

FILED

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**U.S. EPA REGION 4
HEARING CLERK**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**Alabama Power Company
James M. Barry Electric Generating Plant
Bucks, Mobile County, Alabama
EPA ID No.: ALD082148800**

Respondent.

Docket No. **RCRA-04-2024-4200(b)**

Proceeding Under Section 3008(a) of the
Resource Conservation and Recovery Act,
42 U.S.C. § 6928(a)

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is a civil administrative action for penalties and injunctive relief brought under Sections 3008(a) and 4005(d)(4)(A)(i) of the Resource Conservation and Recovery Act, as amended (RCRA or the Act), 42 U.S.C. §§ 6928(a) and 6945(d)(4)(A)(i), and Sections 22.13(b) and 22.18 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein, and Respondent consents to the entry of this CAFO without admission of fact or violation.

II. PARTIES

4. Complainant is the Director, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA) Region 4, who has been delegated the authority on

behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 3008(a) of the Act.

5. Respondent is Alabama Power Company, a corporation doing business in the State of Alabama. This proceeding pertains only to Respondent's facility, the James M. Barry Electric Generating Plant, located in Bucks, Mobile County, Alabama (the Facility or Plant Barry).

III. GOVERNING LAW

6. RCRA, enacted on October 21, 1976, and subsequently amended, establishes a framework for the regulation of the handling and management of non-hazardous and hazardous solid wastes. *See* 42 U.S.C. §§ 6901 *et seq.*
7. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the EPA Administrator to assess civil penalties for any past or current violation, and to issue compliance orders requiring compliance with requirements that are subject to enforcement under Section 3008.
8. RCRA Subtitle D, as amended, establishes a framework for the regulation of the handling and management of non-hazardous solid wastes, including Coal Combustion Residuals (CCR). *See* 42 U.S.C. §§ 6941-6949. In addition, Section 4005(d)(4)(A)(i) of RCRA, 42 U.S.C. § 6945(d)(4)(A)(i), grants the EPA Administrator the authority to use RCRA Sections 3007 and 3008, 42 U.S.C. §§ 6927 and 6928, to enforce the prohibition on open dumping under Section 4005(a), 42 U.S.C. § 6945(a), with respect to CCR units.
9. Section 4005(d)(2) of RCRA, 42 U.S.C. § 6945(d)(2), establishes a framework for the regulation and enforcement of CCR requirements by the EPA in nonparticipating states. A "nonparticipating State" means a State for which the Administrator has not approved a State permit program or other system of prior approval and conditions under RCRA Section 4005(d)(1)(B). 42 U.S.C. § 6945(d)(2)(A)(i) and 40 C.F.R. § 257.53.
10. Respondent is located in a nonparticipating State within the meaning of Section 4005(d)(2)(A) of RCRA, 42 U.S.C. § 6945(d)(2)(A), and 40 C.F.R. § 257.53.
11. On April 17, 2015, the EPA promulgated regulatory requirements for the management of CCR in landfills and surface impoundments. The CCR regulations are set forth at 40 C.F.R. Part 257, Subpart D (Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments) (hereinafter, the "CCR Rule"). The CCR Rule establishes requirements related to location restrictions, groundwater monitoring, corrective action, closure, post-closure care, technical design and operating standards, inspections, monitoring, recordkeeping, and reporting. The regulatory requirements established in the CCR Rule took effect on October 19, 2015, subject to amendments promulgated by the EPA after that date.
12. Pursuant to 40 C.F.R. § 257.53, "aquifer" means "a geologic formation, group of formations, or portion of a formation capable of yielding usable quantities of groundwater to wells or springs."

13. Pursuant to 40 C.F.R. § 257.53, “CCR” means “fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.”
14. Pursuant to 40 C.F.R. § 257.53, “CCR surface impoundment” or “impoundment” means “a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.”
15. Pursuant to 40 C.F.R. § 257.53, “CCR unit” means “any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units, based on the context of the paragraph(s) in which it is used. This term includes both new and existing units, unless otherwise specified.”
16. For purposes of this CAFO, “day” means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this CAFO, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
17. Pursuant to 40 C.F.R. § 257.53, “existing CCR surface impoundment” means “a CCR surface impoundment that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015 and receives CCR on or after October 19, 2015.”
18. Pursuant to 40 C.F.R. § 257.53, “facility” means “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, disposing, or otherwise conducting solid waste management of CCR. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).”
19. Pursuant to 40 C.F.R. § 257.53, “groundwater” means “water below the land surface in a zone of saturation.”
20. Pursuant to 40 C.F.R. § 257.53, “hazard potential classification” means “the possible adverse incremental consequences that result from the release of water or stored contents due to failure of the diked CCR surface impoundment or mis-operation of the diked CCR surface impoundment or its appurtenances. The hazardous potential classifications include high hazard potential CCR surface impoundment, significant hazard potential CCR surface impoundment, and low hazard potential CCR surface impoundment.”
21. Pursuant to 40 C.F.R. § 257.53, “operator” means “the person(s) responsible for the overall operation of a CCR unit.” “Owner” means “the person(s) who owns a CCR unit or part of a CCR unit.”
22. Pursuant to Section 1004(15) of the Act, 42 U.S.C. § 6903(15), “person” means an individual, trust, firm, joint stock company, corporation (including a government corporation),

partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

23. Pursuant to 40 C.F.R. § 257.53, “significant hazard potential CCR surface impoundment” means “a diked surface impoundment where failure or mis-operation results in no probable loss of human life, but can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns.”
24. “Solid waste” is defined at Section 1004(27) of the Act, 42 U.S.C. § 6903(27), and includes CCR.
25. Pursuant to 40 C.F.R. § 257.53, “uppermost aquifer” means “the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility’s property boundary. Upper limit is measured at a point nearest to the natural ground surface to which the aquifer rises during the wet season.”
26. Pursuant to 40 C.F.R. § 257.53, “waste boundary” means “a vertical surface located at the hydraulically downgradient limit of the CCR unit. The vertical surface extends down into the uppermost aquifer.”
27. Pursuant to 40 C.F.R. § 257.73(a)(2), the owner or operator of a CCR unit must conduct a hazard potential classification assessment of the CCR unit and must document the hazard potential classification as a “high,” “significant,” or “low” “hazard potential CCR surface impoundment.”
28. Pursuant to 40 C.F.R. § 257.73(a)(3)(i), the owner or operator of a CCR unit determined to be a “significant hazard potential CCR surface impoundment” must prepare and maintain a written Emergency Action Plan (EAP) that, among other things, defines the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner. Pursuant to 40 C.F.R. § 257.73(a)(3)(iv), the EAP must be certified by a qualified professional engineer.
29. Pursuant to 40 C.F.R. § 257.91(a)(1)-(2), “the owner or operator of a CCR unit must install a groundwater monitoring system that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that: (1) Accurately represent the quality of background groundwater that has not been affected by leakage from a CCR unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the CCR management area where: (i) Hydrogeologic conditions do not allow the owner or operator of the CCR unit to determine what wells are hydraulically upgradient; or (ii) Sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells; and (2) Accurately represent the quality of groundwater passing the waste boundary of the CCR unit. The downgradient monitoring system must be installed at the waste boundary that ensures detection of

groundwater contamination in the uppermost aquifer. All potential contaminant pathways must be monitored.”

30. Pursuant to 40 C.F.R. § 257.91(b)(1)-(2), “[t]he number, spacing, and depths of monitoring systems shall be determined based upon site specific technical information that must include thorough characterization of, among other things: (1) Aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and (2) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.”
31. Pursuant to 40 C.F.R. § 257.91(f), “[t]he owner or operator must obtain a certification from a qualified professional engineer ... stating that the groundwater monitoring system has been designed and constructed to meet the requirements of [40 C.F.R. § 257.91].”
32. Pursuant to 40 C.F.R. § 257.93(f), “[t]he owner or operator of the CCR unit must select one of the statistical methods specified in [40 C.F.R. § 257.93(f)(1) through (5)] to be used in evaluating groundwater monitoring data for each specified constituent.”
33. Pursuant to 40 C.F.R. § 257.107(a), “[e]ach owner or operator of a CCR unit subject to the requirements of this [Subpart D] must maintain a publicly accessible internet site (CCR website) containing the information specified in [40 C.F.R. § 257.107]” Pursuant to 40 C.F.R. § 257.107(f), the owner or operator must place its EAP on its CCR website. Pursuant to 40 C.F.R. § 257.107(h), the owner or operator must place groundwater monitoring reports and certifications on its CCR website.
34. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes a civil penalty of not more than \$25,000 per day for each violation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$121,275 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023.
35. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Alabama before issuance of this CAFO.

IV. FINDINGS OF FACTS

36. Respondent owns and operates an electric generating facility known as the James M. Barry Electric Generating Plant located at 15300 U.S. Highway 43 North, Bucks, Mobile County, Alabama which began operations in 1954. The Facility currently consists of two coal-fired electric generating units and seven natural gas generating units.

37. The Facility includes but is not limited to the "Plant Barry CCR Surface Impoundment" and the "Gypsum Surface Impoundment," both of which are CCR surface impoundments under the CCR Rule. The Plant Barry CCR Surface Impoundment is located in the southeastern portion of the Facility along the Mobile River. The Gypsum Surface Impoundment is located in the western portion of the Facility.
38. The Plant Barry CCR Surface Impoundment was originally constructed in 1965 with the creation of dikes on the east, south, and west sides of the impoundment, which are connected into the elevated natural ground on the north side.
39. The Gypsum Surface Impoundment was constructed between 2007 and 2010 with dikes and a geomembrane liner along the bottom of the pond.
40. The Plant Barry CCR Surface Impoundment and Gypsum Surface Impoundment were designed to receive and store CCR produced during the coal-fired electric generating process at Plant Barry.
41. While this CAFO only addresses enforcement of the federal CCR Rule, the Respondent is also subject to the Alabama Department of Environmental Management's (ADEM) "Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments" found at ADEM Admin. Code r. 335-13-15.
42. As required by the CCR Rule, on October 19, 2015, Respondent established and has maintained a CCR website containing information required by the CCR Rule available at: <https://www.alabamapower.com/company/about-us/how-we-operate/ccr-rule-and-compliance.html>.
43. On October 17, 2017, Respondent provided its "Statistical Analysis Method Certification" as required by 40 C.F.R. § 257.93(f).
44. On its CCR website, Respondent asserts that a professional engineer certified the installation of Respondent's groundwater monitoring system for the Plant Barry CCR Surface Impoundment and Gypsum Surface Impoundment, as required by 40 C.F.R. § 257.91(f).
45. Since October 17, 2017, Respondent has completed seven "Annual Groundwater Monitoring and Corrective Action" reports and posted them to its CCR website.
46. Since October 17, 2017, Respondent has collected over 1,000 subsurface borings from the Plant Barry CCR Surface Impoundment and area surrounding the Plant Barry CCR Surface Impoundment.
47. Pursuant to its National Pollutant Discharge Elimination System (NPDES) Permit (#AL0002879), the Plant Barry CCR Surface Impoundment served as a wastewater treatment pond for the generating plant, receiving process wastewater and stormwater from various plant sources, sluiced ash, and decant water from the Gypsum Surface Impoundment.

