at Talen's Colstrip, Montana, facility:

I. PARTIES

1. Plaintiff is a department of the executive branch of state government, created and existing under § 2-15-3501, MCA.

2. Defendant Talen is a limited liability company organized in Delaware. It is a person as defined by § 75-2-103(15), MCA.

3. Talen operated, at all times relevant to the Complaint, a facility in Colstrip, Rosebud County, Montana.

II. JURISDICTION, VENUE AND GENERAL PROVISIONS

4. Venue is proper in Rosebud County because the violations alleged in the Complaint occurred in that county. § 75-2-4123(2)(b), MCA.
5. The Department is charged with the administration and enforcement of the Clean Air Act of Montana, codified at Title 75, chapter 2, parts 1-4, MCA. The Montana Board of Environmental Review is required by §§ 75-2-203, 211, and 217, MCA, to adopt, and has adopted, rules that provide for the establishment of ambient air quality standards, emission levels, and the issuance of construction and operating permits.
6. The Department is authorized by § 75-2-413, MCA, and Title 27, chapter 19, parts 1-4, MCA, to seek civil penalties from, and injunctions against, persons who violate the Clean Air Act of Montana, administrative rules adopted pursuant to it, or a permit issued under it.
7. Talen holds a Montana Air Quality Permit (MAQP), #0513-10, for the Colstrip facility, which consists of four electrical generating units (EGUs). This will be referred to as Colstrip. MAQP #0513-10 was issued pursuant to the Montana Clean Air Act at § 75-2-211, MCA, and ARM Title 17, chapter 8, subchapter 7. That facility also holds a Title V operating permit, #OP0513-14, which was issued under the Clean Air Act of Montana at § 75-2-217, MCA, and ARM Title 17, chapter 8, subchapter 12. During the period relevant to this action, Colstrip's Title V operating permit #OP0513-14 expired and a new permit became effective July 17, 2018; however, the provisions of the permit relevant to this action remained the same prior to and after July 17, 2018. The analogous federal law and regulations are found at Title V of the Federal Clean Air

Act, 42 U.S.C. §§ 7661-7661f, and regulations found in 40 C.F.R. Part 70. Operating permits issued pursuant to ARM Title 17, chapter 8, subchapter 12, MCA, are commonly referred to as Title V operating permits, and are referred to as Title V operating permits in this complaint.

8. This Consent Decree is entered into voluntarily between the Department and Talen pursuant to the authority vested in the State of Montana, acting by and through the Department, under the Act and rules adopted thereunder.

9. The Department and Talen agree that this Consent Decree has been negotiated at arm's length and in good faith. Actions undertaken by Talen in accordance with this Consent Decree, including Talen's execution and compliance with this Consent Decree, do not constitute an admission of any violation or liability and may not give rise to any presumption of law or findings of fact that inure to the benefit of any third party.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. The Department has filed a Complaint and Application for Injunction against Talen in the Sixteenth Judicial District, Rosebud County, Montana. The Complaint contains two causes of action, the first for operating while out of compliance with an emission standard and the second for failing to appropriately certify a compliance report. Talen has not filed an Answer to the Complaint. This Consent Decree fully resolves all claims brought by the Department in the Complaint and Application for Injunctive Relief.

A. First Cause of Action – Operating While Out of Compliance with an Emission Standard

11. The four electrical generating units (Units) at Colstrip are subject to 40 C.F.R. Part 63, Subpart UUUUU - National Emission Standards for Hazardous Air Pollutants: Coal- and Oil- Fired Electric Utility Steam Generating Units, also commonly

referred to as the federal Mercury and Air Toxics Standard (MATS). This subpart was incorporated by reference into ARM 17.8.302, and is administered by the Department under ARM Title 17, chapter 8, subchapter 3.

12. Section III.B.5 and III.C.15 of Talen's Title V Operating Permit #OP0513-14 require compliance with the MATS emission limits at all times except during periods of startup and shutdown.

13. Talen elected to demonstrate compliance with the MATS emission limits via emissions averaging of all four Units, as allowed for by MATS at 40 C.F.R. § 63.10009. Talen submitted a proposed emission averaging plan to the Department that was approved on November 17, 2015. Talen must calculate the weighted 30-boiler operating day rolling average emissions rate (WAER) in accordance with Equation 2a of MATS using data from all four units, as described at 40 C.F.R. § 63.10009(b)(2), which is incorporated into ARM 17.8.302. Talen has been utilizing this compliance strategy since demonstrating initial compliance on September 8, 2016.

14. The Department has determined, based on its review of the prescriptive rule language of MATS for how to utilize Equation 2a for demonstrating ongoing compliance, that each unit must independently contribute its emissions to the equation based on its preceding 30-boiler operating days and emission rate from its most recent test. 40 C.F.R. § 63.10009(2), as incorporated into ARM 17.8.302. MATS defines a boiler operating day as a 24-hour period that begins at midnight and ends the following midnight during which any fuel is combusted at any time in the unit, excluding startup periods or shutdown periods. It is not necessary for the fuel to be combusted the entire 24-hour period. 40 C.F.R. § 63.10042, as incorporated into ARM 17.8.302.

