



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY Blue Ridge Regional Office

[www.deq.virginia.gov](http://www.deq.virginia.gov)

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### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**SOUTH BOSTON ENERGY, LLC/  
d/b/a NOVEC ENERGY PRODUCTION HALIFAX COUNTY BIOMASS**

**Registration No. 21526**

#### **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 South Boston Energy, LLC, 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. "BRRO-L" means the Blue Ridge Regional Office of DEQ, located in Lynchburg, Virginia.
3. "CEMS/COMS" means Continuous Emissions Monitoring Systems and Continuous Opacity Monitoring System.
4. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

5. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. “EER” means Excess Emission Report.
8. “Facility” or “Plant” means South Boston Energy, LLC/Halifax County Biomass, a 50 MW biomass-fired electricity generating plant located at 1225 Plywood Trail just east of the Town of South Boston, Virginia.
9. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
10. “NOVEC” means NOVEC Energy Production.
11. “Order” means this document, also known as an “Order by Consent” or “Consent Order”, a type of Special Order under the Virginia Air Pollution Control Law.
12. “PCE” means a Partial Compliance Evaluation by DEQ staff.
13. “Permits” means the State Operating Permit (“SOP”) and New Source Review (“NSR”) Permit, Registration No. 21526, which were issued under the Virginia Air Pollution Control Law and Regulations to South Boston Energy, LLC on July 8, 2013.
14. “RATA” means Relative Accuracy Test Audits.
15. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” mean 9 VAC 5 chapters 10 through 80.
16. “SBE” means South Boston Energy, LLC, the operator of the Facility. SBE is a “person” within the meaning of Va. Code § 62.1-44.3.
17. “Stationary source” means any building, structure, facility or installation which emits or may emit any air pollutant.
18. “Va. Code” means the Code of Virginia (1950), as amended.
19. “VAC” means the Virginia Administrative Code.
21. “VEE” means a Visible Emissions Evaluation, as determined by EPA Method 9 (see 40 CFR 60, Appendix A).
22. “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. South Boston Energy, LLC (“SBE”) of Manassas, Virginia operates a 50 MW biomass-fired electricity generating plant located at 1225 Plywood Trail just east of the Town of South Boston, Virginia.
2. The Department issued a State Operating Permit and a New Source Review Permit (“Permits”) to SBE on July 8, 2013, under Registration No. 21526, which allows operation and emissions in strict accordance with its terms.
3. The Permits contain the following monitoring and reporting requirements to allow the Department to determine the Facility’s compliance with the emission limits enumerated in the Permit:
  - a. Conditions 45 and 48 of NSR Stationary Source Permit to Construct and Operate and Condition 32 of SOP Stationary Permit to Operate (Stack Test – initial performance tests and Visible Emissions Evaluation).
  - b. Condition 53 of NSR Stationary Source Permit to Construct and Operate and Condition 36 of SOP Stationary Permit to Operate (CEMS/COMS Performance Evaluations).
  - c. Conditions 54 and 55 of NSR Stationary Source Permit to Construct and Operate and Conditions 37 and 38 of SOP Stationary Permit to Operate (CEMS/COMS Quality Control Program).
  - d. Conditions 54 and 55 of NSR Stationary Source Permit to Construct and Operate and Conditions 37 and 38 of SOP Stationary Permit to Operate (Reports for Continuous Monitoring Systems).
  - e. Conditions 32 and 34 of SOP Stationary Permit to Operate (Stack Test-Concurrent fuel and ash analysis).
4. On March 19, 2014, DEQ staff conducted a Partial Compliance Evaluation (“PCE”) of the Facility record for compliance with the requirements of the Virginia Air Pollution Control Law, the Permits, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:
  - a. The initial stack test was conducted at the Facility on January 8-10, 2014, with the test results received at DEQ’s Blue Ridge Regional Office-Lynchburg (BRRO-L”) on March 19, 2014.
  - b. The results of the Relative Accuracy Test Audits (“RATA”) for the Continuous Emissions Monitoring Systems and Continuous Opacity Monitoring System (“CEMS/COMS”) and the 30-day notification for CEMS/COMS

verification of operational status were received by the BRRO-L on June 18, 2014.

c. The Excess Emission Report (“EER”) for the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2013 were not submitted to the BRRO-L. The EER for the 1<sup>st</sup> quarter of 2014 was received by the BRRO-L on May 1, 2014.

d. The stack test results did not include an analysis of the wood fuel and ash as required by the Facility’s Permits.

e. The weekly fuel and ash sampling results were not submitted with the Facility’s quarterly EERs within the timeframe specified in the Facility’s Permits.