48. For purposes of this CAFO, the Plant Barry CCR Surface Impoundment and the Gypsum Surface Impoundment are “existing CCR surface impoundments” and “CCR units” as those terms are defined at 40 C.F.R. § 257.53.
49. Respondent has, since the Plant Barry CCR Surface Impoundment was originally constructed, expanded the Plant Barry CCR Surface Impoundment to accommodate the increased generation of electrical power. The Plant Barry CCR Surface Impoundment is currently:
 - a. Approximately 597 acres in size and consists of approximately three miles of embankments;
 - b. Located within a flood-prone area of the Mobile River; and
 - c. Located in an area subject to regular tidal influences, major storm events, river flooding, and/or a combination of these forces.
50. On October 13, 2016, Respondent conducted an “Initial Hazard Potential Assessment” of the Plant Barry CCR Surface Impoundment that was certified by a professional engineer licensed in the State of Alabama in accordance with 40 C.F.R. § 257.73(a)(2), and Respondent documented the hazard potential classification as a “significant hazard potential CCR surface impoundment” in accordance with 40 C.F.R. § 257.73(a)(2). Respondent has posted this information on its CCR website.
51. On April 17, 2017, Respondent completed a “CCR Surface Impoundment Emergency Action Plan” for the Plant Barry CCR Surface Impoundment that was certified by a professional engineer licensed in the State of Alabama in accordance with 40 C.F.R. § 257.73(a)(3)(i) and (iv), and on April 15, 2022, Respondent certified completion of a revision to the EAP in accordance with 40 C.F.R. § 257.73(a)(3)(i) and (iv). Respondent has posted this documentation on its CCR website.
52. In accordance with the CCR Rule, Respondent’s EAP includes emergency and incident response plans, identifies responsible persons and responsibilities, and includes provisions for annual coordination meetings, all specifically focused on the Plant Barry CCR Surface Impoundment. The EAP also includes technical information such as inundation maps, flowcharts, notification and documentation forms, and other emergency response information.
53. On its CCR website, Respondent states it has completed multiple meetings with local emergency responders concerning the EAP and the Plant Barry CCR Surface Impoundment.
54. In 2022, the EPA conducted a technical review of the information available on Respondent’s CCR website (Technical Review).
55. On January 31, 2023, the EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer (NOPV) concerning the CCR Rule based on the findings of the Technical Review.

56. On March 20, 2023 and multiple other dates, Respondent submitted detailed technical and engineering information on soil, groundwater, and geologic conditions, among other information, on and around the Plant Barry CCR Surface Impoundment to the EPA.
57. On May 9, 2023 and multiple other dates, Respondent and the EPA met to discuss the disputed allegations in the NOPV concerning the Plant Barry CCR Surface Impoundment.
58. Since the EPA sent the NOPV, the EPA and Respondent have met to discuss the geological and hydrogeological environmental assessment Respondent has undertaken of the Plant Barry CCR Surface Impoundment.
59. On March 20-21, 2024, the EPA visited the Facility, which included a site tour of the Plant Barry CCR Surface Impoundment and the Gypsum Surface Impoundment.
60. In its NOPV, the EPA alleged that Respondent's EAP, dated April 17, 2017 and revised on April 15, 2022, while it did include discussion of flooding and other physical events, did not include detailed narrative discussion of certain hurricane and major storm events and associated flooding, which the EPA alleges might create a safety emergency involving the Plant Barry CCR Surface Impoundment under the CCR Rule. The EPA also alleged in the NOPV that the inundation maps contained in the EAP, delineating downstream areas which could be affected in the event of a CCR unit failure, did not account for certain extreme weather events, and that the EAP did not include a sufficient description of certain other procedures Respondent must follow.
61. In its NOPV, the EPA alleged that Respondent relied on insufficient site-specific technical information relevant to the Plant Barry CCR Surface Impoundment to characterize aquifer thickness, saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities, or to evaluate whether there was leakage from the Gypsum Surface Impoundment.
62. In its NOPV, the EPA alleged that Respondent's groundwater monitoring system did not consist of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the entire uppermost aquifer, to accurately represent the quality of groundwater passing the waste boundary of the Plant Barry CCR Surface Impoundment, and to ensure all potential contaminant pathways are being monitored.
63. In its NOPV, the EPA alleged that Respondent installed upgradient background wells for the Plant Barry CCR Surface Impoundment which may not accurately represent the quality of background groundwater that has not been affected by leakage from the Gypsum Surface Impoundment.

V. ALLEGED VIOLATIONS

64. Respondent is a corporation and is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
65. Respondent is and has been an “owner” and “operator” of a “CCR unit” as those terms are defined at 40 C.F.R. § 257.53.
66. Respondent’s Plant Barry is a “facility” within the meaning of 40 C.F.R. § 257.53.
67. The EPA alleges that Respondent’s EAP does not identify major storm events, and associated flooding, as safety emergencies. Additionally, the EPA alleges that Respondent’s inundation map did not fully account or model for certain flood conditions, including elevated river levels during hurricanes and extreme storm events; and the EPA alleges that Respondent’s EAP did not fully describe procedures to detect certain safety emergencies in a timely manner for specific events that can be forecasted, such as storm and flood watches or warnings. Therefore, the EPA alleges that Respondent has failed to define certain major storm events or circumstances involving its Plant Barry CCR Surface Impoundment that represent a safety emergency or describe procedures that will be followed to detect or respond to a safety emergency in a timely manner, in violation of 40 C.F.R. § 257.73(a)(3)(i).
68. The EPA alleges that Respondent did not sufficiently characterize the geologic and hydrogeologic features to determine the appropriate number of wells, to be installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that accurately represent the quality of groundwater passing the waste boundary of the Plant Barry CCR Surface Impoundment or ensure that all potential contaminant pathways are monitored. The EPA therefore alleges that Respondent violated 40 C.F.R. § 257.91(a)(2), by failing to install a groundwater monitoring system that ensures detection of groundwater contamination in the uppermost aquifer at the waste boundary and monitors all potential contaminant pathways.
69. The EPA alleges that Respondent did not include sufficient information to characterize the uppermost aquifer or to conclude that the location of the upgradient background wells would not be impacted by leakage from the Gypsum Surface Impoundment. The EPA therefore alleges that Respondent violated 40 C.F.R. § 257.91(a)(1), by failing to install a groundwater monitoring system that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer which accurately represents that the quality of background groundwater has not been affected by leakage from a CCR unit.

VI. STIPULATIONS

70. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
71. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
 - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - c. consents to the assessment of a civil penalty as stated;
 - d. consents to the issuance of this compliance order;
 - e. consents to the conditions specified in this CAFO;
 - f. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
 - g. waives its rights to appeal the Final Order accompanying this CAFO.
72. For the purpose of this proceeding, Respondent:
- a. agrees that this CAFO states a claim upon which relief may be granted against the Respondent;
 - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - c. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706;
 - d. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
 - e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
 - f. agrees to comply with the terms of this CAFO.
73. Within 30 days of completion of the work required by Section VIII (Work to be Performed), Respondent shall submit to the EPA a certification signed by a duly authorized representative stating that all the violations alleged in this CAFO, which Respondent neither admits nor denies, have been corrected. This certification shall be as follows:

"I certify under penalty of law, to the best of my knowledge and belief, that all violations alleged in this CAFO have been corrected. All work was done under my direction or supervision according to a system designed to assure that qualified personnel implemented and completed the required tasks. This certification is based on my inquiry of the person(s) who performed the tasks, or those persons directly responsible for the person(s) who performed the tasks. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

74. The certification required to be submitted under this CAFO shall be emailed to:

Araceli B. Chavez
Section Chief
RCRA Enforcement Section
U.S. EPA, Region 4
chavez.araceli@epa.gov

75. In accordance with 40 C.F.R. § 22.5, the individuals named in the Certificate of Service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means. The Parties consent to service of this CAFO electronically at the follow e-mail addresses: redleaf-durbin.joan@epa.gov and nakamoto.robert@epa.gov (for Complainant) and SCOMENSK@southernco.com and dhenderson@kslaw.com (for Respondent).