15. Sections III.B.5 and III.C.15 of Talen's Title V operating permit #OP0513-14 and 40 C.F.R. § 63.10009(e) require that the WAER for the facility must meet the emission limits contained in MATS at all times, except during periods of startup and shutdown.

16. Sections III.B.5 and III.C.15 of Talen's Title V operating permit #OP0513-14 describe the pollutant emission rates with which Talen must comply. These sections allow total filterable particulate matter (PM) to be monitored as a surrogate for non-mercury metals, which are hazardous air pollutants (HAP). Accordingly, Talen elected to utilize the corresponding PM emission limit to demonstrate compliance with the non-mercury metal HAP limit during its initial compliance demonstration on September 8, 2016. The weighted 30-boiler operating day rolling average PM emission rate for the facility is therefore subject to the PM emission limit of 0.030 pounds per million British thermal units (lbs/MMBtu). #OP0513-14, § III.C.15.a.

17. Talen's weighted 30-boiler operating day rolling average PM emission rate for the facility exceeded the PM emission limit when calculated using the results of emissions testing conducted on June 21, 2018 on Unit 3, as confirmed in the MATS semiannual report dated July 31, 2018 and the stack test report dated August 20, 2018. The weighted 30-boiler operating day rolling average PM emission rate on June 21, 2018 was calculated to be 0.035 lbs/MMBtu as a result of this emissions test, as confirmed by the data provided by Talen on September 17, 2018.

18. On June 26, 2018, Talen completed a PM emissions test on Unit 4, and the weighted 30-boiler operating day rolling average emission rate for the facility exceeded the applicable limit, as confirmed in the MATS semiannual report dated July

31, 2018 and the stack test report dated August 20, 2018. The weighted 30-boiler operating day rolling average PM emission rate for the facility on June 26, 2018 was calculated to be 0.041 lbs/MMBtu as a result of this emissions test, as confirmed by the data provided by Talen on September 17, 2018.

19. Talen received the emissions test results for both Units 3 and 4 on June 28, 2018. Unit 3 was shut down on June 28, 2018 and Unit 4 was shut down on June 29, 2018. Talen reported the issue to the Department in accordance with its Title V operating permit #OP0513- 14.

20. On August 24, 2018, Talen provided a de minimis notification, in accordance with ARM 17.8.745(1)(b), for installation of scrubber flow distribution plates in the Unit 3 and 4 scrubbers. The scrubber flow distribution plates were designed to help balance the flow distribution to help reduce potential carryover of scrubber liquor droplets. By letter dated August 27, 2018, the Department confirmed its determination that the information submitted by Talen met the definition of de minimis under ARM 17.8.745 and that Talen's notification satisfied the requirements of ARM 17.8.745(1)(b) and (d).

21. In response to the Department's request for information dated August 31, 2018, Talen provided a response to the Department on September 17, 2018 describing its investigation into the cause of the deviation from compliance with the PM emission limit. The correspondence explained that Talen kept Unit 3 off-line from June 28 through July 8, 2018, and kept Unit 4 off-line from June 29 through July 17, 2018, to verify that operational procedures were followed and to conduct inspections and maintenance in several areas of operation, including the coal mills, boilers, ductwork, scrubbers, and

stacks. The extensive inspection revealed no deviations from the operational procedures and no significant maintenance needs. Talen performed cleaning, adjustments, and repairs as needed to those inspected areas, but that work did not result in compliance, indicating that the normal operational procedures and condition of the units prior to the June 2018 emission tests were appropriate. Additionally, Talen brought in experts and conducted investigations into the following four main areas: a) the compliance test method; b) fuel quality; c) boiler combustion; and d) scrubber performance. While the investigation did not reveal an obvious single candidate as the root cause of the PM noncompliance, the provided information stated that flue gas flow through the mist eliminator portions of the venturi scrubbers for Units 3 and 4 was not optimally balanced, despite meeting manufacturer specifications. This may have resulted in areas of higher flue gas flows and potential carryover of droplets from the wet scrubbing process. These droplets contain solids that may contribute to PM emissions. Talen's de minimis notification of installation of flow distribution plates, as described in ¶ 20 above, was designed to address this issue.

22. Prior to the June 2018 emissions testing for Units 3 and 4, Talen had reviewed the indicators in the Compliance Assurance Monitoring (CAM) plan required by the Title V Permit and discovered no cause for the higher PM emissions and no indication that the second quarter PM tests would suddenly deviate to an extent never seen since MATS PM testing began in 2016. Also prior to the June 2018 emissions testing for Units 3 and 4, Talen reviewed operation of Units 3 and 4 with engineers, operations, and maintenance, including the boiler and scrubber crews, and found no indications of abnormal operations. A review of scrubber operations, opacity, and PM Continuous Emissions Monitoring System (PM CEMS) all indicated normal

operation, suggesting compliant PM emissions rates similar to what had been previously seen for Units 3 and 4.

