

NOW, THEREFORE, the Parties, intending to be bound by this Agreement, hereby stipulate and agree as follows:

1. Promptly after execution of this Agreement, the Parties will notify the Court that they have reached a settlement on issues 1 and 2 in UARG's Nonbinding Statement of Issues (filed Feb. 8, 2010), subject to required notice provisions described in paragraph 7 below, and will request that No. 09-1333 be severed from lead No. 09-1325 and the other consolidated cases and be held in abeyance pending finalization and completion of the terms of their settlement, with EPA to file status reports on 120-day intervals. The Parties will further request in that motion that issue 3 in UARG's Nonbinding Statement of Issues be severed from No. 09-1333 and placed in a new docket, to be held in abeyance, with EPA to file status reports on 120-day intervals.

2. EPA shall as expeditiously as practicable publish a notice of proposed rulemaking on the issue of whether the GHG Reporting Rule should be amended by the inclusion of proposed amendments of the same substance as set forth in Attachment A to this Agreement.

3. If and when EPA promulgates in final form an amendment to the GHG Reporting Rule that includes changes that are substantially the same substance as set forth in Attachment A to this Agreement, then Petitioner shall promptly file a stipulation of dismissal with prejudice of No. 09-1333, or in the event that not all such changes were made, a stipulation of dismissal with prejudice of No 09-1333 for the issues that correspond to such changes that were made, with the creation of a new docket for those issues that were not resolved.

Such stipulation of dismissal shall be in accordance with Rule 42 of the Federal Rules of Appellate Procedure, with each party to bear its own costs and attorneys' fees. In addition, Petitioner shall not challenge the validity of the portion of the final rule adopting such amendments of substantially the same substance as set forth in Attachment A in any court or administrative proceeding, and the right to raise such challenge is waived, provided that Petitioner reserves any rights it may have to challenge in any court or administrative proceeding any portion of such final rule that is not of substantially the same substance as set forth in Attachment A to this Agreement.

4. If and when EPA promulgates in final form an amendment to the GHG Reporting Rule that includes changes that are substantially the same substance as set forth in Attachment A to this Agreement, Petitioner's pending administrative petition for reconsideration of the GHG Reporting Rule, or the issues raised in that petition that correspond to such changes in the event not all such changes are made, shall be deemed withdrawn.

5. For purposes of this Agreement, EPA and Petitioner recognize that the publication of new or modified regulations in the proposed or final rule that address other matters or provisions than that set forth in Attachment A or that in the proposed or final rule are otherwise substantially more detailed, extensive and comprehensive than that set forth in Attachment A would not on that basis alone cause the final changes referenced in paragraphs 2, 3 and 4 above not to be the same substance or substantially the same substance as set forth in Attachment A.

6. If EPA does not take action in accordance with the terms of this

agreement then Petitioner's sole remedy under this Agreement regarding the rules under review in these cases shall be the right to request that the Court lift the stay of proceedings and establish a schedule for briefing and oral argument.

7. EPA and Petitioner agree and acknowledge that before this Agreement is final, EPA must provide notice in the Federal Register and an opportunity for comment pursuant to Clean Air Act section 113(g), 42 U.S.C. § 7413(g). EPA shall submit said notice of this Agreement to the Federal Register for publication as expeditiously as possible. After this Agreement has undergone an opportunity for notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold her consent to the Agreement, in accordance with section 113(g) of the Clean Air Act. This Agreement shall become final on the date that EPA provides written notice of such finality to Petitioner.

8. Nothing in the terms of this Agreement shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act or by general principles of administrative law.

9. Any obligations of EPA to obligate or expend funds under this Agreement are subject to the availability of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341. This Settlement Agreement shall not be construed to require the United States to obligate or pay funds in contravention of said Anti-Deficiency Act, 31 U.S.C. § 1341.

10. Except as provided in this Settlement Agreement, none of the parties

hereto waives or relinquishes any legal rights, claims, or defenses it may have.

11. The undersigned representatives of each party certify that they are fully authorized by the party that they represent to bind that respective party to the terms of this Agreement.

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DRAFT -- CONFIDENTIAL SETTLEMENT COMMUNICATION

ATTACHMENT A

(i) Annual emissions (~~excluding~~ including biogenic CO₂) aggregated for all GHG from all applicable source categories in subparts C through JJ of this part and expressed in metric tons of CO₂e calculated using Equation A-1 of this subpart.

(ii) Annual emissions of biogenic CO₂ aggregated for all applicable source categories in subparts C through JJ of this part in metric tons. Units that use the methodologies in part 75 of this chapter to calculate CO₂ mass emissions are not required to separately report biogenic CO₂ emissions, but may do so as an option.