VII. TERMS OF PAYMENT

76. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **TWO HUNDRED SEVENTY-EIGHT THOUSAND DOLLARS [\$278,000.00]**, which is to be paid within 30 days of the Effective Date of this CAFO.
77. Respondent shall pay the civil penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the following EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions, see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. In addition, Respondent shall identify every payment with Respondent's name and the docket number of this CAFO, Docket No. RCRA-04-2024-4200(b).
78. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov

and

Robert Nakamoto
Enforcement and Compliance Assurance Division
Chemical Safety and Land Enforcement Branch
nakamoto.robert@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or Automated Clearing House transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. RCRA-04-2024-4200(b).

79. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require Respondent to pay the following amounts on any amount overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within 30 days, interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a);
 - b. Non-Payment Penalty. On any portion of a civil penalty more than 90 days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c); and
 - c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average costs incurred. 31 C.F.R. § 901.9(c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
80. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. refer the debt to a credit reporting agency or a collection agency (*see* 40 C.F.R. §§ 13.13 and 13.14);
 - b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (*see* 40 C.F.R. Part 13, Subparts C and H);
 - c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (*see* 40 C.F.R. § 13.17); and/or
 - d. refer the debt to the Department of Justice as provided in 40 C.F.R. § 13.33. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.
81. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.
82. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send a completed Form 1098-F ("Fines, Penalties, and Other Amounts") to the Internal Revenue Service (IRS) annually with respect to any court order and settlement agreement (including administrative settlements), that requires a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (for example, a copy of Form 1098-F). In order to provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Respondent herein agrees, that:
83. Respondent shall complete a Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- a. Respondent shall therein certify that its completed Form W-9 includes Respondent's correct Tax Identification Number (TIN) or that Respondent has applied and is waiting for issuance of a TIN;
 - b. Respondent shall email its completed Form W-9 to the EPA's Region 4 contact at the Cincinnati Finance Center, Jessica Henderson (henderson.jessica@epa.gov), on or before the date that Respondent's initial penalty payment is due pursuant to Paragraph 76 of this CAFO, and the EPA recommends encrypting Form W-9 email correspondence; and
 - c. In the event that Respondent has certified in its completed Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent by the date

that its initial penalty payment is due, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

- i. notify the EPA's Cincinnati Finance Center of this fact, via email, by the date that Respondent's initial penalty payment is due; and
- ii. provide the EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five days of Respondent's issuance and receipt of the TIN.

84. Failure to comply with providing Form W-9 or TIN may subject Respondent to a penalty. See 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1.

VIII. WORK TO BE PERFORMED

85. On or before the Effective Date of this CAFO, Respondent shall designate a Project Coordinator. Respondent shall notify the EPA in writing within three business days of the Effective Date of this CAFO of the name, address, phone number, electronic mail address and qualifications of its Project Coordinator. The EPA Project Coordinator will be Robert Nakamoto, who can be reached at nakamoto.robert@epa.gov or at (404) 562-9341. Each Project Coordinator shall be responsible for overseeing the implementation of this CAFO. The EPA and Respondent have the right to change their respective Project Coordinators. The other Party must be notified in writing at least 10 days prior to the change.
86. The EPA Project Coordinator shall be the EPA's designated representative for this CAFO. Unless otherwise provided in this CAFO, all reports, correspondence, notices, or other submittals relating to or required under this CAFO shall be in writing and shall be sent to the EPA Project Coordinator at the email address specified in Paragraph 85, unless notice is given in writing to Respondent of a change in delivery or correspondence address. Reports, correspondence, notices, or other submittals shall be delivered by electronic mail. All correspondence shall include a reference to the case caption and EPA Docket No. RCRA-04-2024-4200(b).
87. No later than 120 days after the Effective Date of this CAFO, Respondent shall develop and submit the following documents for EPA approval in accordance with Section IX (Approvals and Work Implementation).
- a. A revised and certified EAP in accordance with 40 C.F.R. § 257.73(a)(3) and **Attachment A**; and
 - b. A "Groundwater Investigation Work Plan" (GIWP) intended to provide for additional characterization of groundwater and geologic features both upgradient and downgradient from the CCR unit(s), which shall include but may not be limited to the Plant Barry CCR Surface Impoundment. The GIWP shall provide additional analysis and assessment to document that the requirements of 40 C.F.R. § 257.91 are met and shall follow the GIWP outline in **Attachment B**. The GIWP shall include a

schedule for implementation, progress reports if implementation extends beyond 180 days, and a final report as identified in Paragraph 88.

88. Respondent shall prepare and submit to the EPA a final "Groundwater Investigation Report" (GIR) for the investigations conducted pursuant to the approved GIWP. The GIR shall be submitted to the EPA for review in accordance with the schedule in the approved GIWP, and approval in accordance with Section IX (Approvals and Work Implementation). Respondent shall include the approved GIR in its next Annual Groundwater Monitoring and Corrective Action Report (see 40 C.F.R. § 257.90(f)).
89. No later than 120 days following the EPA's written approval of the GIR, Respondent shall revise its groundwater monitoring system and program in accordance with the approved GIR and 40 C.F.R. § 257.91(a)(1)-(2).
90. No later than 14 days following the EPA's approval pursuant to Section IX (Approvals and Work Implementation) of the deliverables required by this Section (Work to be Performed), Respondent shall post the approved documents on Respondent's CCR website in accordance with the publicly accessible internet site requirements specified in 40 C.F.R. § 257.107(f) and (h).