23. The Department received a final source test report on October 24, 2018 documenting the compliance testing performed on all four units for PM for the third quarter of 2018. Talen remained out of compliance with the PM emission limit until a PM emissions test on September 6, 2018, for Unit 4 brought the weighted-average emission rate into compliance with the limit. The weighted 30-boiler operating day rolling average PM emission rate for that date was calculated to be 0.030 lbs/MMBtu as a result of this emissions test.

24. Talen exceeded the PM emission limit from June 21, 2018, through September 5, 2018, a total of 77 consecutive days.

25. Unit 3 testing on September 11, 2018; Unit 2 testing on September 18, 2018; and Unit 1 testing on September 21, 2018 also resulted in calculation of the weighted-average emission rate that was in compliance with the MATS emission standard. Because the September 6, 2018 emission test on Unit 4 was conducted with a temporary flow distribution modification, the Department requested that Talen repeat the test when the final permanent flow distribution plates were installed for that unit. Talen performed this additional compliance test of Unit 4 on September 26, 2018, which resulted in calculation of a weighted-average emission rate that complied with the MATS emission standard. These emission rates confirm compliance with the weighted 30-boiler operating day rolling average PM emission limit.

26. In November 2018, the fourth quarter MATS PM testing continued to demonstrate compliance. Beginning in December 2018, Talen initiated monthly PM emissions

testing to verify compliance with the MATS PM limit, in addition to the required quarterly MATS PM testing. All of the monthly MATS PM tests from December 2018 through October 2019 have demonstrated compliance.

27. The Colstrip facility is an affected source as defined and applied in 40 C.F.R. Part 63.

28. A person who operates an affected source that fails to comply with an applicable requirement of 40 C.F.R. Part 63 that is incorporated by reference into the Administrative Rules of Montana is liable for penalties not to exceed \$10,000 per day. Each day of violation is a separate violation. §75-2-413(1), MCA.

29. The Department alleges that the Colstrip facility failed to comply with an applicable requirement of 40 C.F.R. Part 63 by exceeding the PM limit, as described in ¶ 24 above for 77 days.

30. The Department alleges that the failure to comply noted in ¶ 29 above violated ARM 17.8.342(1).

31. A person who violates that rule is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation is a separate violation. § 75-2-413(1)(a), MCA.

32. The Department asserts that it is entitled to injunctive relief for the violations alleged in this claim.

33. Injunctive relief is authorized by Title 27, chapter 19, parts 1-4, MCA, and §§ 27- 19- 102 and 75-2-412(4), MCA.

34. Although the gravity and extent of the alleged violations are major, based on Talen's history of and subsequent compliance with the MATS PM requirements, the

circumstances of the violations, the good faith and cooperation of Talen, and other matters required by justice, the Department has determined that the penalty and injunctive relief agreed to in Section IV below is the appropriate penalty and injunctive relief for all alleged MATS PM violations described above.

B. Second Cause of Action – Failure to Appropriately Certify a Compliance Report

35. Talen's Title V operating permit #OP0513-14 requires that it submit reports to the Department on a semiannual basis that demonstrate the source's compliance with the MATS during the previous semiannual period.

36. Talen's Title V operating permit #OP0513-14 requires that the semiannual reports include a certification by a responsible official of truth, accuracy, and completeness, pursuant to ARM 17.8.1207 and 1213(7)(a), (c) and (d).

37. Talen provided the Department with a semiannual MATS compliance report on July 31, 2018, which covered the period from January 1, 2018 to June 30, 2018. July 31, 2018 is the deadline required by 40 C.F.R. § 63.10031(b)(4). This report did not include a signature by a responsible official on the certification statement as required.

38. Talen provided a certification statement signed by a responsible official for the July 31, 2018 semiannual MATS compliance report on August 1, 2018. This certification statement identified that Talen had demonstrated continuous compliance with all of the applicable emission limits during the report period.

39. The July 31, 2018 semiannual MATS compliance report documented the deviation from continuous compliance with the PM emission limit beginning on June 21, 2018.

40. Because Talen had not been in continuous compliance with the applicable PM emission limit during the report period, the certification statement incorrectly asserted that Talen had complied with the requirement to maintain continuous compliance.

41. Upon initial review of the report, the Department verbally informed Talen of the improper assertion of continuous compliance that had been made in the certification statement.

42. On August 27, 2018, Talen provided the Department a revised, signed certification statement for the semiannual MATS compliance report. The revised statement indicated that Talen had maintained continuous compliance with the applicable emission limits with the exception of the period noted within the report. Until August 27, 2018, Talen did not provide the Department with a signed, accurate, and complete certification.

43. By failing to submit a signed, accurate certification on July 31, 2018, Talen allegedly violated ARM 17.8.1207 and its Title V operating permit required pursuant to ARM 17.8.1213(7)(a), (c) and (d) for one day.

44. A person who violates that rule or its permit issued under the Clean Air Act of Montana is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation is a separate violation. Section 75-2-413(1)(a), MCA.

