

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

SIERRA CLUB, a non-profit corp., ) Civil No.: 3:08-cv-01136-HA  
NORTHWEST ENVIRONMENTAL )  
DEFENSE CENTER, a non-profit corp., ) CONSENT DECREE  
FRIENDS OF THE COLUMBIA GORGE, a )  
non-profit corp., COLUMBIA RIVERKEEPER, )  
a non-profit corp., and HELLS CANYON )  
PRESERVATION COUNCIL, a non-profit )  
corp., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
PORTLAND GENERAL ELECTRIC )  
COMPANY, an Oregon Corporation, )  
 )  
Defendant. )  
 )  
 )  
\_\_\_\_\_ )

WHEREAS, Portland General Electric Company (“PGE”) is an Oregon corporation;

WHEREAS, PGE has been, at all times relevant to this lawsuit, the majority owner and operator of the Boardman Power Plant, which is located in Boardman, Oregon;

WHEREAS, on January 15, 2008, Plaintiffs filed a notice of intent to sue PGE for declaratory and injunctive relief and civil penalties for alleged violations, at the Boardman facility, of the Clean Air Act.;

WHEREAS, the Complaint in this matter was filed on September 30, 2008;

WHEREAS, the Complaint seeks declaratory and injunctive relief, the imposition of civil penalties, and Plaintiffs’ attorneys’ fees and costs of litigation;

WHEREAS, PGE denies liability for the allegations set forth in the complaint;

WHEREAS, Plaintiffs and Defendant (the “Parties”) have negotiated this Consent Decree (“Decree”) in good faith and at arm’s length and agree that the settlement of this action through this Consent Decree without further litigation avoids substantial risks and costs of a protracted proceeding, is in the public interest and provides certainty for utility customers and is a fair, reasonable, and appropriate means of resolving all claims in this action;

WHEREAS, the Parties further anticipate that this Decree will achieve significant reductions of emissions from the Boardman Power Plant and thereby significantly improve air quality;

WHEREAS, the Parties consent to the entry of this Decree without further trial, argument, or appeal;

WHEREAS, pursuant to 42 U.S.C. § 7604(c)(3) of the Clean Air Act (“Act”), this Consent Decree is being forwarded to the United States Department of Justice and to the United States Environmental Protection Agency (“EPA”) for the statutorily-mandated forty-five (45) day review period;

NOW, THEREFORE, it is hereby ORDERED AND DECREED as follows:

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to § 304 of the Clean Air Act, 42 U.S.C. § 7604, the citizen suit provision of the Act, and pursuant to 28 U.S.C. § 1331.

2. Venue is proper in this judicial district under § 304(c) of the Act, 42 U.S.C. § 7604(c), and under 28 U.S.C. § 1391.

3. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the Parties, as well as the Parties' officers, employees, agents, successors and assigns.

4. Commencing on or before December 31, 2020, PGE shall permanently cease the combustion of coal, coke, petroleum coke, lignite, waste coal, or tires at its Boardman plant.

5. For each calendar year from 2015 through 2020, annual emissions of sulfur dioxide from the Boardman coal-fired boiler shall not exceed the caps specified in the table below:

<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Tons of SO<sub>2</sub></b>	9,500	9,000	8,500	8,170	6,850	6,700

6. For the purposes of determining compliance with the SO<sub>2</sub> emission caps in the previous paragraph, PGE shall measure all SO<sub>2</sub> emissions using continuous emissions monitoring systems ("CEMS") certified and operated in compliance with the version of 40 C.F.R. § 75.33 in effect as of the date of lodging of this Decree. However, for purposes of compliance with this Decree, the missing data procedures in Table 1 of that version of 40 C.F.R. Part 75 for monitor data availability of "90 or more, but below 95" may be applied for all periods of monitor data availability below 90 percent. By every April 15 beginning April 15, 2016 and ending April 15, 2021, PGE shall report to plaintiffs Boardman's total SO<sub>2</sub> emissions (in tons) for the previous calendar year.