IX. APPROVALS AND WORK IMPLEMENTATION

91. The EPA will review all submittals required under Section VIII (Work to be Performed), and the EPA will notify Respondent in writing of the EPA's: (i) approval, in whole or in part; (ii) approval with conditions or requested modifications; (iii) disapproval, in whole or in part; (iv) disapproval with comments, conditions, or modifications; and/or (v) any combination of the foregoing.
92. The EPA also may modify the submittal to cure deficiencies if: (i) the EPA determines that disapproving the submission and awaiting a resubmission would cause disruption to the work being performed pursuant to Section VIII (Work to be Performed); or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.
93. Subject to the Dispute Resolution process found in Section X (Dispute Resolution), Respondent shall revise any submittal in accordance with the EPA's written comments. Respondent shall submit to the EPA any revised submittals in accordance with the due date specified by the EPA. Revised submittals are subject to this Section IX (Approvals and Work Implementation). If Respondent does not provide a revised submittal by the due date, Respondent shall be in violation of this CAFO as of the due date. If the revised submittal is received timely, but is later disapproved by the EPA, Respondent shall be in violation of this CAFO from the date Respondent receives the EPA's written disapproval.

94. Upon receipt of the EPA's written notification of approval, approval with conditions, or modification, Respondent shall commence work and implement any approved work in accordance with the schedule and provisions contained within the EPA's notification.
95. Any EPA-approved submittal, report, work plan, specification, or schedule shall be deemed incorporated into this CAFO. Prior to this written approval, no submittal, work plan, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

X. DISPUTE RESOLUTION

96. The Parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. The Parties agree the procedures contained in this Section are the sole procedures for resolving disputes arising under Section VIII (Work to be Performed) of this CAFO.
97. If Respondent disagrees, in whole or in part, with any written decision (Initial Written Decision) by the EPA pursuant to Section VIII (Work to be Performed) of this CAFO, Respondent shall notify the EPA of the dispute (Notice of Dispute) in writing within 14 days of Respondent's receipt of the Initial Written Decision. The "Notice of Dispute" shall be emailed to:
- Araceli B. Chavez
Section Chief
RCRA Enforcement Section
U.S. EPA, Region 4
chavez.araceli@epa.gov
98. Respondent and the EPA shall attempt to resolve the dispute informally. The period for informal negotiations shall not exceed 21 days from the date of the Notice of Dispute, unless it is modified by written agreement of the Parties to the dispute (Negotiation Period). The EPA agrees to confer in person, by telephone, or by video conference to resolve any such disagreement with Respondent as long as Respondent's request for a conference will not extend the Negotiation Period. The Negotiation Period may be modified by written agreement of the Parties to the dispute.
99. If the Parties cannot resolve the dispute informally under the preceding Paragraph, then the position advanced by the EPA shall be considered binding unless, within 21 days after the conclusion of the informal Negotiation Period, Respondent invokes the formal dispute resolution procedures by serving on the EPA at the email address specified in Paragraph 97 above, and to the Director of the Enforcement and Compliance Assurance Division, EPA Region 4, at the address below, a written Statement of Position on the matter in dispute, including, but not limited to, the specific points of the dispute, the position Respondent claims should be adopted as consistent with the requirements of Section VIII (Work to be Performed) of this CAFO, the basis for Respondent's position, any factual data, analysis, or

opinion supporting that position and any supporting documentation relied upon by Respondent. If Respondent fails to follow any of the requirements contained in this Paragraph, then it shall have waived its right to further consideration of the disputed issue. The Statement of Position shall be emailed to:

Keriema S. Newman
Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 4
newman.keriema@epa.gov

100. Within 14 days after receipt of Respondent's Statement of Position, the EPA will serve on Respondent and the Director of the Enforcement and Compliance Assurance Division, EPA Region 4, its Statement of Position, including but not limited to any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the EPA.
101. Following receipt of both Statements of Position, the Director of the Enforcement and Compliance Assurance Division, EPA Region 4, will issue a final written decision resolving the dispute, which sets forth the basis for the EPA's decision. Respondent agrees such decision shall not be appealed further and it shall be incorporated into and become an enforceable element of this CAFO, once it is signed by Respondent and approved by the Regional Judicial Officer in accordance with Paragraph 112.
102. During the pendency of the dispute resolution process, unless there has been a written modification by the EPA of a compliance date, or excusable delay as defined in Section XI (Force Majeure and Excusable Delay), the existence of a dispute as defined in this Section and the EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to Section VIII (Work to be Performed) of this CAFO which is not directly in dispute.

XI. FORCE MAJEURE AND EXCUSABLE DELAY

103. "Force majeure," for purposes of this CAFO, is defined as any event arising from causes not reasonably foreseen and beyond the control of Respondent or any person or entity controlled by Respondent, including but not limited to Respondent's contractors, that delays or prevents the timely performance of any obligation under this CAFO despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential force majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. Force majeure does not include increased costs of the work to be performed under this CAFO; financial inability to complete the work; minor precipitation events; or changed circumstances arising out of sale, lease, or transfer of Respondent's interest in any and/or all portions of the Facility.

104. If any event occurs or has occurred that may delay the performance of any obligation under this CAFO, whether or not caused by a force majeure event, Respondent shall contact by telephone and communicate orally with the EPA's Project Coordinator or, in his or her absence, his or her Section Chief or, in the event both of the EPA's designated representatives are unavailable, the Director of the Enforcement and Compliance Assurance Division, EPA Region 4, within 72 hours of when Respondent first knew or should have known that the event might cause a delay. Within five days thereafter, Respondent shall provide to the EPA in writing the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; all other obligations affected by the force majeure event, and what measures, if any, taken or to be taken to minimize the effect of the event on those obligations; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event, unless such failure is waived by the EPA at its discretion. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice. If the EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this CAFO that is affected by the force majeure event will be extended by the EPA for such time as the EPA determines is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the force majeure event. If the EPA determines that the delay or anticipated delay has been or will be caused by a force majeure event, the EPA will notify Respondent in writing of the length of the extension, if any, for performance of such obligations affected by the force majeure event.
105. If the EPA disagrees with Respondent's assertion of a force majeure event, Respondent may elect to invoke the dispute resolution provision, and shall follow the time frames set forth in Section X (Dispute Resolution). In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, the time for performance of such obligation will be extended by the EPA for such time as is necessary to complete such obligation.