45. Because the appropriate injunctive relief would be to require Talen to provide an appropriate certification that does not incorrectly assert that it demonstrated continuous compliance during the reporting period, and it has done so, no injunctive

relief is being requested. Talen corrected the certification of continuous compliance submitted on August 1, 2018.

46. Based on the nature of a reporting violation as an administrative violation and the good faith, cooperation, and compliant history of Talen, the Department has determined that the penalty agreed to in Section IV.A. below is the appropriate penalty for the alleged reporting violation described above.

IV. CONSENT DECREE

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby ORDERS and the Department and Talen hereby AGREE to the following penalty and injunctive relief:

A. Penalty

The Department has assessed, , and the parties have agreed to, a penalty of \$450,000. The penalty calculation is attached as Exhibit 1. Upon the parties' execution, and the Court's entering, of this Consent Decree, the Department has a judgment against Talen for a penalty of \$450,000 pursuant to § 75-2-413, MCA. To satisfy the penalty, the parties have agreed that Talen shall pay to the Department a cash penalty of \$112,500 and fund Supplemental Environmental Project(s) to offset the remainder of the total penalty.

1. Cash Penalty

Talen shall pay the cash penalty to the Department by credit/debit card or by check within 30 days after entry of this Consent Decree. If Talen chooses to pay by:

a. credit/debit card, it shall contact the Fiscal Manager of the Department's Enforcement program at 406-444-0379; or

b. check or money order, it shall make the check payable to the "Montana Department of Environmental Quality," and send it to:

Chad Anderson
Enforcement Program Manager
Department of Environmental Quality
PO Box 200901
Helena MT 59620-0901

At the time Talen sends the check, it shall inform the Department's attorney at Norman Mullen, Legal Unit, Department of Environmental Quality, PO Box 200901, Helena MT 59620-0901, or nmullen@mt.gov.

2. Supplemental Environmental Projects (SEPs)

a. Within 180 days after this consent decree is entered, Talen shall sign agreements in which it agrees to pay for, or shall pay invoices for, the following SEPs or one or more substitute SEPs for which it has obtained Department approval:

i. for all or a portion of the cost of a Street Sweeper to be provided to the Northern Cheyenne Tribe. Talen's payment of up to \$270,000 of that cost may offset the remaining penalty owed to the Department on a 1:1 ratio; and

ii. for all or a portion of the cost of constructing a deicer storage building for the Town of Colstrip. For the purpose of this paragraph IV.A.2.a., "constructing" means purchasing materials for and constructing a new building, or purchasing and installing a prefabricated building. Talen's payment of up to \$103,000 of that cost may offset the remaining penalty owed to the Department on a 1.25:1 ratio.

b. Within 180 days after this consent decree is entered, Talen shall provide the Department with a copy of each agreement or invoice payment.

c. Within the earlier of the completion of a SEP or one year after the consent decree is entered, Talen shall provide DEQ a final SEP report documenting whether the approved SEP was completed.

Protocol and Procedures Manual within 60 days after this court's entry of this Consent Decree. If the Department disapproves the revised protocol and communicates the reasons to Talen, Talen shall, within 30 days after the date of the Department's communication, submit to the Department for its review and approval a revision to the revised protocol. Talen shall repeat this process until a revision of the protocol that it submits to the Department is approved. Any Department disapproval of the revised protocol must state reasons based on the Montana Source Test Protocol and Procedures Manual for the disapproval. The Department's approval of the revised protocol may not be unreasonably withheld, and the revised protocol becomes effective upon the Department's written approval of the revised protocol. Talen's existing source test protocol will govern until the Department approves a revised protocol.

3. Within 60 days after this court's entry of this Consent Decree, submit for Department review and approval a demonstration that the scrubbers on all four units are operating within the appropriate parameters for minimizing emissions. The demonstration must include identification of scrubber operating parameters that are indicative of proper performance and capable of being monitored, recorded, and reported on a regular basis. If the Department disapproves the demonstration and communicates the reasons to Talen, Talen shall, within 30 days after the date of the Department's communication, submit to the Department for its review and approval a revision to the proposed demonstration. Talen shall repeat this process until a revision of the demonstration that it submits to the Department is approved. The Department's approval of the demonstration may not be unreasonably withheld.

4. Include the daily weighted 30-boiler operating day rolling average pollutant emission rate as described by Equation 2a of MATS, recalculated for every day covered by the report submitted to the Department for any non-mercury HAP metals compliance demonstration

- d. If, within one year after this consent decree is entered:
 - i. a SEP in IV.A.2.a. has not been completed, Talen shall immediately pay to the Department the portion of the total penalty that would have been offset by that SEP.
 - ii. Talen has not spent money on the SEPs to offset all of the \$337,500 remaining of the total \$450,000 penalty owed to the Department, then Talen shall pay to the Department the amount of the remaining penalty that has not been offset.
- e. Talen is not required under this consent decree to pay or offset more than \$450,000 total penalty.