7. Within 180 days of entry of this Decree, PGE shall submit an application to the Oregon Department of Environmental Quality to modify the Boardman Title V permit to incorporate into that permit the emission caps set forth in Paragraph 5 as applicable

requirements. During the term of the Consent Decree, once the emission caps set forth in Paragraph 5 have been included in the Title V permit, PGE agrees not to seek modification of that permit to change or eliminate those caps for the Boardman coal-fired boiler.

8. Within 30 days of entry of the Decree, PGE agrees to pay \$2,500,000 to the Oregon Community Foundation to be provided as grants for the following types of environmentally beneficial projects:

- a. 40% of the funds for (1) the purchase of interests in land in the Columbia River Gorge area to protect clean air and provide for habitat protection and/or (2) habitat restoration projects on federal or state land in the Columbia River Gorge area under the conditions set forth in Exhibit A;
- b. 25% of the funds for (1) the purchase of interests in lands in Union or Wallowa Counties to protect clean air and provide for habitat protection and/or (2) habitat restoration projects in the Eagle Cap or Hells Canyon Wilderness Areas under the conditions set forth in Exhibit A;
- c. 20% of funds to support renewable distributed generation projects under the conditions set forth in Exhibit A; and
- d. 15% of the funds to support community-based efforts to reduce air pollution and its impacts on public health and the environment in Oregon and Washington under the conditions set forth in Exhibit A.

9. None of the following organizations or their officers, employees, agents, successors or assigns, are eligible for the funds made available under the previous paragraph: Sierra Club, Northwest Environmental Defense Center, Friends of the Columbia Gorge, Columbia Riverkeeper, Hells Canyon Preservation Council, the Citizens' Utility Board ("CUB"),

the Renewable Northwest Project, Oregon Environmental Council, the NW Energy Coalition, or PGE.

10. PGE shall allow up to three representatives of the plaintiffs a reasonable opportunity to observe dry sorbent injection (“DSI”) pilot test(s) at the Boardman Plant that are undertaken pursuant to OAR 340-223-0030(2) to evaluate compliance with sulfur dioxide emission limits and the potential side effects of compliance with those limits as set forth in the BART rule (OAR 340-223-0010 *et seq*). Plaintiffs shall coordinate with PGE regarding scheduling such observations and shall provide PGE the names of the representatives at least 30 days prior to such observations. Plaintiffs’ representatives shall submit to such procedures necessary to protect property and personal safety. No cameras or recording devices will be allowed. Plaintiffs understand and agree that plaintiffs and plaintiffs’ representatives will need to sign one or more confidentiality agreements regarding observation of the pilot test(s).

11. In the event that PGE submits studies to the Oregon Department of Environmental Quality pursuant to OAR 340-223-0030(2) in support of a petition to allow the applicable sulfur dioxide limits in the BART rule to be exceeded for the reasons set forth in OAR 340-223-0030(3) (*i.e.*, where compliance with the applicable limits would be technically infeasible, would prevent compliance with mercury emission limits, or would cause a significant air quality impact for particulate matter), PGE shall also provide to plaintiffs, upon request directed to PGE as provided in Paragraph 12 below, the data generated by the pilot test(s) related to PGE’s petition to exceed the applicable sulfur dioxide limits as set forth in OAR 340-223-0030(3) and any final reports generated related to the petition. Plaintiffs understand and agree that plaintiffs and plaintiffs’ representatives will need to sign one or more confidentiality agreements regarding any non-public data or final reports provided pursuant to this Paragraph.

12. Any notifications under this Consent Decree shall be directed to the individuals at the addresses specified below by United States Mail or Overnight Courier and e-mail, unless these individuals or their successors give notice of a change to the other Parties in writing.

As to Plaintiffs:

Aubrey Baldwin  
Pacific Environmental Advocacy Center  
10015 SW Terwilliger Blvd.  
Portland, OR 97219  
e-mail: abaldwin@lclark.edu

As to Defendant:

Stephen A. Redshaw  
Associate General Counsel  
Portland General Electric Co.  
121 SW Salmon Street  
1WTC1301  
Portland, OR 97204  
e-mail: stephen.redshaw@pgn.com

13. The Parties agree to cooperate in good faith in order to obtain the Court's review and entry of this Consent Decree.

14. Pursuant to 42 U.S.C. § 7604(c)(3), this Consent Decree shall be lodged with the Court and simultaneously provided to the United States for review and comment for a period not to exceed forty-five (45) days.

