



RECEIVED PRO
JAN 27 2014

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
JAMES RIVER GENCO, LLC
FOR
JAMES RIVER GENCO, LLC, HOPEWELL SITE
Registration No. 50950**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and James River Genco, LLC regarding the James River Genco, LLC, Hopewell Site for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

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

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Facility" means James River Genco, LLC's Hopewell Plant, a cogeneration plant located at 912 E. Randolph Road, Hopewell, Virginia that produces electricity.

5. "James River" means James River Genco, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. James River is a "person" within the meaning of Va. Code § 10.1-1300.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
10. "PSD Permit" means a Prevention of Significant Deterioration permit to operate a cogeneration facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to James River on July 30, 2002 and modified on June 8, 2008.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "TV Permit" means the Title V Operating permit to operate a cogeneration facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to James River on March 21, 2006, and modified on August 18, 2009 and expired on March 20, 2011. The TV Permit was administratively continued.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. James River owns and operates the Facility in Hopewell, Virginia.
2. The Facility is the subject of the TV Permit and PSD Permit, which allow the operation of the Facility.
3. On May 22 and 23, 2013, James River conducted stack testing on Unit 1 and Unit 2. DEQ staff conducted a PCE of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations and observed part of the RATA stack testing on May 22, 2013.

4. On July 9, 2013, DEQ staff received and reviewed the May 2013, stack test results for Units 1A, 1B, 1C, 2A, 2B and 2C at the Facility. Based upon the May 22, 2013, PCE and the stack test results DEQ staff made the following observations:
 - a. The test results from the stack testing indicated that the emissions for PM-10 exceeded the permitted emission limits for Units 1A, 1B and 1C. The test results indicated PM-10 emissions for the Unit 1 stack were 0.036 lb/MMBtu (23.62 lbs/hr).
5. Condition 17 of the PSD Permit states that “[e]missions from the operation of the six Foster Wheeler boilers (units 1A, 1B, 1C, 2A, 2B and 2C) shall not exceed the limits specified below . . .” Condition 17 of the PSD Permit states that the emission limit for PM is 0.03 lbs/10⁶ BTU and 18.0 lbs/hr/stack.
6. Condition III.A.12 of the TV Permit states that “[e]missions from the operation of the six Foster Wheeler boilers (units 1A, 1B, 1C, 2A, 2B and 2C) shall not exceed the limits specified below . . .” Table III.A.1 in Condition III.A.12 of the TV Permit states that the emission limitations for each boiler, Unit Reference numbers 1A, 1B, 1C, 2A, 2B and 2C for PM-10 is 0.03 lbs/10⁶ BTU and 18.0 lbs/hr per stack.
7. On July 25, 2013, DEQ met with James River to discuss the May 2013, stack test results.
8. On August 2, 2013, James River conducted another stack test for Units 1A, 1B, 1C, 2A, 2B and 2C at the Facility.
9. On August 16, 2013, based upon the results of the May 2013, stack test, DEQ issued NOV No. APR08749 to James River for the PM-10 violations described above.
10. On August 27, 2013, DEQ staff received the August 2, 2013, stack test results for Units 1A, 1B, 1C, 2A, 2B and 2C at the Facility.
11. On September 6, 2013, DEQ staff conducted a PCE of the August 2, 2013, stack test results, for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. DEQ staff determined from the August 2, 2013, stack test results that the Facility was in compliance.
12. On September 17, 2013, DEQ met with James River to discuss the May 2013, and August 2013, stack test results.
13. 9 VAC 5-50-280 (A) states “[f]or major stationary sources located in prevention of significant deterioration areas, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of that resultant from using best available control technology, as reflected in any condition that may be placed upon the permit approval for the facility.”

14. 9 VAC 5-80-260(A)(1) states “. . . failure to comply with any condition of a permit shall be considered a violation of the Virginia Air Pollution Control Law.”
15. 9 VAC 5-80-260(F) states “[t]he board may enforce permits issued under this article through the use of other enforcement mechanisms such as consent orders and special orders. The procedures for using these mechanisms are contained in 9 VAC5-20-20 and 9 VAC5-20-30 and in §§ 10.1-1307 D, 10.1-1309, and 10.1-1309.1 of the Virginia Air Pollution Control Law.”
16. 9 VAC 5-80-1985(H) states “[t]he permittee shall comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) revocation.”
17. Va. Code § 10.1-1322 states that failure to comply with any condition of a permit is considered a violation of the Virginia Air Pollution Control Law.
18. Based on the results of the abovementioned inspections, meetings and documentation, the Board concludes that James River has violated conditions in its PSD Permit, TV Permit, Virginia Air Pollution Control Law and Regulations as described above.
19. James River has submitted documentation that verifies that the violations described above have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders James River and James River agrees to:

1. Pay a civil charge of \$13,926.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

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

2. James River shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of James River for good cause shown by James River, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the 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; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, James River admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. James River consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. James River declares it has received fair and due process under the Administrative Process Act and the Virginia 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 any 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 to modify, rewrite, amend, or enforce this Order.
6. Failure by James River 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.
7. 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.
8. James River 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 acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. James River shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. James River shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;

- b. the projected duration of any 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 Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and James River. Nevertheless, James River agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after James River has completed all of the requirements of the Order;
 - b. James River petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to James River.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve James River from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

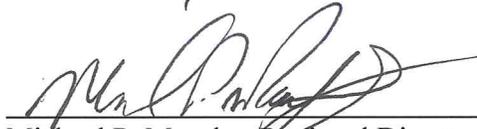
- 12. Any plans, reports, schedules or specifications attached hereto or submitted by James River and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of James River certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to

execute and legally bind James River to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of James River.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, James River voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 27th day of JANUARY, 2014.



Michael P. Murphy, Regional Director
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----

James River Genco, LLC voluntarily agrees to the issuance of this Order.

Date: 1/24/2014 By: Mike Williams, General Manager
(Person) (Title)
James River Genco, LLC

Commonwealth of Virginia

City/County of HOPEWELL VIRGINIA

The foregoing document was signed and acknowledged before me this 24th day of

JANUARY, 2014, by Diana K. Turner, who is

ADMIN. ASST., EMPLOYEE of James River Genco, LLC, on behalf of the
company

