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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE

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Secretary of Natural Resources

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David K. Paylor
Director

Michael D. Overstreet
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO Galax Energy Concepts, LLC. Registration No. 11012

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301, 1309, 1316 and 10.1 – 1184, between the State Air Pollution Control Board and Galax Energy Concepts, LLC. for the purpose of resolving certain violations of State Air Pollution Control Law and Associated Board Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" or "SWRO" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Galax Energy Concepts, LLC" or "Galax Energy" means Galax Energy Concepts, LLC, a corporation licensed to do business in Virginia, its affiliates, partners, subsidiaries and parents.

9. "Facility" means the steam production facility located at 1010 Glendale Road in Galax, Virginia and owned by Galax Energy Concepts, LLC.

SECTION C: Findings of Facts and Conclusions of Law

1. Galax Energy Concepts, LLC owns and operates the Facility.
2. On May 31, 2002 (as amended September 4, 2003) and April 23, 2003 DEQ issued a New Source Review and Virginia Title V Operating Permit, respectively to Galax Energy Concepts, LLC.
3. Permit condition No. 20 of Galax Energy Concepts, LLC. New Source Review Permit and condition No. IV. 6 of their Virginia Title V Operating Permit States the following: "Emissions from the operation of the Three (3) Converta Kiln wood-fired gasifier/boilers shall not exceed the limits specified below:

Particulate Matter 0.16 lbs/MMBtu (per unit) 4.72 lbs/hr (per unit)
 (9 VAC 5-50-260)"

4. On November 3, 2004 the Department of Environmental Quality, Southwest Regional Office requested Galax Energy Concepts, LLC. to conduct a stack test on all three (3) Converta Kiln gasifier/boilers at average low and high loads for total particulate matter. On March 2 and 3, 2005 Environmental Source Samplers, Inc. of Cornelius, NC conducted the required stack test.
5. On March 24, 2005 Stack test results were received by the Southwest Regional Office of DEQ on Based on the results of the above referenced stack test report all three (3) units exceeded permitted emission limits.

<u>Boiler No.1 low load</u>	<u>PERMIT</u>	<u>TEST</u>	<u>% over LIMIT</u>
PM, lb/hr (unit No. 1 low load)	4.72	5.442	15.3
PM, lb/MMBtu (unit No. 1 low load)	0.16	0.2882	80.1
<u>Boiler No.2 low load</u>	<u>PERMIT</u>	<u>TEST</u>	<u>% over LIMIT</u>
PM, lb/hr (unit No. 2 low load)	4.72	13.267	168.8
PM, lb/MMBtu (unit No. 2 low load)	0.16	0.576	245.0
<u>Boiler No.3 low load</u>	<u>PERMIT</u>	<u>TEST</u>	<u>% over LIMIT</u>
PM, lb/hr (unit No. 3 low load)	4.72	4.347	N/A
PM, lb/MMBtu (unit No. 3 low load)	0.16	0.2335	45.9
<u>Boiler No.1 high load</u>	<u>PERMIT</u>	<u>TEST</u>	<u>% over LIMIT</u>
PM, lb/hr (unit No. 1 high load)	4.72	9.46	100.2
PM, lb/MMBtu (unit No. 1 high load)	0.16	0.7637	376.8
<u>Boiler No.2 high load</u>	<u>PERMIT</u>	<u>TEST</u>	<u>% over LIMIT</u>
PM, lb/hr (unit No. 2 high load)	4.72	9.003	90.7
PM, lb/MMBtu (unit No. 2 high load)	0.16	0.1574	N/A
<u>Boiler No.3 high load</u>	<u>PERMIT</u>	<u>TEST</u>	<u>% over LIMIT</u>
PM, lb/hr (unit No. 3 high load)	4.72	7.505	59.0
PM, lb/MMBtu (unit No. 3 high load)	0.16	0.2381	48.8

