

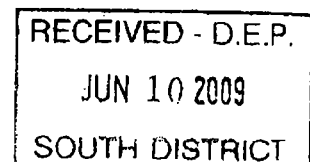
BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,)	IN THE OFFICE OF THE SOUTH DISTRICT
)	
Complainant,)	
)	OGC FILE NO. 09-0012
vs.)	
)	
NEW HOPE POWER COMPANY,)	
)	
Respondent.)	
_____)	

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and New Hope Power Company ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent neither admits nor denies the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air resources and to administer and enforce the provisions of Chapter 403, Florida Statutes ("Fla. Stat."), and the rules promulgated thereunder in Title 62 of the Florida Administrative Code ("Fla. Admin. Code"). The Department has jurisdiction over the matters addressed in this Consent Order.
2. Palm Beach County Health Department ("PBCHD") is charged with the operation of the local air pollution control program for Palm Beach County by special act and resolution. Per a Specific Operating Agreement, the Department has authorized PBCHD to administer and enforce various aspects of its state air pollution control program.
3. Respondent is a Florida corporation that owns and operates a biomass-fired cogeneration facility ("Facility") located at 8001 U.S. Highway 27 South, near South Bay, in Palm Beach County, Florida. Respondent is a person within the meaning of Section 403.031(5), Fla. Stat.
4. On September 27, 1993, the Department issued a PSD air construction permit (No. AC50-219413; PSD-FL-196) ("PSD Permit") that authorized the initial construction and operation of the



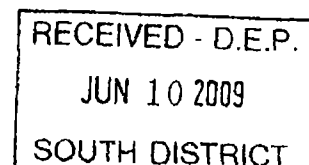
Facility. The most recent modification to the Facility's PSD Permit (No. 0990332-017-AC; PSD-FL-196P) was issued on June 6, 2005. The most recent Title V operating permit (No. 0990005-012-AV) ("Title V Permit") for the Facility was issued by the Department in accordance with Rule 62-213.420(1)(b) 2, Fla. Admin. Code, on March 18, 2004. This Title V Permit expired on October 24, 2005, but the permit is administratively continued and will remain in effect until the Department takes final action on Respondent's pending application to renew the permit.

5. Per the Air Pollution Control Specific Operating Agreement Between the State of Florida Department of Environmental Protection and Palm Beach County, PBCHD is responsible for the compliance actions with respect to the Facility, and the Department is responsible for conducting any necessary enforcement actions against the Facility.

6. In 2008, the Respondent reported to the Department and PBCHD that the Respondent had encountered a variety of problems that were causing excess emissions from the Facility. Among other things, the Respondent reported that (a) its biomass fuel (i.e., bagasse, wood, and other vegetative material) included relatively old vegetative debris that the Respondent accepted from the Palm Beach County Solid Waste Authority following the 2005 hurricanes and (b) the biomass fuel was unusually wet because of heavy summer rains, including the downpours associated with Tropical Storm Fay. The Respondent explained that the old, wet fuel made it difficult to maintain good combustion conditions in the Facility's boilers, which in turn caused the Facility to have elevated emissions of carbon monoxide ("CO") and opacity.

7. Based on the information provided by the Respondent, and based on the independent evaluations conducted by the PBCHD and the Department, the Department finds that the following violations occurred:

- A. On various occasions between April 10, 2008, and March 12, 2009, the emissions from the Facility's boilers (Boilers A, B, and C) exceeded the limits for visible emissions (opacity) that are set forth in the PSD Permit. The PSD Permit provides that the visible emissions from a boiler's stack shall not exceed 20% opacity (based on a 6-minute block average), except for one 6-minute block per hour, which shall not exceed 27% opacity.



- B. Beginning at the end of March 2008, the CO emissions from Boiler C exceeded the CO limit in the PSD Permit that is based on a 12-month rolling average (0.35 lbs/MMBtu). Boiler C exceeded this CO limit again for each subsequent month in 2008 and each month through and including March 2009. However, the 12-month rolling average for CO emissions from Boiler C was less than the applicable limit during the 12 month period ending on April 30, 2009.
- C. In August 2008 and each month thereafter, through and including the effective date of this Consent Order, the CO emissions from Boiler A exceeded the CO limit in the PSD Permit that is based on a 12-month rolling average (0.35 lbs/MMBtu).
- D. From August 24 to September 29, 2008, and from October 8 to October 29, 2008, the CO emissions from Boiler B exceeded the CO limit in the PSD Permit that is based on a 30-day rolling average (0.50 lbs/MMBtu).
- E. From August 25, 2008 to September 17, 2008, the emissions of nitrogen oxides (NOx) from Boiler B exceeded the NOx limit in the PSD Permit that is based on a 30-day rolling average (0.15 lbs/MMBtu).