15. If the United States does not object or intervene within forty-five (45) days of receipt, the Parties shall submit a joint motion to the Court seeking entry of the Consent Decree.

16. Entry of this Consent Decree shall resolve any and all claims of Plaintiffs under the Clean Air Act and Oregon's State Implementation Plan relating to any actions taken by PGE at the Boardman Power Plant prior to entry of the Decree, including but not limited to those claims and actions alleged or that could have been alleged in the Complaint and Notice Letter in

this action. The failure of any Party to comply with any requirement contained in this Consent Decree will not excuse the obligation to comply with other requirements contained herein.

17. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree, and supersedes all prior agreements and understandings among the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise constitutes any part of this Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

18. Within 30 days of entry of this Decree, PGE agrees to transfer by wire to Pacific Environmental Advocacy Center the amount of \$1,000,000 to cover plaintiffs' attorneys' fees, plaintiffs' expert witness fees, and plaintiffs' costs for this case through the date of lodging. Counsel for Plaintiffs shall provide wire transfer instructions to counsel for PGE at least ten (10) days prior to the date payment is due.

19. Plaintiffs expressly reserve their right to petition the Court for recovery of additional costs and fees incurred after the Consent Decree is lodged, including but not limited to their costs and fees incurred in any Consent Decree enforcement process. PGE expressly reserves its right to object to the recovery of any additional costs and fees.

20. Modifications to this Consent Decree may be made only upon written agreement of the Parties which shall be filed with the Court.

21. Pursuant to 42 U.S.C. § 7604(c)(3), the United States shall be provided with the opportunity to review and comment upon any proposed modification to this Consent Decree.

22. This Consent Decree shall remain an enforceable order of the Court until terminated pursuant to Paragraph 23.

23. Any party may move for termination of this Decree once PGE has met all of the requirements of the Decree. If no party moves for termination of the Decree, the Decree shall terminate automatically by its own terms as of June 30, 2021. In no event shall this Consent Decree terminate until the permits that PGE must apply for under the terms of this Consent Decree have been validly issued and have taken effect, except that the Decree shall terminate on June 30, 2021 even if the permitting authority has failed to issue the required permits.

24. Until termination of this Consent Decree, this Court shall retain jurisdiction over both the subject matter of this Consent Decree and the Parties to this Consent Decree to enforce the terms and conditions of this Consent Decree. During the term of this Consent Decree, any Party to the Consent Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree. Prior to applying to the Court for relief, the Parties agree to meet and confer to determine whether the dispute can be resolved through informal negotiations among the Parties. As part of the meet and confer obligation, the Parties shall discuss whether to submit their dispute to a mutually-agreed-upon alternative dispute resolution forum rather than seeking Court intervention.

25. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

26. This Consent Decree may be signed in counterparts.

THE UNDERSIGNED PARTIES enter into this Consent Decree and submit it to this Court for approval and entry.

Dated: July 18, 2011

  
\_\_\_\_\_  
Bill Corcoran  
Sierra Club

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
Mark Riskedahl  
Northwest Environmental Defense Center

Dated: \_\_\_\_\_, 2011

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Michael Lang  
Friends of the Columbia Gorge

Dated: \_\_\_\_\_, 2011

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Brett VandenHeuvel  
Columbia Riverkeeper

Dated: \_\_\_\_\_, 2011

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Brian Kelly  
Hells Canyon Preservation Council

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
Stephen Quennoz  
Portland General Electric Company

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
The Honorable Ancer L. Haggerty  
United States District Judge

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
Bill Corcoran  
Sierra Club

Dated: July 14, 2011

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*Mark Riskedahl*  
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Northwest Environmental Defense Center

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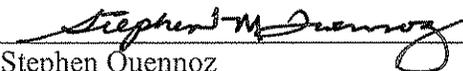
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