6. On April 14, 2005, DEQ sent a Notice of Violation Letter (NOV No. 4-1-05) Certified Mail-Return Receipt Requested, to Galax Energy Concepts, LLC. This letter informed Galax Energy that DEQ had reason to believe that a violation of Air Pollution Law and Regulations had occurred at the Facility. Specifically, that during stack testing performed at the Facility on March 2 and 3, 2005, Galax Energy was out of compliance with their permitted lb/MMBtu and lbs/hr Total Particulate limit. Galax Energy was instructed to contact DEQ staff member Crystal C. Bazyk within 10 days of the date of the NOV letter to arrange a meeting to discuss resolution of the apparent violation. Galax Energy was also informed that they may be asked to enter into a Consent Order with DEQ to formalize their plan and schedule of corrective action, and to settle violations through the issuance of a Consent Order which may include the payment of civil charges.
7. The Virginia Department of Environmental Quality (DEQ) has determined that the C & H Combustion incinerator as currently permitted at Galax Energy Concepts, LLC (GEC) is subject to 9 VAC 5 Chapter 40, Part II, Article 46 (Rule 4-46). 9 VAC 5-40-6710.3 requires Class II units to submit a final control plan by September 6, 2003 and achieve compliance no later than May 6, 2005 or submit a closure notification no later than September 6, 2003. These requirements were discussed with Mr. Charles Cash of GEC on August 29, 2003. DEQ promulgated rule 4-46 on September 10, 2003. DEQ has not received a copy of the control plan or closure notification and final compliance was not achieved with Rule 4-46 by May 6, 2005. A Notice of Violation was issued June 2, 2005. A permit was issued June 29, 2005 limiting the facility to 34 tons of waste per day.
8. On January 27, 2007, Galax Energy Concepts, LLC in a conversation with EPA, agreed to settle violations with the State of Virginia Air Compliance Division and EPA for the above violations.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1 – 1316 (C), orders Galax Energy and Galax Energy agrees to pay a civil charge of \$46,591 within 30 days of the effective date of this Order. Payment shall be made by check payable to the “Treasurer of Virginia”, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

For purposes of properly identifying its payment, Galax Energy Concepts, LLC shall include with the check, a notation of its Registration Number, Federal Identification Number and the fact that payment is being made in accordance with the terms of this Order.
2. By signing this Consent Order, Galax Energy Concepts, LLC agrees that the air polluting activities at this source are permanently shutdown, its permits dated May 31, 2002 (amended September 4, 2003 and June 29, 2005) and August 27, 2001 (modified April 23, 2003) should be revoked (including any permit renewals or modifications of these permits that may have been issued after October 5, 2006), and its registration number should be closed. Accordingly, Galax Energy Concepts, LLC voluntarily surrenders these permits.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Galax Energy for good cause shown by Galax Energy, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Galax Energy permits dated May 31, 2002 (as amended September 4, 2003) and April 23, 2003.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. For purposes of this Order and subsequent actions with respect to this Order, Galax Energy admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
5. Galax Energy consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. Galax Energy declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 *et seq.*, and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.
7. Failure by Galax Energy to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Galax Energy Concepts, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Galax Energy must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Galax Energy shall notify the Director and the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

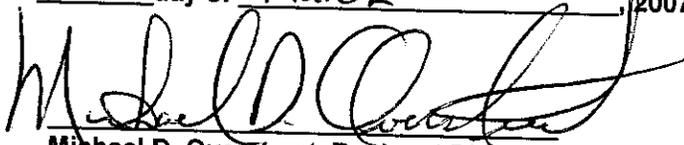
- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Regional Office within 24 hours of learning of any condition listed above, which Galax Energy Concepts, LLC intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and Galax Energy. Notwithstanding the foregoing, Galax Energy agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director of the Board terminates the Order in his or its sole discretion upon 30 days written notice to Galax Energy. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Galax Energy from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. By its signature below, Galax Energy Concepts, LLC voluntarily agrees to the issuance of this Order.

And it is ORDERED this 12th day of March, 2007.



Michael D. Overstreet, Regional Director
Department of Environmental Quality

Galax Energy Concepts, LLC voluntarily agrees to the issuance of this Order.

Galax Energy Concepts, LLC

By: Daugherty Petroleum, Inc.
Its: Manager

By: 

William G. Barr III
Its: Chief Executive Office

Date: 3/7/07

Commonwealth of Kentucky

City/County of Lexington / Fayette

The foregoing document was signed and acknowledged before me this 7th day of March, 2007 by William G. Barr III, as CEO of
(Name)

Daugherty Petroleum, Inc, Manager of Galax Energy Concepts, LLC; by Daugherty
(title)

Petroleum, Inc.; Its: Manager, on behalf of the Corporation.

Date: 3/7/2007


Notary Public

My commission expires: 3/7/2009