5. 9 VAC 5-80-1200 (C) states, *inter alia*, testing required by this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the source will be operated, but not later than 180 days after initial startup of the source.
6. 9 VAC 5-50-40 (D) states, *inter alia*, all continuous monitoring systems required by subsection A of this section shall be installed, calibrated, maintained and operated in accordance with applicable requirements in this section, 40 CFR 60.13 and the applicable subpart listed in 9 VAC5-50-410.
7. 9 VAC 5-50-40 (C) states, *inter alia*, the owner of any affected facility shall conduct continuous monitoring system performance evaluations and furnish the board within 60 days of them two or, upon request, more copies of a written report of the results of such tests. These continuous monitoring system performance evaluations shall be conducted in accordance with the requirements and procedures contained in the applicable performance specification of Appendix B of 40 CFR Part 60.
8. 9 VAC 5-80-850 (C) states, *inter alia*, permits granted pursuant to this article may contain emission standards as necessary to implement the provisions of this article. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.
9. On May 29, 2014, the Department issued Notice of Violation (“NOV”) No. AWCRO #8951 to SBE to address the violations described in paragraphs C(4) through C(8), above.
10. On June 6, 2014, SBE submitted a response to the NOV. SBE staff indicated that the Facility was experiencing operational issues and vendor technicians were on-site making adjustments.
11. On June 11, 2014, Department staff met with SBE representatives to discuss the violations and corrective action required to return to compliance.

12. On May 12, 2015, Department staff met with SBE representatives to discuss the corrective actions performed to-date and current compliance status.
13. Based on the results of the March 19, 2014 PCE, the June 11, 2014 and May 12, 2015 meetings, and the documentation submitted on June 13,17 and 18, 2014, the Board concludes that South Boston Energy, LLC has violated, 9 VAC 5-50-40 (C) and (D), 9 VAC 5-80-850 (C) and 9 VAC 5-80-1200 (C) as described in paragraphs C(4) through C(8), above.
14. In order for SBE to return to complete its return to compliance, DEQ staff and representatives of SBE have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

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

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$14,671 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

SBE shall include its Federal Employer Identification Number (FEIN) [(xx-xxxxxxx)] 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, SBE shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of SBE for good cause shown by SBE, 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, SBE admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies the findings of fact, and conclusions of law in this Order.
4. SBE 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. SBE declares that they have received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and they waive 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 SBE 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. SBE 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. SBE shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. SBE 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 SBE intends 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 South Boston Energy, LLC.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after SBE has completed all of the requirements of the Order;
  - b. SBE 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 SBE.

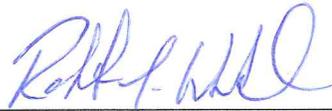
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve SBE from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by SBE 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 SBE certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind SBE to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of SBE.

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 their signature below, South Boston Energy, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 27<sup>th</sup> day of July, 2015.

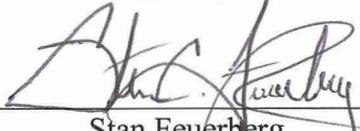


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Robert J. Weld, Regional Director  
Department of Environmental Quality

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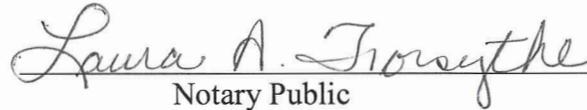
NOVEC Energy Production voluntarily agrees to the issuance of this Order.

Date: July 20, 2015 By: , SBE, LLC MANAGER  
Stan Feuerberg Manager  
NOVEC Energy Production

Commonwealth of Virginia

City/County of Prince William

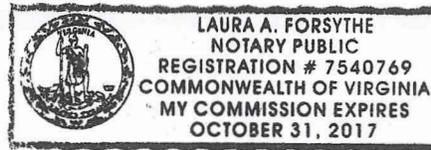
The foregoing document was signed and acknowledged before me this 20th day of July, 2015, by Stan C. Feuerberg who is Manager of NOVEC Energy Production, on behalf of NOVEC Energy Production.

  
Notary Public

7540769  
Registration No.

My commission expires: October 31, 2017

Notary seal:



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## **APPENDIX A**

### **SCHEDULE OF COMPLIANCE**

SBE shall submit written documentation to the Department within 60 days of the effective date of this Order:

- 1) A comprehensive Plan of Action (“POA”), for Department review and approval, that describes the modifications to all production process equipment and air pollution controls equipment to achieve compliance with current SOP and NSR Permits, as well as the Title V Permit currently being drafted.
- 2) Documentation of the retention of an environmental consulting firm to assist SBE in the timely testing and reporting requirements of the SOP/NSR/TV Permits.

#### **Certification of Documents and Reports:**

In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to the Department pursuant to this Order, South Boston Energy shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

#### **Submission of Documents and Reports:**

Unless otherwise specified in this Order, South Boston Energy shall submit all documentation required by Appendix A of this Order to:

G. Marvin Booth, III  
Regional Enforcement Representative  
Virginia Department of Environmental Quality  
7705 Timberlake Road  
Lynchburg, VA 24502