

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:	)	
	)	
Alabama Power Company	)	
Barry Steam Electric Generating Plant	)	CONSENT ORDER NO.
Bucks, Mobile County, Alabama	)	
	)	
<u>Air Facility ID No. 503-1001</u>	)	

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and Alabama Power Company (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, *as amended*, the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, *as amended*, and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. The Permittee operates a power generation facility (hereinafter, the “Facility”) known as the Barry Steam Electric Generating Plant, located in Bucks, Mobile County, Alabama (ADEM Air Facility ID No. 503-1001).
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, *as amended*.
3. Pursuant to Ala. Code § 22-22A-4(n), *as amended*, the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, *as amended*. In addition, the Department is authorized to administer and enforce the

provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, *as amended*.

4. The Permittee operates a coal-fired power boiler at the Facility (hereinafter, “Unit 4”), under the authority of Air Permit No. 503-1001-X010 (hereinafter, the “Permit”), which was issued by the Department on November 6, 2014.

5. Proviso No. 25 of the Permit states:

*“On and after April 16, 2016, these units will be subject to the Mercury and Air Toxics Standards (MATS) found in ADEM Admin. Code r. 335-3-11-.06(124) (incorporating 40 CFR Part 63, Subpart UUUUU).”*

6. According to §63.9991(a)(1) and Table 2 of 40 CFR Part 63, Subpart UUUUU, existing coal-fired electric generating units must comply with the Hydrogen Chloride (HCl) emission limit of 0.0020 lb/MMBtu or the Sulfur Dioxide (SO<sub>2</sub>) emission limit of 0.20 lb/MMBtu. The Permittee has conducted performance tests in accordance with 40 CFR Part 63, Subpart UUUUU on Unit 4 to demonstrate compliance with the HCl emission limit since May 18, 2016.

#### ***DEPARTMENT’S CONTENTIONS***

7. On April 14, 2020, the Permittee performed a HCl emissions test on Unit 4 in accordance with Method 26A of 40 CFR 60, Appendix A.

8. On June 3, 2020, the Department received a report from the Permittee summarizing the results of the April 14, 2020, HCl emissions test on Unit 4, which indicated a measured HCl emissions rate of 0.0021 lb/MMBtu, which exceeded the applicable HCl emissions limit of 0.0020 lb/MMBtu.

9. On July 9, 2020, the Department issued a Notice of Violation (hereinafter, the “NOV”) to the Permittee for the following violations:

(a) During the test performed on April 14, 2020, measured HCl emissions from Unit 4 exceeded the applicable HCl emissions limit as set forth in Air Permit 503-1001-X010 and 40 CFR Part 63, Subpart UUUUU.

10. On August 7, 2020, the Department received a response to the NOV.

11. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the 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 violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following.

A. SERIOUSNESS OF THE VIOLATION: The Department considers the exceedance of the HCl emission limit set forth in 40 CFR Part 63, Subpart UUUUU and the Permit on Unit 4 to be a serious violation. However, the Department is not aware of any irreparable harm to the environment resulting from these violations.

B. THE STANDARD OF CARE: The Permittee failed to exhibit a sufficient standard of care by exceeding the permitted HCl emission limit for Unit 4.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any evidence indicating that the Permittee received any significant economic benefit from these violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee stated that plugging was removed from the sorbent injection system on the day after the emissions test. The Permittee also stated that after receiving the results of the test report, an investigation into the potential contributing factors to the exceedance was performed and preventative maintenance was conducted.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has no history of enforcement actions with the Department due to exceedances of an allowable HCl emission rate at the Facility.

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 in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

12. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has

concluded that the civil penalty herein is appropriate (*See* “Attachment A”, which is made a part of Department’s Contentions).

13. The Department neither admits nor denies Permittee’s contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### ***PERMITTEE’S CONTENTIONS***

14. A sudden and unanticipated introduction of moisture into the dry sorbent injection system immediately prior to and during the test resulted in accelerated and unusual plugging of the sorbent injection lances and interfered temporarily with the performance of the sorbent injection system.

15. On April 15th, the day following the test, Alabama Power identified and cleaned out unusual plugging of the injection lances that deliver sorbent material for control of HCl. Following this maintenance, the injection system operated properly.

16. The dry sorbent material injected for control of HCl is highly susceptible to moisture and in light of this, Barry Unit 4 employs dedicated air dryers to dehumidify purge air.

17. Plant Barry performed maintenance and made repairs to the dedicated dryer and returned it to service the afternoon prior to the test.

18. The process of isolating, repairing and then reconnecting the dryer introduced a shock of moisture into the system for a short period as large spaces/ducts that Page 6 of

11 had been bypassed while the dryer was out of service were reconnected. Condensation had occurred in these spaces while they were isolated and bypassed and this resulted in a short and unanticipated spike in moisture being introduced into the purge air system just before and during the test itself.

19. Permittee neither admits nor denies the Department's contentions. Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

### ***ORDER***

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

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$35,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five 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 Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing every day thereafter.

D. 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.

E. The parties agree 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 cited in this Consent Order.

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

G. 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) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. 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. 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.

I. 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.

J. 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.

K. 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 days within which to comment on the Order.

L. 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.

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

N. 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.

ALABAMA POWER COMPANY

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
Lance R. LeFleur  
Director

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Title)

Date Signed: \_\_\_\_\_

Date Executed: \_\_\_\_\_

## Attachment A

### Alabama Power Company – Barry Steam Electric Generating Plant Mobile County

**Facility ID No. 503-1001**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>	<b>Total of Three Factors</b>
Demonstrated noncompliance with HCl emission limits	2	\$30,000.00	\$10,000.00	\$0	\$40,000.00
<b><i>TOTAL PER FACTOR</i></b>		<b><i>\$30,000.00</i></b>	<b><i>\$10,000.00</i></b>	<b><i>\$0</i></b>	<b><i>\$40,000.00</i></b>

<b>Adjustments to Amount of Initial Penalty</b>	
<b>Mitigating Factors (-)</b>	
<b>Ability to Pay (-)</b>	
<b>Other Factors (+/-)</b>	<b>-\$5,000</b>
<b>Total Adjustments (+/-)</b>	<b>-\$5,000</b>

<b>Economic Benefit (+)</b>	<b>\$0</b>
<b>Amount of Initial Penalty</b>	<b>\$40,000.00</b>
<b>Total Adjustments (+/-)</b>	<b>-\$5,000</b>
<b>FINAL PENALTY</b>	<b>\$35,000.00</b>

#### Footnotes

\* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.