XII. ADDITIONAL WORK

106. The EPA may determine, or the Respondent may propose, that certain tasks are necessary in addition to or in lieu of the tasks included in any EPA-approved work plan in Section VIII (Work to be Performed) when such additional work is necessary. The EPA may determine that Respondent shall perform any additional work and the EPA will specify, in writing, the basis for its determination that any additional work is necessary under Section VIII (Work to be Performed). Within five days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with the EPA to discuss any additional work. Respondent shall submit for EPA approval a work plan for any additional work under Section VIII (Work to be Performed). Such work plan shall be submitted within 10 days of Respondent's receipt of the EPA's determination that additional work is necessary, or according to an alternative schedule established by the EPA. Upon approval of a work plan for any additional work under Section VIII (Work to be Performed), Respondent shall implement the work plan for the additional work in accordance with the schedule and provisions contained therein. The work plan for any additional work under Section VIII (Work to be Performed) shall be incorporated by reference into this CAFO once it is signed by both Parties and approved by the Regional Judicial Officer in accordance with Paragraph 112 of this CAFO.

XIII. EFFECT OF CAFO

107. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties and injunctive relief for the violations and facts specifically alleged above.
108. Full payment of the civil penalty, as provided in Section VII (Terms of Payment) shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law. 40 C.F.R. § 22.18(c).
109. Any violation of this CAFO may result in a civil penalty for each day of continued noncompliance with the CAFO as provided in Section 3008(c) of the Act, 42 U.S.C § 6928(c).
110. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
111. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
112. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional

Judicial Officer, except that the Regional Judicial Officer need not approve written agreements between the Parties modifying the compliance schedules described in Attachments A and B. The Director, Enforcement and Compliance Assurance Division, shall have the authority to extend the deadlines in Attachments A and B.

113. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO, as appropriate.
114. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
115. By signing this Consent Agreement, Respondent acknowledges this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
116. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that each person is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the Party represented by that person to this CAFO.
117. By signing this Consent Agreement, both Parties agree that each Party's obligations under this CAFO constitute sufficient consideration for the other Party's obligations.
118. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
119. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
120. Unless specifically stated otherwise in this CAFO, each Party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
121. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any Party or circumstances is

held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other Parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

122. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of the Work to be Performed, is restitution, remediation, or required to come into compliance with law.

XIV. EFFECTIVE DATE


123. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

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Complainant and the Respondent will Each Sign on Separate Pages.]

The foregoing Consent Agreement *In the Matter of Alabama Power Company*, Docket No. **RCRA-04-2024-4200(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

	September 25, 2024
Signature	Date
Printed Name:	Susan Comensky
Title:	Vice President, Environmental Affairs
Address:	Alabama Power Company, 600 18th Street North, Birmingham, AL 35203

The foregoing Consent Agreement *In the Matter of **Alabama Power Company***, Docket No. **RCRA-04-2024-4200(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Keriema S. Newman, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**Alabama Power Company
James M. Barry Electric Generating Plant
Bucks, Mobile County, Alabama
EPA ID No.: ALD082148800**

Alabama Power Company
Respondent.

Docket No. **RCRA-04-2024-4200(b)**

Proceeding Under Section 3008(a) of the
Resource Conservation and Recovery Act,
42 U.S.C. § 6928(a)

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified, and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, *In the Matter of Alabama Power Company*, Docket No. **RCRA-04-2024-4200(b)**, was filed and copies of the same were emailed to the Parties as indicated below.

Via email to all Parties at the following email addresses:

Respondent: Susan B. Comensky
Vice President of Environmental Affairs
Alabama Power Company
SCOMENSK@southernco.com
(205) 257-0298

Douglas A. Henderson
King & Spalding
dhenderson@kslaw.com
(404) 572-2769

EPA: Robert Nakamoto
Environmental Engineer
Nakamoto.robert@epa.gov
(404) 562-9341

Mike Elster
Life Scientist
Elster.mike@epa.gov
(404) 562-8490

Joan Redleaf Durbin
Senior Attorney
Redleaf-durbin.joan@epa.gov
(404) 562-9544

Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov

Attachment A: EAP Specific Tasks

Respondent agrees to revise its EAP, as amended, to clarify the following items:

1. Include a definition of “extreme weather conditions” in the EAP.
2. Include “extreme weather conditions” in the Table contained in Section 3.3 of the EAP, as amended, and include an appropriate Condition Level for the event.
3. Develop and include a new Subsection 3.0 of the EAP that would contain the procedure(s) for which the Facility monitors the potential for extreme weather conditions, including hurricane watches or warnings, tornados, extreme flooding, or other such extreme weather events with the potential to affect the Plant Barry CCR Surface Impoundment. This new subsection will contain the procedure(s) by which the Facility takes early action to prepare for and address any of these extreme weather conditions.
4. Include relevant technical analysis of the impacts, if any, which extreme weather conditions may have on conditions at the Plant Barry CCR Surface Impoundment. This analysis will include an examination of existing FEMA coastal flood modeling as well as a discussion of other potential impacts from extreme coastal and riverine storm events, including multiple, concurrent events.
5. Once these changes to the EAP have been finalized and included in a revised EAP, the revised EAP shall be placed on the CCR website as required by the CCR Rule.

Attachment B: Groundwater Investigation Work Plan (GIWP) Tasks

1. Unit 1 Characterization:

- a. Respondent will augment the previously presented evaluation of Unit 1 hydrogeologic characterization data to include the downgradient waste boundary of the Plant Barry CCR Surface Impoundment and select areas for further investigation.
- b. Respondent's work plan is anticipated to include, but not be limited to, analysis of over 1,000 existing subsurface borings, including geologic boring logs, well installation logs, and cone penetrometer testing (CPT) logs (as depicted on **Figure A, "Existing Geologic/Geotechnical Borings and Monitoring Wells,"** attached to this **Attachment B**). Respondent's work plan may propose to advance additional borings along the Plant Barry CCR Surface Impoundment waste boundary, as needed, to augment the existing data set for this evaluation.
- c. Existing and new CPT measurements and lithological observations will be used to evaluate spatial variability of Unit 1 hydrogeological properties and potential flow paths. These measurements and observations may also help differentiate Unit 1's boundary with other units and refine the hydrogeologic properties and potential flow paths of Units 2 and 3. It is anticipated that this evaluation of Unit 1 hydrogeologic properties will include presentation of cross sections, other necessary figures, and technical interpretations at select locations of interest.