(iii) Annual emissions from each applicable source category in subparts C through JJ of this part, expressed in metric tons of each applicable GHG listed in this paragraph (4)(iii)(A) through (4)(iii)(E).

(A) Biogenic CO₂. Units that use the methodologies in part 75 of this chapter to calculate CO₂ mass emissions are not required to separately report biogenic CO₂ emissions, but may do so as an option.

(B) CO₂ (~~excluding~~ including biogenic CO₂).

(C) CH₄.

(D) N₂O.

(E) Each fluorinated GHG (including those not listed in Table A-1 of this subpart).

40 C.F.R. § 98.3(c)(4)(i)-(iii)

(4) Missing data computations. For each missing data event, also retain a record of the duration-cause of the event, and the corrective actions taken to restore malfunctioning monitoring equipment, the cause of the event, and the actions taken to prevent or minimize occurrence in the future.

40 C.F.R. § 98.3(g)(4)

(h) *Annual GHG report revisions.*

(1) The owner or operator shall submit a revised annual GHG report within 45 days of discovering that or being notified by EPA of errors in an annual GHG report that the owner or

operator previously submitted contains one or more substantive errors. The revised report must correct all identified substantive errors.

(2) The Administrator may notify the owner or operator in writing that an annual GHG report previously submitted by the owner or operator contains one or more substantive errors. Such notification will identify each such substantive error. The owner or operator shall, within 45 days of receipt of the notification, either resubmit the report that, for each identified substantive error, corrects the identified substantive error (in accordance with the applicable requirements of part 98) or provide information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error.

(3) A substantive error is an error that impacts the quantity of GHG emissions reported or otherwise prevents the reported data from being validated or verified.

(4) Notwithstanding paragraphs (h)(1) and (2) of this section, upon request by the owner or operator, the Administrator may provide reasonable extensions of the 45-day period for submission of the revised report or information under paragraphs (h)(1) and (2). If the Administrator receives a request for extension of the 45-day period, by email to an address prescribed by the Administrator, at least 2 business days prior to the expiration of the 45-day period, and the Administrator does not respond to the request by the end of such period, the extension request is deemed to be automatically granted for 30 more days. During the automatic 30-day extension, the Administrator will determine what extension, if any, beyond the automatic extension is reasonable and will provide any such additional extension.

(5) The owner or operator shall retain documentation for 3 years to support any revisions made to an annual GHG report.

40 C.F.R. § 98.3(h)

* * * The accuracy specifications in this paragraph (i) do not apply where either the use of company records (as defined in §98.6) or the use of "best available information" is specified in an applicable subpart of this part to quantify fuel usage and/or other parameters. Further, the provisions of this paragraph (i) do not apply to stationary fuel combustion units that use the methodologies in part 75 of this chapter to calculate CO₂ mass emissions. * * *

Intro paragraph in 40 C.F.R. § 98.3(i)

(ii) The minimum required sampling frequency ~~number of HHV samples required~~ sampling frequency for determining the annual average HHV (e.g., monthly, quarterly, semi-annually, or by lot) is specified (e.g., monthly, quarterly, semi-annually, or by lot) in §98.34. The method for computing the annual average HHV is a function of unit size and how frequently you perform or receive from the fuel supplier the results of fuel sampling for HHV. The method is specified in paragraph (a)(2)(ii)(A) or (a)(2)(ii)(B) of this section, as applicable.

(A) If the results of fuel sampling are received monthly or more frequently, then for each unit with a maximum rated heat input capacity greater than or equal to 100 mmBtu/hr (or for a group of units that includes at least one unit of that size), the annual average HHV shall be calculated using Equation C-2b of this section. If multiple HHV determinations are made in any month, average the values for the month arithmetically.

(B) If the results of fuel sampling are received less frequently than monthly, ~~then or, for a unit with a maximum rated heat input capacity less than 100 mmBtu/hr (or a group of such units) regardless of the sampling frequency,~~ the annual average HHV shall be computed as the arithmetic average HHV for all values for the year (including valid samples and substitute data values under §98.35).