B. Injunctive Relief

As a remedy for the violations alleged in Claim 1 of the Complaint in this action, Talen shall:

1. Conduct PM emissions testing on each electrical generating unit (EGU) at the Colstrip facility to demonstrate compliance with its Operating Permit issued under ARM Title 17, chapter 8, subchapter 12 (also known as its Title V permit) each calendar month, beginning December 2018. The testing must be in accordance with Talen's existing source test protocol and Talen may not deviate from this schedule unless it has obtained written approval from the Department. After at least 12 months have elapsed from the December 2018 initial monthly test, Talen may request Department approval, which may not be unreasonably withheld, to return to quarterly testing.
2. Submit, for Department review and approval, a revised source test protocol for the MATS PM testing and associated reporting in accordance with the Montana Source Test

report. The report must include all relevant data used to perform the calculation, including pollutant emissions rate, the daily heat input for each unit for the reporting period, and the total heat input for the preceding 30-boiler operating days for each unit. Talen shall also provide the report described in this paragraph to the Department in electronic spreadsheet format.

V. EFFECT OF SETTLEMENT

In consideration of the actions that will be performed and the payments that will be made by Talen under the terms of this Consent Decree, the Department covenants not to sue Talen in another judicial or administrative action for any of the alleged actions or violations identified in the Complaint. If Talen does not satisfactorily perform its obligations under this Consent Decree, the Department may move this Court to enforce it.

The parties intend that this Consent Decree will resolve the litigation between the parties, and therefore request that the Court enter this Consent Decree as an Order and Judgment of the court in congruence with Section VI, and that the Court retain jurisdiction over this case to enforce the Court's Order and Judgment.

The Department and Talen agree that the actions undertaken by Talen in accordance with the Consent Decree do not constitute an admission of any liability or imprudence by Talen. Talen does not admit and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Decree, the validity of the facts or allegations contained in the Department's Complaint.

Notwithstanding any other provision of this Consent Decree, the violations alleged in it may be used by the Department as a "history of violation" in an action brought by the Department within 24 months after this Consent Decree's effective date.

This Consent Decree and its exhibits constitute the full, final, complete, and exclusive settlement between the Department and Talen with respect to the violations alleged in the Complaint. The Department and Talen acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

Nothing in this Consent Decree affects the authority of the Department, or a duty of Talen, to address future noncompliance or regulatory changes.

Each party shall bear its own costs incurred in this action, including attorney fees. Each of the signatories to this Consent Decree represents that he or she is authorized to enter into this Consent Decree and to bind the parties represented by him or her to the terms of the Consent Decree.

The effective date of this Consent Decree shall be the date upon which the Court enters this Consent Decree. This Consent Decree may be signed in counterparts and its validity may not be challenged on that basis.

VI. CONTINUING JURISDICTION

The Department and Talen request that this Stipulation be entered as an Order and Judgment of this Court. This Court shall retain jurisdiction of this matter to enable any of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation, modification, or termination of this Consent Decree, and for the enforcement of compliance with it.

VII. ENTRY OF CONSENT DECREE

The parties request that the Court enter this Consent Decree ten days after its filing, or upon joint motion of the parties, whichever occurs first. If for any reason the Court declines to enter this Consent Decree in the form presented, the terms of this Consent Decree may not be used as evidence in any litigation between the parties.

JUDGMENT IS THEREFORE ENTERED pursuant to all the terms and conditions recited above.

Entered this _____ day of _____, 2019.

JUDGE, SIXTEENTH JUDICIAL DISTRICT,
ROSEBUD COUNTY

The parties, individually and by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendant waives any right to appeal this action.

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date: _____

By: _____
SHAUN McGRATH
Director

By: _____
NORMAN J. MULLEN
Special Assistant Attorney General

TALLEN MONTANA, LLC

Date: _____

By: _____
DALE LEBSACK
President, Talen Montana, LLC

By: _____
VICTORIA A. MARQUIS
HOLLAND & HART
Attorneys for Talen Montana, LLC


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The parties, individually and by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendant waives any right to appeal this action.

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY


Date: 11/25/19

By: 
SHAUN McGRATH
Director

By: 
NORMAN J. MULLEN
Special Assistant Attorney General

TALEN MONTANA, LLC

Date: 11/25/19

By: 
DALE LEBSACK
President, Talen Montana, LLC

By: 
VICTORIA A. MARQUIS
HOLLAND & HART
Attorneys for Talen Montana, LLC

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**Department of Environmental Quality - Enforcement Division
Penalty Calculation Worksheet**

Responsible Party Name:	Talen Energy (Talen)
FID:	
Statute:	Clean Air Act of Montana (Act)
Maximum Penalty Authority:	\$10,000.00
Date:	11/19/2019
Name of Employee Calculating Penalty:	Chad W. Anderson

Penalty Calculation #1
Description of Violation: Talen failed to operate its Colstrip facility in continuous compliance with an applicable emission standard (PM limit), in accordance with Operating Permit #OP0513-14 and 40 CFR Part 63.

