



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 15 2011

UNITED PARCEL SERVICE

Gregory R. Signer, Esq.
Assistant General Counsel
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1401

Re: Consent Agreement and Final Order
In the Matter of Tennessee Valley Authority, Widows Creek Fossil Plant
Docket No. CAA-04-2011-1504(b)

Dear Mr. Signer:

Enclosed please find a copy of the ratified Consent Agreement and Final Order (CAFO) between the U.S. Environmental Protection Agency and the Tennessee Valley Authority (TVA) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk as directed in 40 C.F.R. § 22.6 of the Consolidated Rules of Practice, as amended. Please refer to Section IV of the CAFO ("Final Order"), for the terms and instructions regarding TVA's payment of the penalty. Also, please ensure that the face of TVA's check includes TVA's name and the Docket Number of this case. Penalty payment questions should be directed to Mr. Bryson Lehman either by telephone at 513-487-2123, or by written correspondence to his attention at the U.S. Environmental Protection Agency, Cincinnati Accounting Center, P.O. Box 979077, St. Louis, Missouri, 63197-9000.

If you have any other questions, please give me a call at 404-562-9520, or contact David Lloyd of the Air Enforcement Section at (404) 562-9216.

Sincerely,

A handwritten signature in cursive script that reads "Robert W. Caplan".

Robert W. Caplan
Senior Attorney
U.S. EPA - Region 4

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
Tennessee Valley Authority)
Widows Creek Fossil Plant)
Stevenson, Alabama)
)
Respondent.)
)

Docket No. CAA-04-2011-1504(b)

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EPA REGION 4

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action/Jurisdictional Statements

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22, for alleged violations of the federal Acid Rain Program, Subchapter IV-A of the Act, 42 U.S.C. §§ 7651-7651o, and 40 C.F.R. Parts 72 through 78, and the federally approved state of Alabama regulations implementing the federal title V program.

2. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is the Tennessee Valley Authority (TVA) (hereinafter, "Respondent"). TVA owns and operates 11 coal-fired electric generating plants in the States of Alabama and Tennessee and the Commonwealth of Kentucky, including the Widows Creek Plant in Stevenson, Alabama.

3. Consistent with Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the requisite joint determination has been made by EPA and the United States Department of Justice that this matter is appropriate for administrative penalty action.

4. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b)(2) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

5. The authority to take action under Section 113(d) of CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides, and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to that delegation, the Director of the Air,

Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

6. Respondent is a federal agency and instrumentality of the United States that was created by Congress pursuant to the Tennessee Valley Authority Act of 1933. Its central administration is located at 400 West Summit Hill Drive, Knoxville, Tennessee, 37902-1499.

7. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e).

8. Pursuant to Section 502(a) of the Act, 42 U.S.C. § 7661(a), and 40 C.F.R. § 70.7(b), after the effective date of any permit program approved or promulgated under title V of the Act, no source subject to title V may operate except in compliance with a title V permit. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See 57 Fed. Reg. 32295*; 40 C.F.R. Part 70.

9. Alabama's program under Subchapter V of the Act, 42 U.S.C. §§ 7661-7661(f), was granted interim approval by the Administrator on November 15, 1997 (60 *Fed. Reg.* 57,346), and final approval on August 28, 2001 (66 *Fed. Reg.* 452531).

10. Alabama's regulations governing the title V permitting program are codified at Alabama Department of Environmental Management (ADEM) Admin. Code R. 335-3-16, and are federally enforceable pursuant to CAA § 113(a)(3) and 40 C.F.R. § 70.6(b)(1).

11. The requirements of Subchapter IV-A of the Act, known as the Acid Rain Program, are listed at 42 U.S.C. §§ 7651-7651o, 40 C.F.R. Parts 72 through 78.

12. Pursuant to ADEM Admin. Code R. 335-3-16-.05(f), and General Permit Proviso 4, a source operating under permit issued pursuant to ADEM Admin. Code R. 335-3-16 shall operate in compliance with ADEM's air rules, codified at ADEM Admin. Code R. 335-3.

II. Factual Allegations

13. TVA owns and operates the Widows Creek Plant, a coal-fired power plant located in Stevenson, Alabama.

14. The Widows Creek Plant is major source under title V of the Act and is subject to the regulatory requirement to operate under a title V State Operating Permit and to comply with the Code of Alabama, Title 22, Chapter 28; and the ADEM Admin. Code R. 335-3-16.

15. In accordance with the requirements of 40 C.F.R. Part 70 and ADEM Admin. Code 335-3-16, TVA was issued a Part 70 Operating Permit No. 705-0008 (title V permit) on December 29, 2003. This permit was in effect for periods relevant to the allegations addressed in this CAFO.

16. EPA issued a Notice of Violation (NOV) to TVA on July 11, 2007, alleging violations of the CAA associated with Unit 7 at the Widows Creek Plant. The alleged violations resulted from holes in the ductwork at Unit 7 that were not adequately repaired and that allowed

sulfur dioxide (SO₂) and nitrogen oxides (NO_x) to escape to the atmosphere from 2002 through 2005. The specific violations include the following:

- For 2002-2005, failure to maintain equipment in good working order to prevent releases as required by General Proviso 16 of TVA's title V permit: "all air pollution control devices and capture systems for which this permit is issued shall be maintained and operated at all times in a manner so as to minimize the emissions of air contaminants. . ."
- For 2002-2005, failure to measure emissions as required by 40 C.F.R. § 75.10.
- For 2002-2005, failure to hold and deduct an allowance from the Widows Creek unit 7 subaccount for each ton of SO₂ emitted as required by 40 C.F.R. § 72.9(c).
- Failure to follow missing data procedures as required whenever a monitor is not working, 40 C.F.R. § 75.30-37.
- For 2004-2005, failure to report non-compliance with the Acid Rain program in its title V annual certifications.