40 C.F.R. § 98.33(a)(2)(ii)

~~(Div) For units that qualify to use the alternative CO₂ emissions calculation methods in paragraphs (a)(5)(i) through (a)(5)(iii) of this section, if both biomass and fossil fuel are combusted during the year, separate calculation and reporting of the biogenic CO₂ mass emissions determine and report the biogenic CO₂ mass emissions separately, (as described in paragraph (e) of this section) is optional.~~

40 C.F.R. § 98.33(a)(5)(iii)(D)

(4) * * *

(HI)_A = ~~Cumulative annual heat input derived from combustion of the fuel, derived from the electronic data reports required under §75.64 of this chapter or, for Tier 4 units, from the best available information as described in paragraph (c)(4)(ii) of this section (mmBtu).~~

* * *

(i) ~~If only one type of fuel listed in Table C-2 is combusted during normal operation~~ the reporting year, substitute the cumulative annual heat input from combustion of the fuel into Equation C-10 of this section to calculate the annual CH₄ or N₂O emissions. For units in the Acid Rain Program and units that report heat input data to EPA year-round according to part 75 of this chapter, obtain the cumulative annual heat input directly from the electronic data reports required under §75.64 of this chapter. For Tier 4 units, use the best available information, as described in paragraph (c)(4)(ii)(C) of this section, to estimate the cumulative annual heat input (HI)_A.

(ii) ~~If more than one type of fuel listed in Table C-2 is combusted during normal operation~~ the reporting year, use Equation C-10 of this section separately for each type of fuel, except as provided in, except as provided in paragraph (c)(4)(ii)(B) of this section. Determine

the appropriate values of (HI)_A as follows: If flow rate and diluent gas monitors are used to measure the unit heat input,

(A) For units in the Acid Rain Program and other units that report heat input data to EPA year-round according to part 75 of this chapter, obtain (HI)_A for each type of fuel from the electronic data reports required under §75.64 of this chapter, except as otherwise provided in paragraphs (c)(4)(ii)(B) and (c)(4)(ii)(D) of this section.

(B) For a unit that uses CEMS to monitor hourly heat input according to part 75 of this chapter, the value of (HI)_A obtained from the electronic data reports under §75.64 of this chapter may be attributed exclusively to the fuel with the highest F-factor, when the reporting option in 3.3.6.5 of appendix F to part 75 of this chapter is selected and implemented.

(C) For Tier 4 units, use the best available information (e.g., fuel feed rate measurements, fuel heating values, engineering analysis) to estimate the annual heat input from value of (HI)_A for each type of fuel. Instrumentation used to make these estimates is not subject to the calibration requirements of §98.3(i) or to the QA requirements of §98.34.

(D) Units in the Acid Rain Program and other units that report heat input data to EPA year-round according to part 75 of this chapter may use the best available information described in paragraph (c)(4)(ii)(C) of this section, to estimate (HI)_A for each fuel type, whenever fuel-specific heat input values cannot be directly obtained from the electronic data reports under §75.64 of this chapter.

40 C.F.R. § 98.33(c)

(e) * * * Notwithstanding these requirements, separate reporting of biogenic CO₂ emissions is optional for units subject to subpart D of this part and for units that use the CO₂ mass emissions calculation methodologies in part 75 of this chapter, pursuant to paragraph (a)(5) of this section; however, if the owner or operator opts to report biogenic CO₂ emissions separately for these units, the appropriate method(s) in this paragraph (e) shall be used.

40 C.F.R. § 98.33(e)

(ii) For coal and fuel oil, and for any other solid or liquid fuel that is delivered in lots, analysis of at least one representative sample from each fuel lot is required. For fuel oil, as an alternative to sampling each fuel lot, a sample may be taken upon each addition of oil to the unit's storage tank. Flow proportional sampling, continuous drip sampling, or daily manual oil sampling may also be used, in lieu of sampling each fuel lot. For the purposes of this section, a fuel lot is defined as either:

(A) A shipment or delivery of a single fuel (e.g., ship load, barge load, group of trucks, oil delivery via pipeline from a tank farm, group of railroad cars, etc.); or

(B) If multiple deliveries of a particular type of fuel are received from the same supply source in a given calendar month, the deliveries for that month are considered, collectively, to comprise a fuel lot, requiring only one representative sample.

40 C.F.R. § 98.34(a)(2)(ii)

~~(6) You must Use one of the following any applicable appropriate fuel sampling and analysis methods. You may use a methods published by a consensus standards organization if such a method exists, or you may use industry consensus standard practice in this paragraph (a)(6) to determine the high heat values. Consensus-based standards organizations include, but are not limited to, the following: ASTM International, the American National Standards Institute (ANSI), the American Gas Association (AGA), the American Society of Mechanical Engineers (ASME), the American Petroleum Institute (API), and the North American Energy Standards Board (NAESB). Alternatively, for gaseous fuels, the HHV may be calculated using chromatographic analysis together with standard heating values of the fuel constituents, provided that the gas chromatograph is operated, maintained, and calibrated according to the manufacturer's instructions. The method(s) used shall be documented in the monitoring plan required under §98.3(g)(5).~~

~~(i) ASTM D4809-06 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method) (incorporated by reference, see §98.7).~~

~~(ii) ASTM D240-02 (Reapproved 2007) Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (incorporated by reference, see §98.7).~~

~~(iii) ASTM D1826-94 (Reapproved 2003) Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter (incorporated by reference, see §98.7).~~

~~(iv) ASTM D3588-98 (Reapproved 2003) Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels (incorporated by reference, see §98.7).~~

~~(v) ASTM D4891-89 (Reapproved 2006) Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion (incorporated by reference, see §98.7).~~

~~(vi) GPA Standard 2172-09 Calculation of Gross Heating Value, Relative Density, Compressibility and Theoretical Hydrocarbon Liquid Content for Natural Gas Mixtures for Custody Transfer (incorporated by reference, see §98.7).~~

~~(vii) GPA Standard 2261-00, Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography (incorporated by reference, see §98.7).~~

~~(viii) ASTM D5865-07a, Standard Test Method for Gross Calorific Value of Coal and Coke (incorporated by reference, see §98.7).~~

40 C.F.R. §98.34(a)(6)

(1) ~~You must~~ Calibrate each oil and gas flow meter according to §98.3(i) and the provisions of this paragraph (b)(1).

(i) Perform calibrations using any of the test methods and procedures in this paragraph (b)(1)(i). The method(s) used shall be documented in the monitoring plan required under §98.3(g)(5).

(A) ~~You may use~~ An appropriate flow meter calibration method published by a consensus standards organization, if such a method exists~~applicable flow meter test method listed in paragraphs (b)(4)(i) through (b)(4)(viii) of this section.~~ Consensus-based standards organizations include, but are not limited to, the following: ASTM International, the American National Standards Institute (ANSI), the American Gas Association (AGA), the American Society of Mechanical Engineers (ASME), the American Petroleum Institute (API), and the North American Energy Standards Board (NAESB).

(B) ~~You may use~~ The calibration procedures specified by the flow meter manufacturer.

(C) ~~You may use~~ An industry-accepted or industry consensus standard calibration practice***

40 C.F.R. §98.34(b)(1)

(B) For coal and fuel oil and for any other solid or liquid fuel that is delivered in lots, analysis of at least one representative sample from each fuel lot is required. For fuel oil, as an alternative to sampling each fuel lot, a sample may be taken upon each addition of oil to the unit's storage tank. Flow proportional sampling, continuous drip sampling, or daily manual oil sampling may also be used, in lieu of sampling each fuel lot. For the purposes of this section, a fuel lot is defined as either:

(1) A shipment or delivery of a single fuel (e.g., ship load, barge load, group of trucks, group of railroad cars, oil delivery via pipeline from a tank farm, etc.); or

(2) If multiple deliveries of a particular type of fuel are received from the same supply source in a given calendar month, the deliveries for that month are considered, collectively, to comprise a fuel lot, requiring only one representative sample.

40 C.F.R. § 98.34(b)(3)(ii)(B)

(4) ~~Use any applicable standard method from the following list to quality assure the data from each fuel flow meter.~~

~~(i) AGA Report No. 3, Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids, Part 1: General Equations and Uncertainty Guidelines (1990) and Part 2: Specification and Installation Requirements (2000)(incorporated by reference, see §98.7).~~

~~(ii) AGA Transmission Measurement Committee Report No. 7, Measurement of Gas by Turbine Meters (2006) (incorporated by reference, see §98.7).~~

~~(iii) ASME MFC 3M 2004 Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi (incorporated by reference, see §98.7).~~

- (iv) ~~ASME MFC 4M-1986 (Reaffirmed 1997), Measurement of Gas Flow by Turbine Meters (incorporated by reference, see §98.7).~~
 - (v) ~~ASME MFC 5M-1985 (Reaffirmed 1994), Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters (incorporated by reference, see §98.7).~~
 - (vi) ~~ASME MFC 6M-1998 Measurement of Fluid Flow in Pipes Using Vortex Flowmeters (incorporated by reference, see §98.7).~~
 - (vii) ~~ASME MFC 7M-1987 (Reaffirmed 1992), Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles (incorporated by reference, see §98.7).~~
 - (viii) ~~ASME MFC 9M-1988 (Reaffirmed 2001), Measurement of Liquid Flow in Closed Conduits by Weighing Method (incorporated by reference, see §98.7).~~
- (54) You must use one of the following any applicable appropriate fuel sampling and analysis methods-. You may use a method published by a consensus standards organization if such a method exists, or you may use industry consensus standard practice methods from the following list to determine the carbon content and molecular weight (for gaseous fuel) of the fuel. Consensus-based standards organizations include, but are not limited to, the following: ASTM International, the American National Standards Institute (ANSI), the American Gas Association (AGA), the American Society of Mechanical Engineers (ASME), the American Petroleum Institute (API), and the North American Energy Standards Board (NAESB). Alternatively, the results of chromatographic analysis of the fuel may be used, provided that the gas chromatograph is operated, maintained, and calibrated according to the manufacturer's instructions. The method(s) used shall be documented in the monitoring plan required under §98.3(g)(5).

