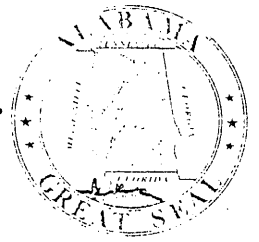


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DIRECTOR

April 28, 2006

BOB RILEY

GOVERNOR

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DEBORAH HART
MORGAN STANLEY
SEEDCO
2000 WESTCHESTER AVENUE 1ST FLOOR
PURCHASE NY 10577

RE: Facility No. 206-0030
Consent Order 06-050-CAP

Dear Ms. Hart:

Please find enclosed ADEM Consent Order No. 06-050-CAP which requires South Eastern Development Corporation (SEEDCO) to take certain actions in regard to alleged violations of the Alabama Air Pollution Control Act. This Order has been issued with the consent of SEEDCO and the Department. Please note that the assessed civil penalty is due within 45 days of the effective date of the Order.

If you have any questions concerning this matter, please contact Daphne Smart at (334) 271-7867 in Montgomery.

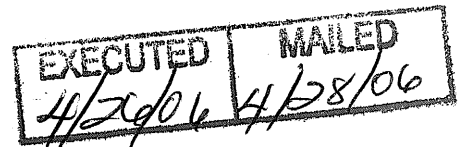
Sincerely,

Ronald W. Gore, Chief
Air Division

Enclosure

RWG/DYS/bdc

cc: Olivia Rowell – ADEM Office of General Counsel



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Birmingham Branch
110 Vulcan Road
Birmingham, Alabama 35209-4702
(205) 942-6168
(205) 941-1603 [Fax]

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Mobile Branch
2204 Perimeter Road
Mobile, Alabama 36615-1131
(251) 450-3400
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(251) 432-6533
(251) 432-6598 [Fax]



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**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

<u>IN THE MATTER OF:</u>)	
)	
South Eastern Electric Development Corp.)	CONSENT ORDER NO. 06- <u>050</u> -CAP
Smiths, Lee County, Alabama)	
)	
<u>Air Facility ID No. 206-0030</u>)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and South Eastern Electric Development Corporation (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama, 1975, §§ 22-22A-1 through 22-22A-16, as amended, the Alabama Air Pollution Control Act, Code of Alabama, 1975, §§ 22-28-1 through 22-28-23, as amended, and the regulations promulgated pursuant thereto. It is intended to serve as the final resolution between the State, acting through the Department, and the Permittee of the allegations set forth below.

STIPULATIONS

1. The Permittee operates an electric generating facility (Air Facility ID No. 206-0030) in Smiths, Lee County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Code of Alabama, 1975, §§ 22-22A-1 through 22-22A-16, as amended.
3. Pursuant to Code of Alabama, 1975, § 22-22A-4(n), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42

U.S.C. §§ 7401 through 7671(q), as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Code of Alabama, 1975, §§ 22-28-1 through 22-28-23, as amended.

4. The Permittee operates two 50 MW simple cycle combustion turbine units under the authority of Major Source Operating Permit No. 206-0030 (hereinafter "the Permit").

5. The Permit was issued subject to certain terms, conditions, and limitations, including the following monitoring, recordkeeping and reporting requirements:

- Reports to the Department of any required monitoring shall be submitted at least every 6 months. All instances of deviations from permit requirements must be clearly identified in said reports. All required reports must be certified by a responsible official consistent with Rule 335-3-16-.04(9). [General Proviso 21(a)]

Deviations from permit requirements shall be reported within 48 hours or 2 working days of such deviations, including those attributable to upset conditions as defined in the permit. The report will include the probable cause of said deviations, and any corrective actions or preventive measures that were taken. [General Proviso 21(b)]

- A compliance certification shall be submitted annually within 60 days of the date of issuance of this permit. (General Proviso 12)

The compliance certification shall include the following:

- The identification of each term or condition of this permit that is the basis of the certification;
- The compliance status;
- The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with Rule 335-3-16-.05(3) (Monitoring and Recording Keeping Requirements);
- Whether the compliance has been continuous or intermittent;
- Such other facts as the Department may require to determine the compliance status of the source...