III. Consent Agreement

17. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in Paragraphs 1 through 12 above, but Respondent neither admits nor denies the factual allegations set out in Paragraphs 13 through 16 above.

18. As provided in 40 C.F.R. § 22.18(b)(2), for the purposes of this proceeding, Respondent waives any right to contest the allegations listed above and its right to appeal the proposed final order accompanying this consent agreement.

19. As provided in section 113(d) of the Act, 42 U.S.C. § 7413, as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 and 40 C.F.R. Part 19, as amended, the violations set forth above subject Respondent to civil administrative penalties of up to \$27,500 per day for each violation occurring on or after January 31, 1997; \$32,500 per day for each such violation occurring after March 15, 2004; and \$37,500 per day for each such violation occurring after January 12, 2009.

20. Based on an analysis of the penalty assessment criteria set forth in section 113(e) of the Act, 42 U.S.C. § 7413(e). Complainant has determined that an appropriate civil penalty to settle this matter is \$450,000. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in section IV of this CAFO.

21. For purposes of settlement, the parties have agreed that an estimated 931 tons of SO₂ and 13 tons of NO_x were emitted from the leaking ductwork during the relevant timeframe set out in this CAFO. Pursuant to settlement discussions and prior to the parties' entry into this CAFO, TVA retired: (1) 931 SO₂ allowances under the Acid Rain trading program that is expected to result in the elimination of 931 tons of SO₂ from the trading program; and (2) 13 ozone-season

NOx credits that will result in the elimination of 13 tons of NOx from the trading program. Prior to the effective date of this CAFO, TVA submitted documentation to EPA that demonstrates that the credits have been retired as stated herein.

22. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of its title V permit at its Widows Creek facility.

23. Compliance with this CAFO shall resolve the alleged violations contained herein. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, EPA does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement for allegations of violations not contained in this CAFO.

24. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

IV. Final Order

25. Based upon an analysis of the penalty assessment criteria in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), Complainant has determined that an appropriate civil penalty to settle this matter is Four Hundred and Fifty Thousand dollars (\$450,000).

26. Respondent shall pay the penalty **within 45 days** of the effective date of the CAFO by wire transfer to the Federal Reserve Bank of New York with the following wire transfer content:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
TIN: 52-0852695
33 Liberty St.
New York NY 10045

Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"

27. At the time of payment, Respondent shall send a copy of the wire transfer authorization form and transaction record, together with a transmittal letter which shall state that the payment is for the civil penalty owed pursuant to the Consent Agreement and Final Order in the Matter of the Tennessee Valley Authority, Widows Creek Plant, Docket No. CAA-04-2011-1504(b), to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Mr. David Lloyd
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Ms. Saundi Wilson (OEA)
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

28. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest therefore will begin to accrue on the civil administrative penalty from the effective date of this CAFO, if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge of up to six percent per year compounded annually may be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

29. The penalty described in paragraph 25, shall represent civil penalties assessed by Complainant within the meaning of section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and is not a tax-deductible expenditure for purposes of federal law. Respondent, as an agency and instrumentality of the United States, is not subject to federal or state income taxation.

30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

31. This CAFO shall be binding upon the Respondent, its successors and assigns.

32. The following individual is authorized to receive service for EPA:

Ms. Beverly A. Spagg
Chief
Air Enforcement and EPCRA Branch
Air, Pesticides and Toxics Management Division
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

33. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

34. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.


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V. Effective Date

35. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.


AGREED AND CONSENTED TO:

Tennessee Valley Authority

By: 
Anda A. Ray, Senior Vice President
Environment & Technology

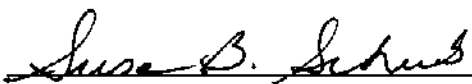
Date: February 8, 2011

U.S. Environmental Protection Agency

By: 
Beverly H. Banister, Director
Air, Pesticides and Toxics Management Division
EPA, Region 4

Date: JAN 27 2011

APPROVED AND SO ORDERED this day of March 14, 2011.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) in In the Matter of Tennessee Valley Authority Widows Creek Fossil Plant, Docket Number CAA-04-2011-1504(b), and served a true and correct copy of the CAFO to the addressees listed below.

Gregory R. Signer
Assistant General Counsel
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, TN 37902-1401

(via Certified Mail, Return Receipt Requested)

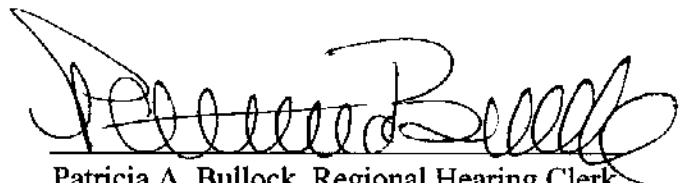
David Lloyd
Air Division
U.S. EPA, Region 4
61 Forsyth St., S.W.
Atlanta, GA 303030

(via EPA's internal mail)

Robert Caplan
Senior Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., S.W.
Atlanta, GA 303030

(via EPA's internal mail)

Date: 3-15-11



Patricia A. Bullock, Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth St., S.W.
Atlanta, GA 303030
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 3/7/11
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Tennessee Valley Authority/Widows Creek Fossil Plant
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 450,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 04 2011 1504(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |