



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**JUL 23 2008**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Amanda C. Baxter  
Troutman Sanders LLP  
Bank of America Plaza  
800 Peachtree Street NE Suite 5200  
Atlanta, Georgia 30308-2218

RE: Georgia Power Company  
Consent Agreement and Final Order

Dear Amanda,

Please find enclosed a signed copy of the Consent Agreement and Final Order for Docket No. CWA-04-2008-5130(b). Payment is due thirty days after the effective date of this final order.

If you have any questions, please do not hesitate to call.

Sincerely yours,

A handwritten signature in cursive script that reads "Caroline Y. F. Robinson".

Caroline Y. F. Robinson  
Chief, RCRA and OPA Enforcement and  
Compliance Branch  
RCRA Division

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

2008 JUL 23 PM 2:00  
HEARING CLERK  
EPA REGION IV

IN THE MATTER OF	)	CWA SECTION 311 CLASS I
	)	CONSENT AGREEMENT AND
Georgia Power Company	)	FINAL ORDER
	)	UNDER 40 C.F.R. § 22.13(b)
	)	
Respondent.	)	Docket No. CWA-04-2008-5130(b)
_____	)	

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(i) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities through the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division ("Complainant").

**CONSENT AGREEMENT**

**Stipulations**

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Georgia Power Company, Respondent, was incorporated under the laws of the State of Georgia on June 26, 1930. Since 1945, Respondent has operated as a wholly-owned subsidiary of The Southern Company, a publicly owned holding company for public utilities and other energy-related businesses. The Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 110.1.

2. The Respondent was the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 110.1 of a pole mounted transformer located at 2537 Peach Orchard Road, Augusta, Richmond County, Georgia ("the facility") during the time of discharge.

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. Rocky Creek is a navigable water subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

7. For the purposes of this Consent Agreement, Respondent admits to EPA's jurisdiction over the matters set out above, but neither admits nor denies the factual allegations or other legal conclusions set forth in this Agreement. Neither this Consent Agreement nor any part thereof, nor any entry into or performance under this Order, shall constitute or be construed as an

admission or acknowledgment of liability in this proceeding or any subsequent legal action. This paragraph shall not in any way negate Respondent's admissions of EPA's jurisdiction over the matters set out above to the full extent required under 40 C.F.R. Part 22.

**Allegations**

Complainant alleges, and Respondent neither admits nor denies, that:

8. On July 21, 2003, a lightning strike to a pole mounted transformer caused the discharge of approximately 15 gallons of non-PCB mineral oil, as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from the Respondent's facility, a portion of which then spilled across a parking lot, through a drainage ditch, and into Rocky Creek.

9. Respondent's July 21, 2003, discharge of oil from its facility resulted in an observed sheen on Rocky Creek and/or its adjoining shorelines, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, in violation of Section 311(b)(3) of the Act.

10. Without admitting any liability for the release, Respondent took immediate responsive action to mitigate environmental harm and minimize environmental impact from the spill.

**Waiver of Rights**

11. Solely for the purposes of this Agreement, Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

12. Nothing in this CAFO shall be construed to create any rights in, or grant any cause of action to, any person not a party to this CAFO. Except as otherwise provided herein, Complainant and Respondent each expressly reserves any and all rights, defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the facts alleged in the CAFO against any person not a Party hereto.

13. Respondent 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 sole purpose of such discussion, memorandum or communication is to persuade such official to accept this Consent Agreement or issue the Final Order.

#### **Penalty**

14. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$600.00.

#### **Payment Terms**

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

15. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$600.00 by means of a corporate cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a corporate cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 93197-9000

If paying by EFT, the Respondent shall transfer \$600.00 to [www.pay.gov](http://www.pay.gov). Enter SFO 1.1 into the "search public forms" field. Open the form and enter the requested information.

16. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 4  
SNAFC  
61 Forsyth Street, SW  
Atlanta, GA 30303

Frank Ney, Acting Chief  
South Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. Environmental Protection Agency  
Region 4  
SNAFC  
61 Forsyth Street, SW  
Atlanta, GA 30303

17. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

**General Provisions**

18. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

19. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated there under, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and/or alleged herein.

20. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to this Consent Agreement.

21. The following attorney represents EPA in this matter and is authorized to receive service for EPA in the proceeding:

Joan Redleaf Durbin  
Associate Regional Counsel  
United States Environmental Protection Agency, Region 4 Sam Nunn Atlanta  
Federal Center,  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
(404) 562-9544

22. The following attorney represents Respondent in this matter and is authorized to receive service for Respondent in the proceeding:

Amanda Baxter, Esq.  
Troutman Sander LLP  
600 Peachtree Street, NE  
Suite 5200  
Atlanta, Georgia 30308

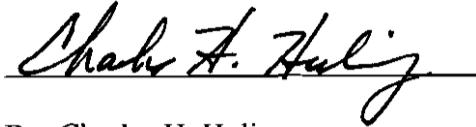
**Effective Date**

23. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

For

GEORGIA POWER COMPANY

Date: 7/2/08



By: Charles H. Huling  
Title: Vice-president, Environmental Affairs

For

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/22/08



Caroline Y. F. Robinson  
Chief, RCRA and OPA Enforcement and  
Compliance Branch  
RCRA Division

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

Georgia Power Company, the Respondent, is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2008-5130(b).

Date: July 23, 2008

Susan B. Schub  
Susan Schub  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the matter of the Georgia Power Company, Docket No. CWA-04-2008-5130(b) on the parties listed below in the manner indicated:

Joan Redleaf Durbin  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

(Via EPA's internal mail)

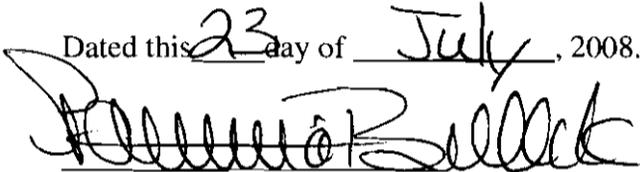
Edmond Burks  
RCRA & OPA Enforcement and Compliance Branch  
U.S. EPA, Region 4  
61 Forsyth St., S.W.  
Atlanta, Georgia 30303

(Via EPA's internal mail)

Amanda Baxter  
Troutman Sanders LLP  
600 Peachtree Street, Suite 5200  
Atlanta, Georgia 30308

(Via Certified Mail)

Dated this 23 day of July, 2008.



Ms. Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA – Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960