- The Carbon Monoxide (CO) emission rate from each combustion turbine stack shall not exceed 75.0 lb/hr. (Emission Standard Proviso 2)
- The water-to-fuel ratio shall be monitored continuously while each machine is operating. The water-to-fuel ratio for each turbine shall be maintained at or below the highest injection rate measured during any previous testing events showing compliance with the CO emission limit of 75.0 lb/hr. (Emission Monitoring Proviso 1)

6. On August 1, 2005, the Department received the Permittee's Annual Compliance Certification for the June 8, 2004 through June 7, 2005 period. A revised Annual Compliance Certification was received on September 15, 2005. The Permittee certified continuous compliance with the CO emission limits and with the water-to-fuel ratios.

7. On July 22, 2005, the Department received the Permittee's monitoring report for the 2nd Quarter of 2005. Subsequently, the Department requested that the monitoring reports address the water-to-fuel ratios. Bill Apple of Smith and Aldridge, a consultant for the Permittee, indicated that the water-to-fuel ratios were not addressed in the quarterly reports because there were no deviations. On September 15, 2005, the Department received a revised monitoring report for the 2nd Quarter of 2005 which indicated that the water-to-fuel ratio for each turbine was maintained at or below the highest injection rate measured during any previous testing events showing compliance with the CO emission limit of 75.0 lb/hr during all operating hours in the reporting period.

8. On September 21, 2005, Air Division personnel conducted an unannounced inspection of the Permittee's facility located in Smiths, Alabama. Records provided during the inspection indicated that the water-to-fuel ratios were not maintained

at or below the established highest injection rates during operations on April 13 and 14, 2005.

9. On October 18, 2005, the Department issued a Notice of Violation ("NOV") to the Permittee alleging that the Permittee had failed to maintain the water-to-fuel ratios within required ranges during certain times, had incorrectly certified the compliance of the facility in the Annual Compliance Certifications, had failed to report the water-to-fuel deviations to the Department in the monitoring reports, and had failed to notify the Department of deviations from permit requirements within 48 hours or 2 working days.

10. On November 4, 2005, the Department received the Permittee's response to the NOV. The Permittee stated the plant operator adjusted the water-to-fuel ratios to maintain the NOx emissions as reported by the CEMS and did not realize there were maximum allowable water-to-fuel ratios. It was also stated that the reports submitted to the Department were reviewed against any known excursions; however, no excursions were reported. As a result of the above noted events, the Permittee has indicated that all operators and personnel responsible for the facility will be re-trained on the conditions of the Permit on an annual basis, an operations checklist will be developed, an alarm will be added to the control system to alert the operators of any exceedances of water-to-fuel ratios, and revisions will be made to the reporting procedures which will include a review of plant operations data.

11. The Permittee has provided copies of the checklist and control form referenced above and developed in partial response to the Department's October 18, 2005, Notice of Violation.

12. The Permit provides that the CO emissions rate for each combustion turbine stack shall not exceed 75 lb/hr. However, the Permit further provides that this emission standard shall not apply during the hour of start-up and of shut-down and also in the event of a load change of more than 15% (Permit p. 14).

13. The Permittee has also provided a report ("Operating Report") that details hours of operation and water-to-fuel ratios for each unit on each day of operation in 2005.

14. During 2005, the Operating Report indicates that the units operated outside established water-to-fuel ratios during testing required by the permit on April 13 and 14. SEEDCO alleges that all other operations during 2005 appear to fall within the startup/shutdown or load change exceptions contained in the Permit. The Permittee believes that, even though the water-to-fuel ratios were not within established ranges during operation on April 13 and 14, the CO emissions remained below the 75 lb/hr permitted limits. For this reason, the Permittee asserts that while operations in excess of the water-to-fuel ratios may violate a permit provision under certain operating conditions, there is no indication of an actual exceedance of the 75 lb/hr CO emission limit.

15. The Permittee neither admits nor denies the allegations set forth by the Department above and hereinafter and enters this Consent Order with the understanding that nothing herein constitutes any admission of wrongdoing or violation of law. Therefore, in an effort to resolve the matter amicably and completely, the Permittee consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

16. The Department has agreed to the terms of this Consent Order in an effort to resolve fully the violations alleged herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has

determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

17. Pursuant to Code of Alabama, 1975, § 22-22A-5(18)c., in determining the amount of any penalty, the Department must give consideration to the seriousness of the alleged violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such alleged violation upon the environment; such person's history of previous violations or alleged; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than one hundred dollars (\$100.00) or exceed twenty-five thousand dollars (\$25,000.00) for each alleged violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed two hundred fifty thousand dollars (\$250,000.00). Each day such violation continues shall constitute a separate allegation of violation.

18. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Department alleges that on April 13 and 14, 2005, there were deviations from the water-to-fuel ratio requirements of the Permit, which provide an indication of compliance with the CO emission limitations. In such event, the Permittee would also be required by the Permit to report such

excursions within 48 hours and to indicate them on the 2005 annual compliance certification. There is no separate evidence that the CO limit of 75 lb/hr was exceeded and the Department is not aware of any evidence of harm to human health or the environment.

B. THE STANDARD OF CARE: The Department alleges that, on the two days in which the units operated and were subject to the CO emission limitations during April 2005, the Permittee failed to operate the water injection systems on the combustion turbines within the permitted operating range as indicated by the water-to fuel ratios. The Permittee also failed to report excursions and provided inaccurate and incomplete reports to the Department.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any significant economic benefit which would have been realized as a result of the alleged violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee states that it was not aware of the alleged violations during the events and therefore did not take any immediate actions to minimize or mitigate the effects of the alleged violations upon the environment. There is no evidence that any of the alleged violations threatened any adverse effect on human health or the environment. The Permittee has agreed to retrain personnel on the conditions of the Permit on an annual basis, develop an operations checklist, add a water-to-fuel ratio alarm to the control system, and revise reporting procedures to include reviews of operations data and documents demonstrating these actions have been provided by the Permittee.

E. HISTORY OF PREVIOUS VIOLATIONS: Air Division records indicate that since 2001, the Permittee has received two (2) Notices of Violation (excluding that which is cited for in this Order). On November 25, 2002, a Notice of Violation was issued to the Permittee for incorrectly identifying the method used to determine compliance and incorrectly certifying compliance in an Annual Compliance Certification. The other Notice of Violation was issued due to violations of air pollution control regulations, but was not similar to the type of violation cited for this event. Following the Permittee's response to these notices, the Department did not take any further action.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE the Permittee, along with the Department, desires to resolve and settle fully and completely the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Code of Alabama, 1975, § 22-22A-5(18)c., as well as the need for and benefits of securing timely and effective enforcement, and the Department believes that the following conditions are appropriate to address fully and completely the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) in settlement of the violations alleged herein within 45 days from the effective date of this Consent Order. Failure to pay the civil penalty within 45 days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

D. That subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are alleged in this Consent Order.

E. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

F. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee).

G. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein as between the Permittee and the State. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

H. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent

Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

I. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

J. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty (30) days within which to comment on the Order.

K. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

L. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

M. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

SOUTH EASTERN ELECTRIC
DEVELOPMENT CORPORATION

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Deborah L. Hart

(Signature of Authorized Representative)

Deborah L. Hart

(Printed Name)

Vice President

(Printed Title)

Date Signed: 4-7-06

Onis "Trey" Glenn, III

Onis "Trey" Glenn, III
Director

Date Signed: 4-26-06