8. The emission limits and opacity limits contained in the PSD Permit also are contained in the Title V Permit. Each exceedance listed in paragraph 7 also is an exceedance of the corresponding emission limit in the Title V Permit. Each exceedance listed in paragraph 7 is a violation of section 403.161(1)(b), Fla. Stat.

9. Notwithstanding these violations, Respondent has worked cooperatively with the Department and PBCHD to address the problems that arose at the Facility. The Respondent already has completed a significant number of actions to achieve compliance with the permit requirements. For example, Respondent has improved the Facility's fuel supply by blending old fuel (e.g., 2005 hurricane debris) with new pine wood chips. In addition, Respondent has increased the use of oil and natural gas to assist the boilers to operate more efficiently and thus reduce CO emissions. Furthermore, Respondent obtained new equipment to compact and reduce the moisture in the biomass fuel stockpiles. Respondent conducted

thermographic surveys of the Facility and performed maintenance on newly discovered problems that were identified through the surveys. The maintenance consisted of, but was not limited to, welding roof leaks, replacing door gaskets, and replacing corroded electrostatic field plates. Respondent provided additional training to all operational and maintenance personnel. Respondent also prepared a Compliance Plan (dated March 12, 2009), which contains a more detailed description of the problems experienced at the Facility, the steps that Respondent has taken to address these problems, and the steps that the Respondent will take in the future. The Respondent's Compliance Plan is attached hereto for reference, but the Compliance Plan is not incorporated herein, and nothing contained in the Compliance Plan shall be construed to supersede or override any provision contained in this Consent Order.

10. The Department, PBCHD, and Respondent have discussed the relevant issues in this case on several occasions. To resolve the issues in this case, the Respondent has agreed to comply with the requirements contained in this Consent Order, rather than incurring the delay and expense associated with litigation. Having reached a mutually acceptable resolution of the matter, the Department, the PBCHD, and the Respondent mutually agree and it is,

ORDERED:

11. Within thirty days of the effective date of this Consent Order, Respondent shall pay a CIVIL PENALTY to the Department in the amount of \$87,135.00 in settlement of the violations of Respondent's PSD Permit, Title V Permit, and Section 403.161(b), Fla. Stat., set forth in paragraph 7 above. In addition to the civil penalty, the Respondent shall pay \$2,500.00 for costs and expenses incurred by the Department during the investigation of this matter and for preparation and tracking of this Consent Order. This results in a total assessment of \$89,635.00. Payment of this assessment shall be made by cashier's check or money order and divided between PBCHD and the Department as follows:

- A. A payment of \$44,817.50 shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC number assigned to this Consent Order (OGC File No. 09-0012) and the notation "Ecosystem Management and Restoration Trust

Fund.” This payment shall be sent to the Department of Environmental Protection, Post Office Box 2549, Fort Myers, Florida 33902-2549.

- B. A payment of \$44,817.50 shall be made payable to Palm Beach County. This payment shall be sent to “Palm Beach County,” c/o Air Pollution Control Section, Environmental Health and Engineering, Palm Beach County Health Department, 901 Evernia Street, West Palm Beach, Florida 33401.

12. Unless otherwise provided, all other submittals required under this Consent Order shall be sent to Sherrill Culliver, Department of Environmental Protection, Post Office Box 2549, Fort Myers, Florida 33902-2549.

13. The Department and Respondent believe that the violations identified in this Consent Order were a result of moisture in the biomass fuel causing a low heating value. To redress this problem, Respondent shall implement and complete the following actions and practices:

- A. Before June 1, 2009, Respondent shall blend the oldest biomass fuel in the stockpiles with other fuel, as follows:
 - 1. To the extent that Respondent has not already done so, Respondent shall move and process the wettest and oldest (i.e., pre-June 1, 2008) portions of its fuel inventory (“low quality fuel”).
 - 2. Respondent shall spread out the low quality fuel on the stockpiles of newer and drier fuel (“high quality fuel”), which will expose the low quality fuel to drier conditions.
 - 3. While spreading the low quality fuel, Respondent shall build the blended stockpiles steeper and more compacted than they previously were (i.e., pre-2008) to ensure that the stockpiles shed rainfall to the greatest extent practicable.
- B. All of the low quality fuel that was collected and blended pursuant to subparagraph A shall be processed and burnt by June 1, 2009.