2. Unit 4 Characterization:

- a. In addition to at least 15 previous borings encountering Unit 4 in the vicinity of the Plant Barry CCR Surface Impoundment, seven permeability tests on samples of Unit 4, and existing data illustrating an upward vertical gradient across Unit 4 at well locations MW-15 and MW-15V, Respondent will review additional existing site information deemed relevant by Respondent to further characterize the continuity of Unit 4 beneath the Plant Barry CCR Surface Impoundment, including site boring logs.
- b. Respondent will also perform additional new borings at appropriate locations to characterize Unit 4 properties in these locations and further evaluate Unit 4 continuity beneath the Plant Barry CCR Surface Impoundment.

3. Additional Background Monitoring Wells:

- a. In addition to the existing four background monitoring wells, Respondent will install six new background monitoring wells at two locations (three wells per location) to supplement the existing background well network (see "Proposed Co-Located Upgradient Monitoring Well Cluster," as depicted on **Figure B, "Proposed Preliminary New Well Locations,"** attached to this **Attachment B**).

- b. At a single location, one well will be installed in the Unit 2 sands, one in the Unit 3 sands, and one beneath Unit 4 in the Unit 5 sands.
- c. The Unit 5 background monitoring wells will be utilized to establish a background data set representative of Unit 5 groundwater quality.

4. Additional Detection Monitoring Wells:

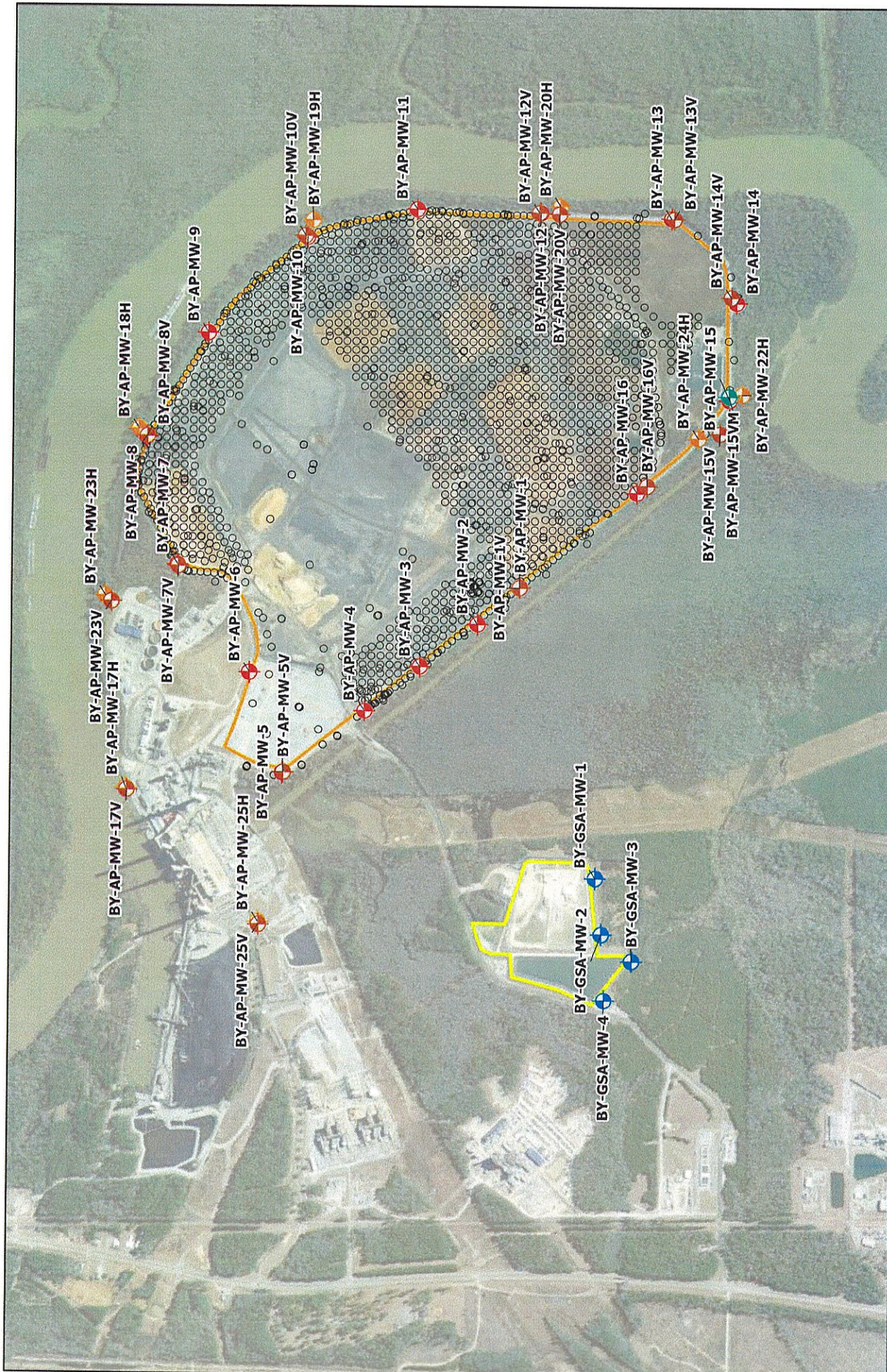
- a. Respondent will evaluate, based on existing data and information obtained from ongoing monitoring and site investigations, potential locations for additional monitoring wells on the downgradient boundary of the Plant Barry CCR Surface Impoundment.
- b. Respondent has preliminarily identified four additional locations (see "Proposed Downgradient Monitoring Well Locations," as depicted on **Figure B, "Proposed Preliminary New Well Locations,"** attached to this **Attachment B**), and will review existing site information and data to identify additional areas for investigation should they exist and additional well locations.
- c. Respondent will sample piezometer MW-15VM installed in Unit 5 in the vicinity of the Plant Barry CCR Surface Impoundment and perform a statistical evaluation once an appropriate background data set has been established.
- d. Respondent will re-evaluate existing and new monitoring wells to determine if any should be included in the detection well network.