I. BASE PENALTY

Nature

Explanation: Talen exceeded an emission limit in Title V Operating Permit #OP0513-14. The exceedance of an air quality emission limit has the potential to harm human health or the environment.	
Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

Gravity and Extent

Gravity Explanation: Talen released a substance which poses a potential to harm human health or the environment, which is a criterion for major gravity. While traditional criteria air pollutants warrant regulation due to their potential to harm, Hazardous Air Pollutants (HAP) are regulated in a separate manner because they cause or may cause cancer and/or other serious health effects. Potential HAP emission levels are considered "major" by regulatory definition at much lower levels than criteria pollutants. 10 tons per year (TPY) of an individual HAP or 25 TPY of all combined HAP triggers major source designation versus 100 TPY of a criteria pollutant for an electrical generating facility such as Talen. Talen experienced an exceedance of a HAP emission limit designed to protect human health which has the potential for serious harm. The gravity of the violation is major.	
Extent Explanation: When determining the extent of a violation, the factors that may be considered include volume, concentration, and toxicity of the regulated substance, as well as the severity and percent of exceedance of a regulatory limit and the duration of the violation. The pollutant limit that was exceeded was for Particulate Matter (PM); however, its origin is from an air toxics standard and PM is a surrogate for non-Hg (Mercury) metals HAP. Therefore, the exceedance is of an air toxics limit. The limit of 0.030 lb/MMBtu was exceeded by 16%-36% for 77 days of noncompliance, with an average exceedance of 32%. Based on the length of noncompliance and percent of exceedance from an air toxics limit, the extent is major.	

Harm to Human Health or the Environment

Gravity

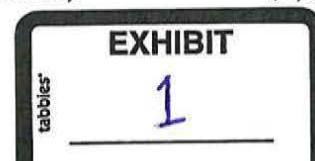
Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: 0.85

Impact to Administration

Gravity

Major	Moderate	Minor	
0.50	0.40	0.30	Gravity Factor: 0.00

BASE PENALTY (Maximum Penalty Authority x Gravity Factor): **\$8,500.00**



II. ADJUSTED BASE PENALTY

A. Circumstances (up to 30% added to Base Penalty)

Explanation:
When determining the circumstances of the violation, consideration must be given to how much control the source had over the violation, the foreseeability of the violation, whether the source took reasonable precautions to prevent the violation, and whether the source knew or should have known of the requirement that was violated. While the individual unit emission rates have experienced increases and decreases over the years, the weighted average PM emission rate had a slight upward trend, indicating a shrinking compliance margin over time. The PM test from the first quarter 2018 showed a decrease in PM emissions for Unit 1; however, Units 2, 3 and 4 all showed increases in PM emissions to their highest reported weighted average since MATS took effect in 2016. The results yielded a weighted average emission rate equal to the permit limit of 0.030 lb/MMBtu, prompting Talen to investigate possible reasons for the elevated PM emissions. Talen reviewed indicators in the CAM plan, reviewed operations and maintenance, scrubber plumb bob dP, opacity and PM CEMS data and found no indicators of abnormal operations and no causes of higher PM emissions. The second quarter MATS compliance test indicated the average PM emission rate for Unit 4 was 0.051 lb/MMBtu, which was above the 0.05 lb/MMBtu PM limit in condition III.C.2 of Talen's Operating Permit for Unit 4. There are circumstances that warrant an increase in the base penalty; however, prior to the second quarter 2018 Talen had no history of noncompliance with the MATS. Talen made efforts to understand the PM emission performance once the compliance margin was reduced. The Department has determined that an increase in the base penalty of 8% is appropriate for circumstances.

Circumstances Percent:	0.08
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$680.00

B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)

Explanation:
When considering a source's good faith and cooperation, the Department considers the promptness in reporting and correcting the violation, how quickly the impacts of the violation are mitigated, the extent of the source's voluntary and full disclosure of the facts related to the violation, and the extent of the source's assistance in the Department's investigation and analysis of the violation. Talen reported the violation in a prompt manner via telephone on June 28, 2018 and provided a written notification on July 27, 2018, as required by its Title V Operating Permit #OP0513-14 Section V.E. Talen promptly and voluntarily ceased operation of Units 3 and 4 after discovery of the violation. In an effort to minimize emissions and their impacts as the cause of the deviation was investigated, Talen only operated Units 3 and 4 as needed for diagnosis and evaluation. The Department issued an information request to Talen on August 31, 2018 regarding the MATS noncompliance. Talen provided the requested information by the deadline on September 17, 2018. The information indicated that Talen treated the violation as a high priority and employed significant outside resources in addition to its own work on solving the issue. The actions and information provided by Talen communicate a timely and high-quality investigation into the issue. Actual fuel combustion data for all 4 units show that after Units 3 and 4 were brought offline, they operated sporadically for several weeks following the failed test. This is consistent with Talen's statement that it would bring units online for evaluation but otherwise not operate them. The Department considers Talen's actions following the discovery of the violation to be consistent with the elements of good faith and cooperation. Therefore, a decrease of 10% in the base penalty is appropriate.