- C. Beginning June 1, 2009, Respondent shall evaluate the effectiveness of its fuel blending operations by monitoring the heating value of its as-fired fuel (i.e., the mixture of wood waste and yard trash that is ready to be used in the Facility) on a twice-a-month basis. The heating value of the fuel shall be determined through laboratory testing of composite samples taken from the as-fired fuel. The first composite sample shall be collected by the Respondent between the 1st and 7th day of every month. The laboratory testing of that sample shall be completed no later than the 14th day of the same month. The second composite sample shall be collected by the Respondent between the 14th and 21st day of the month. The laboratory testing of that sample shall be completed no later than 28th of the month. The deadlines for the laboratory testing shall be extended until the next business day if the 14th or the 28th fall on a weekend or holiday. If the heating value of any composite sample is ever less than 6,520 Btu per pound (dry basis), Respondent shall: (1) notify the Department in writing within 5 days of receiving the test results; (2) immediately adjust its fuel blending procedures to improve the quality of the as-fired fuel; and (3) conduct weekly sampling and testing until the heating value of the as-fired fuel exceeds 6,520 Btu per pound (dry basis). Under such circumstances, Respondent shall terminate weekly testing and shall resume its normal twice-a-month monitoring program on the 1st day of the month following the month when Respondent collects a weekly sample demonstrating that the heating value of the fuel exceeds 6,520 Btu per pound (dry basis).
- D. If, after taking the measures required in subparagraphs 13.A and 13.B, Respondent discovers that any of its fuel supply is excessively wet or less than 6,520 Btu per pound in heat value (dry basis), Respondent shall blend its fuel supply with drier fuel or adjust its fuel blending operations to improve the quality of the as-fired fuel.

- E. Respondent completed surveys of the Facility's dust collectors and ESPs prior to the start of the maintenance outage scheduled for April 2009 for the purpose of identifying any locations where air or water may enter into the Facility's combustion system. Any leaks detected in these surveys must be repaired by June 1, 2009. Respondent shall submit these surveys to the Department, along with a list of the repairs made and actions taken as a result of these surveys, by June 15, 2009.
- F. Respondent shall complete the improvements to the Facility's dust collector and ash removal system for Boiler A, pursuant to the requirements in Department's Consent Order No. OGC 07-2645.
- G. Respondent shall conduct a preliminary study that identifies the minimum size requirements and the estimated cost of constructing a covered shed or warehouse for storing biomass fuel during wet weather conditions. Respondent shall complete its study and provide a summary report to the Department by July 31, 2009.
- H. Beginning June 1, 2009, Respondent shall limit the monthly average CO emissions from Boiler A to 0.35 lb/MMBtu or less until the 12-month rolling average for the CO emissions from the boiler is less than or equal to 0.35 lb/MMBtu, as required by the PSD Permit. The 0.35 lb/MMBtu monthly CO limit will automatically expire when the boiler achieves the 12-month rolling average limit of 0.35 lb/MMBtu. Upon the expiration of the 0.35 lb/MMBtu limit, Respondent will again be subject to the .50 lb/MMBtu monthly CO limit in the PSD Permit. In the event the Facility is impacted by a tropical cyclone weather event, the monthly limit of 0.35 lb/MMBtu for CO emissions from Boiler A will not apply to that month; instead, the 30-day rolling average limit of 0.50 lb/MMBtu for CO emissions will be in effect.
- I. The 12-month rolling average for the CO emissions from Boiler A must be less than or equal to 0.35 lb/MMBtu (and thereby in compliance with the PSD Permit) no later

than November 1, 2009. If the Facility is impacted by a tropical cyclone weather event, this deadline is hereby extended by one month.

- J. Respondent's CO emission records shall be made available to the Department upon request.
 - K. The requirements in subparagraphs 13.C and 13.D, above, shall automatically expire when: (a) the 12 month rolling average for each of the Facility's three boilers (Boilers A, B, and C) is equal to or less than the CO emission limit of 0.35 lb/MMBtu; and (b) the Respondent has complied with each of the other requirements in subparagraphs 13.A through 13.J. However, the requirements in the PSD Permit and Title V Permit concerning the sampling, analysis, and management of the Facility's fuel shall remain in effect.
14. Respondent agrees to pay the Department stipulated penalties in the amount of \$500.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 13E, 13G and 13J of this Consent Order. A separate stipulated penalty shall be assessed for each failure to comply and the Department may demand stipulated penalties any time after Respondent's noncompliance occurs. Within 30 days of written demand from the Department, Respondent shall pay the stipulated penalties owed and divide the payment evenly between the Department and PBCHD evenly. One-half of the stipulated penalty amounts shall be sent to the Department of Environmental Protection at Post Office Box 2549, Fort Myers, Florida 33902-2549 in the form of a cashier's check or money order that includes the OGC number assigned to this Consent Order (OGC File No. 09-0012) and the notation "Ecosystem Management and Restoration Trust Fund." The other half of the stipulated penalty amount shall be sent to Palm Beach County, c/o Air Pollution Control Section, Environmental Health and Engineering, Palm Beach County Health Department at 901 Evernia Street, West Palm Beach, Florida 33401. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the Civil Penalties agreed to in paragraph 11 of this Consent Order. If the Department

is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking additional civil penalties for the failure to comply with this paragraph and any other paragraph to which a stipulated penalty does not apply in an amount up to the statutory maximum of \$10,000.00 per day per violation.