5. Impact of Pumping Relief Wells on Local Groundwater Flow Direction:

- a. In addition to information already provided, Respondent will investigate the potential impact of pumping relief wells (PRWs) on local groundwater flow conditions.
- b. Respondent will evaluate pumping well data, drawdown of the potentiometric surface due to pumping, and the relative position of existing monitoring wells.

6. Plant Barry CCR Surface Impoundment Waste Boundary:

- a. In addition to information already provided, Respondent will provide additional detail regarding the location of the waste boundary.



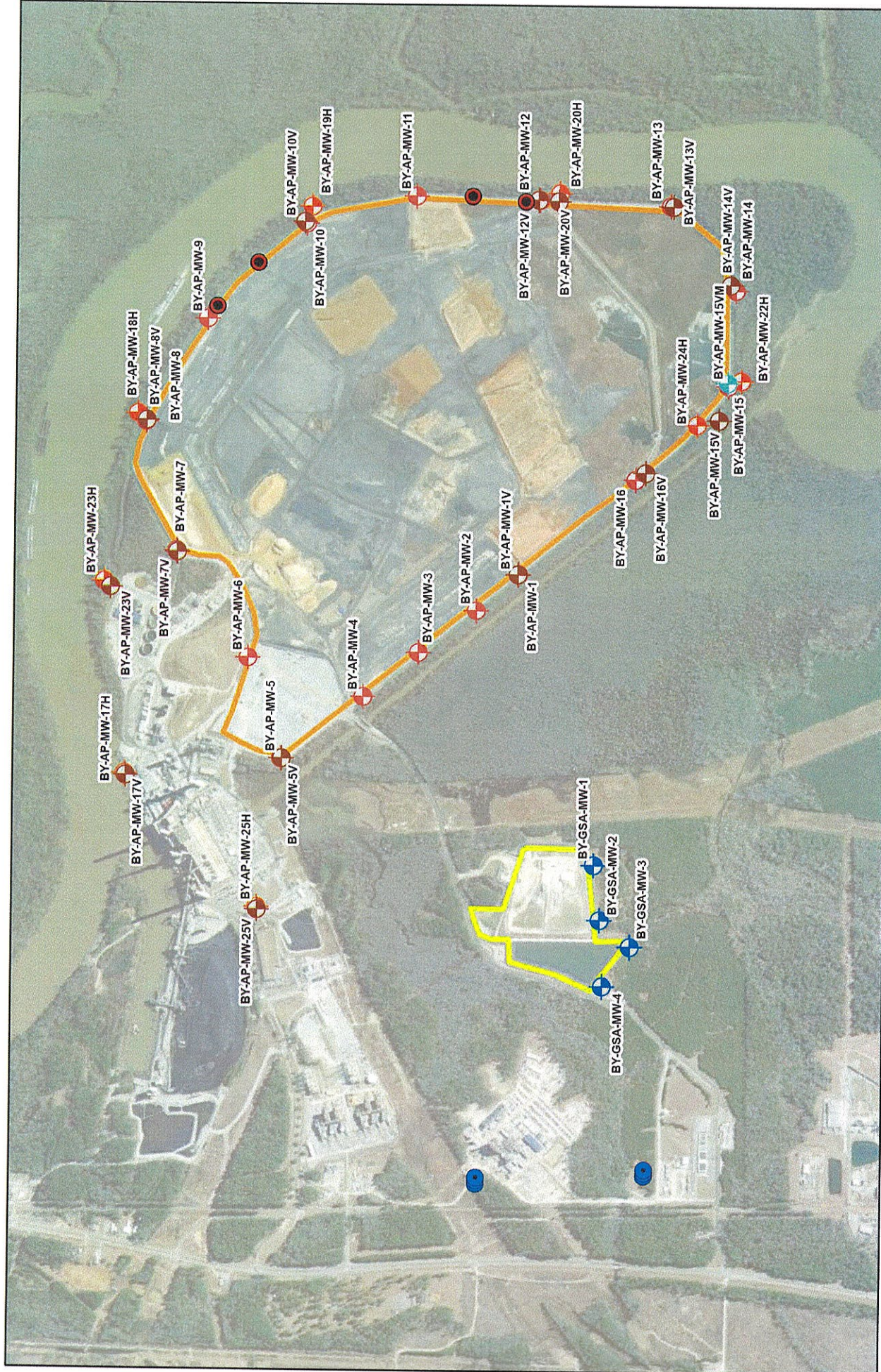
EXISTING GEOLOGIC/ GEOTECHNICAL BORINGS AND MONITORING WELLS	
Alabama Power Company Plant Barry Bucks, Alabama	
Geosyntec CONSULTANTS KENNESAW, GA AUGUST 2024	Figure A

Legend

- Downgradient Monitoring Well
- Upgradient Monitoring Well
- Phase 1 Horizontal Delineation Monitoring Well
- Phase 1 Vertical Delineation Monitoring Well
- Piezometer
- Existing Boring (Note 1)

Scale: 750 375 0 750 Feet

Note:
 1. Existing borings include Cone Penetration Testing (CPT) and Dilatometer Testing (DMT) and were advanced using Direct Push Technology (DPT), hollow stem auger, mud-rotary, and rotasonic drilling.



<p>PROPOSED PRELIMINARY NEW WELL LOCATIONS</p> <p>Alabama Power Company Plant Barry Bucks, Alabama</p> <p>Figure B</p> <p>Geosyntec CONSULTANTS</p> <p>KENNESAW, GA AUGUST 2024</p>	
<p>Legend</p> <ul style="list-style-type: none"> Downgradient Monitoring Well Upgradient Monitoring Well Phase 1 Horizontal Delineation Monitoring Well Phase 1 Vertical Delineation Monitoring Well 	<p>Piezometer</p> <ul style="list-style-type: none"> Proposed Downgradient Monitoring Well Locations (Approximate Location) Proposed Co-located Upgradient Monitoring Well Cluster (Approximate Location)