Good Faith & Coop. Percent:	0.10
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$850.00

C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)

Explanation:	
Talen reportedly spent over \$2.9 million dollars on outside resources investigating and correcting potential causes of the PM exceedance. The information supplied indicated that it employed multiple outside resources in the form of equipment and process consultants and emissions testers. Talen also installed additional hardware in the scrubbers to improve PM control performance. Talen treated the noncompliance with a high priority and undertook significant expense to research and address the issue. Therefore, a base adjustment decrease of 10% is appropriate.	
AVE Percent:	0.10
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$850.00

ADJUSTED BASE PENALTY SUMMARY

Base Penalty	\$8,500.00
Circumstances	\$680.00
Good Faith & Cooperation	-\$850.00
Amt. Voluntarily Expended	-\$850.00
ADJUSTED BASE PENALTY	\$7,480.00
Maximum penalty authority	\$10,000.00

III. DAYS OF VIOLATION

Explanation:	
Talen exceeded the PM emission limit from June 21, 2018 through September 5, 2018, for a total of 77 consecutive days. The Department considered that Talen voluntarily shut down Units 3 and 4 when a violation of the MATS PM limit was discovered, and only operated the units as necessary to undertake testing, gather data, perform diagnostics, and evaluate potential corrective actions to return the units to compliance. Although the Department maintains that the days of violation of the site-wide average limit lasted for 77 days, Units 3 and 4 were shut down for 15 of those days. During an additional 26 of the 77 days only one of Units 3 and 4 operated. Therefore, a base penalty adjustment decrease of 50% for 15 days ($\$4250 \times 15 = \$63,750$) and a base penalty adjustment decrease of 25% for 26 days ($\$6375 \times 26 = \$165,750$) is appropriate. The remaining 36 days of violation are calculated at the adjusted base penalty ($\$7480 \times 36 = \$269,280$).	
Number of Days:	77
ADJUSTED BASE PENALTY x NUMBER OF DAYS:	\$498,780.00

IV. OTHER MATTERS AS JUSTICE MAY REQUIRE

Explanation:	
<p>As indicated in Section I. Base Penalty, the Department calculated the adjusted base penalty to be \$7,480 based on the nature, gravity and extent, and circumstances of the violation as well as the good faith and cooperation and amounts voluntarily expended by Talen.</p> <p>Under ARM 17.4.305, the Department has the discretion to consider each day of violation as a separate violation subject to penalties. The Department is further granted the discretion to multiply the adjusted base penalty by the number of days of violation to obtain a total adjusted penalty. Finally, if multiplication of the days of violation with the adjusted base penalty results in a penalty that is higher than the Department believes is necessary to provide an adequate deterrent, the Department may reduce the number of days of violation. Pursuant to ARM 17.4.305, the Department determined that Talen exceeded the PM emission test from June 21, 2018 through September 5, 2018 for a total of 77 days. The Department multiplied the adjusted base penalty (\$7,480) with the maximum days of number of days of violation (77) to calculate a penalty of \$498,780. (See Section III. Days of Violation).</p> <p>The Department believes, however, that a penalty in the amount of \$446,000, which includes costs of implementing Supplemental Environmental Projects (SEPs) to reduce particulate matter emissions in two local communities, and the \$2.9 million Talen has expended to investigate and correct the violation, provide an adequate deterrent. While the Department has the authority to make this adjustment by reducing the number of days of violation, the Department believes it is also appropriate to make an adjustment under "Other Matters as Justice May Require" based on the sufficiency of the penalty to provide a deterrent effect. Therefore, the Department is decreasing the calculated penalty of \$498,780 to the final assessed penalty of \$446,000.</p>	
OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:	\$446,000.00

V. ECONOMIC BENEFIT

Explanation:	
<p>Talen ceased normal operation of the affected units during a time when power output was in high demand. Talen stated in the July 27, 2018, Prompt Deviation Report that Units 3 and 4 would remain offline and only be brought online for evaluation. Units 3 and 4 heat input data for the 77 day period of noncompliance indicate numerous instances of short-term operation followed by shutdown, which is consistent with Talen's proposed operation while investigating the cause of elevated emissions. This resulted in lost potential revenue which could have been realized had Talen operated these units normally during the period of violation. Talen also expended money and resources to investigate and correct the noncompliance during this time. The operation of the facility and application of resources during the period of violation do not reflect an intent to gain economic benefit from the noncompliance. The Department does not consider an increase to the base penalty from economic benefit to be warranted.</p>	
ECONOMIC BENEFIT REALIZED:	\$0.00

**Department of Environmental Quality - Enforcement Division
Penalty Calculation Worksheet**

Responsible Party Name:	Talen Energy (Talen)
FID:	
Statute:	Clean Air Act of Montana (Act)
Maximum Penalty Authority:	\$10,000.00
Date:	11/19/2019
Name of Employee Calculating Penalty:	Chad W. Anderson

Penalty Calculation #2
Description of Violation:
Talen failed to submit a signed, accurate certification on July 31, 2018 in violation of ARM 17.8.1207 and its Title V operating permit.