15. Respondent shall allow all authorized representatives of the Department and PBCHD access to the Facility and the property upon which the Facility is located ("Property") at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes administered by the Department.

16. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, material man or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department within 24 hours (or by the next working day and shall) within seven calendar days of the initial notification to the Department, notify the Department in writing of (1) the anticipated length and cause of the delay, (2) the measures taken or to be taken to prevent or minimize the delay and (3) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder may be extended. Any such agreement must describe the provision(s) extended, identify the new compliance date(s), and describe the additional measures Respondent must take, if any, to avoid or minimize the delay. Respondent's failure to comply with the notice requirements of this paragraph in a timely manner

constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

17. Persons who are not parties to this Consent Order, but whose substantial interests are affected by this Consent Order, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Fla. Stat... Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in this Consent Order.

The petition for administrative hearing must contain all of the following information:

- a. The OGC Number assigned to this Order;
- b. The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c. A statement of how and when the petitioner received notice of the Order;
- d. An explanation of how the petitioner's substantial interests will be affected by the Order;
- e. Either a statement of all material facts disputed by petitioner, or a statement that the petitioner does not dispute any material facts;
- f. A statement of the rules or statutes petitioner contends require reversal or modification of the Consent Order;
- g. A statement of the specific facts the petitioner contends warrant reversal or modification of the Order; and
- h. A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office at the address indicated in paragraph 12. Failure to file a petition within the 21-day period constitutes a person's waiver

of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Fla. Stat.

Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under Section 120.573, Fla. Stat. If mediation does not result in a settlement, choosing mediation will not adversely affect such a person's right to request an administrative hearing. Additional information about mediation is provided in Section 120.573, Fla. Stat. and Rule 62-110.106, Fla. Admin. Code.

18. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

19. In the event of a sale or conveyance of the Facility or Property, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Property or Facility: (a) notify the Department of such sale or conveyance; (b) provide the name and address of the purchaser, or operator, or person(s) in control of the Facility; and (c) provide a copy of this Consent Order with all attachments to the purchaser, or operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or Property does not relieve Respondent of the obligations in this Consent Order.

20. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Consent Order, including undisclosed or unidentified releases, contamination or other polluting conditions.

21. The terms and conditions in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Fla. Stat. Failure to comply with the terms of this Order constitutes a violation of Section 403.161(1)(b), Fla. Stat.

22. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Consent Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations listed in paragraph 7 through the date of the filing of this Consent Order. This waiver is conditioned upon Respondent's complete compliance with all the terms of this Consent Order and does not include violations not included herein as specified in paragraph 18.

23. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

24. Rules referenced in this Consent Order are available at <http://www.dep.state.fl.us/legal/Rules/rulelistnum.htm>.

25. The Department may extend deadlines imposed by this Consent Order via letter. However, no other modifications of the terms of this Consent Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

26. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat., on the terms of this Consent Order. Respondent also acknowledges and waives its right to appeal the terms of this Consent Order pursuant to Section 120.68, Fla. Stat. However, Respondent does not waive its right to an administrative hearing concerning any agency action taken by the Department in the future. Respondent also reserves its right to contest any civil or administrative determination of whether the Respondent has complied with the requirements in this Consent Order.

27. The Department acknowledges that the Respondent is entering into this Consent Order to settle a dispute and, therefore, the Respondent's execution of and compliance with this Consent Order do not constitute an admission of guilt or liability with regard to any issue.

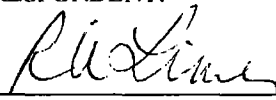
28. Following the completion of the activities required by this Consent Order, the Respondent may submit a written request asking the Department to confirm that the terms of this Consent Order have been satisfied. The Respondent's request shall be supported by a report or other appropriate documentation

concerning the activities that the Respondent has completed pursuant to this Consent Order. The Department shall review the Respondent's request, the supporting documents, and any other relevant materials, and then the Department shall provide a timely written reply to the Respondent. If the Department agrees that the Respondent has complied with the requirements contained herein, the Department shall notify the Respondent in writing that the requirements in this Consent Order have been satisfied and the Respondent has no further obligations to the Department under this Consent Order.

29. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Fla. Stat., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Fla. Stat. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

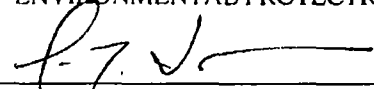
6/8/09
DATE


~~Armando Tabornilla, Secretary~~ Ricardo Lima
New Hope Power Company Vice-President

DONE AND ORDERED this 11th day of June, 2009, in

Fort Myers, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


Jon M. Iglehart
Director of District Management
South District

Filed on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.


CLERK

6/11/09
Date

cc: Lea Crandall – Agency Clerk