40 C.F.R. § 98.34(b)(4)-(5)

(f) ~~Whenever company records are used in the calculation of CO₂ emissions, the records required under § 98.3(g)(2)(i) shall include an explanation of how the following parameters are determined from both the company records (or, if applicable, from the best available information): and an explanation of how those records are used to estimate the following parameters:~~

- (1) ~~Fuel consumption, when the Tier 1 and Tier 2 Calculation Methodologies are used-, including when 98.36(c)(4) applies.~~
- (2) Fuel consumption, when solid fuel is combusted and the Tier 3 Calculation Methodology is used.
- (3) Fossil fuel consumption when § 98.33(e)(2) applies to a unit that uses CEMS to quantify CO₂ emissions and that combusts both fossil and biomass fuels.
- (4) Sorbent usage, when § 98.33(d) applies.
- (5) Quantity of steam generated by a unit when § 98.33(a)(2) applies.
- (6) Biogenic fuel consumption under § 98.33(e)(5).

(7) Fuel usage for CH₄ and N₂O emissions calculations under §98.33(c)(4)(ii).

(8) Mass of biomass combusted, for premixed fuels that contain biomass and fossil fuels under §98.33(e)(1)(iii).

40 C.F.R. § 98.34(f)

[Delete 40 C.F.R. § 98.34(g)]

(4) The following alternative reporting option applies to situations where a common liquid or gaseous fuel supply is shared between one or more large combustion units, such as boilers or combustion turbines (including units subject to subpart D of this part), and small combustion sources on-site, including but not limited to space heaters and hot water heaters. In this case, you may simplify reporting by attributing all of the GHG emissions from combustion of the shared fuel to the large combustion unit(s), provided that:

(i) The total quantity of the fuel combusted during the report year in the units sharing the fuel supply is measured, either at the “gate” to the facility or at a point inside the facility, using a fuel flow meter, billing meter, or tank drop measurements (as applicable);

(ii) On an annual basis, at least 95 percent (by mass or volume) of the shared fuel is combusted in the large combustion unit(s), and the remainder is combusted in the small combustion sources. Company records may be used to determine the percentage distribution of the shared fuel to the large and small units; and

(iii) The use of this reporting option is documented in the monitoring plan required under §98.3(g)(5). Indicate in the monitoring plan which units share the common fuel supply and the method used to demonstrate that this alternative reporting option applies. For the small combustion sources on-site, a description of the types of units and the approximate number of units is sufficient.

40 C.F.R. § 98.36(c)(4).

(ii) *** Subpart D units are not required to report biogenic CO₂ emissions under §§98.3(c)(4)(ii) and (c)(4)(iii)(A).

* * *

(ix) Annual CO₂ mass emissions from the combustion of biomass, expressed in metric tons CO₂e (optional).

40 C.F.R. §§ 98.36(d)(1)(ii) and (ix)

(ii) ***

(~~DF~~) Annual CO₂, CH₄, and N₂O emissions at each monitored location, across all fuel types, expressed in metric tons of CO₂e.

(I) Annual CO₂ mass emissions from the combustion of biomass, expressed in metric tons CO₂e (optional).

40 C.F.R. § 98.36(d) (2)(ii)

(iii) ***

(~~DF~~) The total annual CO₂, CH₄, and N₂O emissions at each monitored location, expressed in metric tons of CO₂e.

(I) Annual CO₂ mass emissions from the combustion of biomass, expressed in metric tons CO₂e (optional).

40 C.F.R. § 98.36(d)(2)(iii)

The annual report shall comply with the data reporting requirements specified in §98.36(d)(1)(b) and, if applicable, §98.36(e)(2) or (e)(3).

40 C.F.R. § 98.46

You shall comply with the recordkeeping requirements of §§98.3(g) and 98.37. Records retained under § 75.57(h) of 40 CFR Part 75 for missing data events satisfy the recordkeeping requirements of § 98.3(g)(4) for those same events.

40 C.F.R. § 98.47