I. BASE PENALTY

Nature

Explanation:	
Talen failed to appropriately certify its MATS semiannual report for the period of January 1, 2018 to June 30, 2018. This violation is classified as Administrative.	
Potential to Harm Human Health or the Environment	
Potential to Impact Administration	X

Gravity and Extent

Gravity Explanation:	
The certification required by ARM 17.8.1207 must be based on information and belief formed after reasonable inquiry, and the statement and information in the document must be true, accurate and complete. The semiannual MATS compliance report that Talen submitted July 31, 2018, which covered the period from January 1, 2018 to June 30, 2018, did not include the required signature by a responsible official on the certification statement. Talen provided a signed certification statement for this report on August 1, 2018. This certification statement identified that Talen had demonstrated continuous compliance with all applicable emission limits during the report period. However, Talen was not in compliance with the non-mercury metals emission standard throughout the entire report period. Failing to properly certify is classified as moderate gravity because Talen did not specifically identify noncompliance with PM as a surrogate for non-mercury metals limitation. This could have an adverse impact on the Department's implementation of its programs.	
Extent Explanation:	
Not applicable for Administrative violations.	

Harm to Human Health or the Environment

Gravity

Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: 0.00

Impact to Administration

Gravity

Major	Moderate	Minor	
0.50	0.40	0.30	Gravity Factor: 0.40

BASE PENALTY (Maximum Penalty Authority x Gravity Factor): \$4,000.00

II. ADJUSTED BASE PENALTY

A. Circumstances (up to 30% added to Base Penalty)

Explanation:	
The report included documentation and disclosure of the noncompliance. While the report included the correct documentation, the certification is an important element of the source's culpability in demonstrating compliance with regulations.	
Circumstances Percent:	0.00
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$0.00

B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)

Explanation:	
In addition to the discussion of noncompliance in the report, Talen verbally communicated that there was noncompliance during the report period and that the certification was incorrect. Talen provided a corrected certification on August 27, 2018.	
Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)

Explanation:	
The Department is unaware of any amounts that Talen voluntarily expended to mitigate the violation or its impact beyond what was required to return to compliance. Therefore, no reduction is being allowed.	
AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

ADJUSTED BASE PENALTY SUMMARY

Base Penalty	\$4,000.00
Circumstances	\$0.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
ADJUSTED BASE PENALTY	\$4,000.00
Maximum penalty authority	\$10,000.00

III. DAYS OF VIOLATION

Explanation:	
The semiannual report was provided on July 31, 2018 without a required signature by a responsible official on the certification statement. A signed certification statement was provided on August 1, 2018, but incorrectly certified continuous compliance with all the applicable emission limits during the report period. On August 27, 2018, Talen provided the Department a revised, signed certification statement for the semiannual MATS compliance report. By failing to submit a signed, accurate certification on July 31, 2018, Talen violated ARM 17.8.1207 and ARM 17.8.1213(7)(a)(c)(d) for one day.	
Number of Days:	1
ADJUSTED BASE PENALTY x NUMBER OF DAYS:	\$4,000.00


IV. OTHER MATTERS AS JUSTICE MAY REQUIRE

Explanation:	
None	
OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:	\$0.00

V. ECONOMIC BENEFIT

Explanation:	
The associated report documented and disclosed the noncompliance. Therefore, there was no economic benefit to the assertion of compliance.	
ECONOMIC BENEFIT REALIZED:	\$0.00

**Department of Environmental Quality - Enforcement Division
Penalty Calculation Summary**

Responsible Party Name:	Talen Energy (Talen)
FID:	
Statute:	Clean Air Act of Montana (Act)
Maximum Penalty Authority:	\$10,000.00
Date:	November 19, 2019
Signature of Employee Calculating Penalty:	

Penalty #1 Penalty #2

I. Base Penalty (Maximum Penalty Authority x Matrix Factor)			
Maximum Penalty Authority:	\$10,000.00	\$10,000.00	
Percent Harm - Gravity and Extent:	0.85	0.00	
Percent Impact - Gravity:	0.00	0.40	
Base Penalty:	\$8,500.00	\$4,000.00	
II. Adjusted Base Penalty			
Base Penalty:	\$8,500.00	\$4,000.00	
Circumstances:	\$680.00	\$0.00	
Good Faith and Cooperation:	-\$850.00	\$0.00	
Amount Voluntarily Expended:	-\$850.00	\$0.00	
Adjusted Base Penalty:	\$7,480.00	\$4,000.00	
Maximum Per Violation:	\$10,000.00	\$10,000.00	
III. Days of Violation or			
Number of Occurrences	77	1	
Total Adjusted Penalty:	\$498,780.00	\$4,000.00	\$502,780.00
IV. Other Matters as Justice			
May Require	\$446,000.00	\$0.00	
V. Economic Benefit			
	\$0.00	\$0.00	
VI. History*			
Subtotal(s)	\$446,000.00	\$4,000.00	<u>\$0.00</u> <u>\$450,000.00</u>
Total calculated penalty: \$450,000.00			

*Talen does not have a prior history of violations of the Clean Air Act of Montana documented in either an administrative order, judicial order, or judgment within the last three years.