



# *COMMONWEALTH of VIRGINIA*

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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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. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. “EER” means Excess Emission Report.
7. “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. “New Source Review (“NSR”) Permit”, Registration No. 21526, which was issued under the Virginia Air Pollution Control Law and Regulations to South Boston Energy, LLC on July 8, 2013.
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
11. “NOVEC” means NOVEC Energy Production.
12. “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.
13. “PCE” means a Partial Compliance Evaluation by DEQ staff.
14. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” mean 9 VAC 5 chapters 10 through 80.
15. “SBE” means South Boston Energy, LLC, the operator of the Facility. SBE is a “person” within the meaning of Va. Code § 10.1-1300.
16. “State Operating Permit” (“SOP”) means the Permit, Registration No. 21526, which was issued under the Virginia Air Pollution Control Law and Regulations to South Boston Energy, LLC on July 8, 2013.
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.
20. “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 to SBE on July 8, 2013, under Registration No. 21526, which allows operation and emissions in strict accordance with their terms.
3. DEQ staff performed Partial Compliance Evaluations (PCE's) for each quarterly Excess Emission Report (EER), as submitted for compliance with the requirements of the Virginia Air Pollution Control Law, the Permits, and the Regulations. Based on the evaluations and follow-up information, Department staff made the following observations:
  - a. For the PCE conducted on May 6, 2014 for the first quarter of 2014, monitoring results indicated that the highest value recorded for CO was 1.273 lb/MMBtu.
  - b. For the PCE conducted on October 6, 2014 for the second quarter of 2014, monitoring results indicated that the highest value recorded for CO was 1.046 lb/MMBtu.
  - c. For the PCE conducted on December 9, 2014 for the third quarter of 2014, monitoring results indicated that the highest value recorded for CO was 0.114 lb/MMBtu.
  - d. For the PCE conducted on August 4, 2015 for the second quarter of 2015, monitoring results indicated that the highest value recorded for CO was .208 lb/MMBtu, and that the highest value recorded for NO<sub>x</sub> was .85 tons/day.
  - e. For the PCE conducted on November 9, 2015 for third quarter of 2015, monitoring results indicated that the highest value recorded for CO was .86 tons/day, and that the highest value recorded for NO<sub>x</sub> was .87 tons/day.
4. Condition 35 of the NSR Permit dated July 8, 2013 states, *inter alia*, Emission Limits  
Emission limits for the operation of the wood-fired boiler shall not exceed the limits specified below:

Carbon Monoxide (CO)	0.085 lb/MMBtu	0.65 tons/day
Nitrogen Oxides (NO <sub>x</sub> )	0.65 tons/day	

The same emission limits for CO are contained in Condition 28 of the July 8, 2013 SOP.

5. DEQ staff performed a Full Compliance Evaluation (“FCE”) at the Facility on August 6, 2015. It was determined during the FCE that the Facility was out-of-compliance regarding Permit Conditions #28 and #35 (CO limitation exceedances).
6. VAC 5-80-1180 states, *inter alia*, The source shall be designed, built and equipped to comply with standards of performance prescribed under 9VAC5-50 (New and Modified Stationary Sources) and with emission standards prescribed under 9VAC5-60 (Hazardous Air Pollutant Sources).
7. 9 VAC 5-50-260 states, *inter alia*, No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of emissions limitations representing best available control technology, as reflected in any term or condition that may be placed upon the minor NSR permit approval for the facility.
8. 9 VAC 5-170-160 states, *inter alia*, The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.
9. Virginia Code § 10.1-1322(A) states, *inter alia*, Permits may be issued, amended, revoked or terminated and reissued by the Department and may be enforced under the provisions of this chapter in the same manner as regulations and orders. Failure to comply with any condition of a permit shall be considered a violation of this chapter and investigations and enforcement actions may be pursued in the same manner as is done with regulations and orders of the Board under the provisions of this chapter.
10. On December 14, 2015, the Department issued Notice of Violation (“NOV”) No. ABRRO000314 to SBE to address the violations described in paragraphs C(4) through C(6), above.
11. On December 17, 2015, SBE submitted a response to the NOV. SBE staff indicated that the emission violations occurred in 2014 during initial startup of the Facility, and later in 2015 when attempting to address operational issues.
12. Based on the results of the PCEs by Department staff, the meetings with SBE representatives, and the documentation submitted by SBE, the Board concludes that South Boston Energy, LLC has violated, 9 VAC 5-80-1180 and 9 VAC 5-50-260, as well as Condition 28 of the SOP and Condition 35 of the NSR Permit, as described in paragraphs C(3)through C(5) , above.

### **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 pay a civil charge of \$105,576 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.

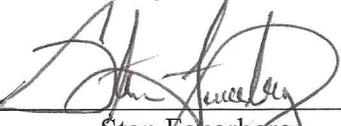
And it is so ORDERED this 18<sup>th</sup> day of May, 2016.



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Robert J. Weld, Regional Director  
Department of Environmental Quality

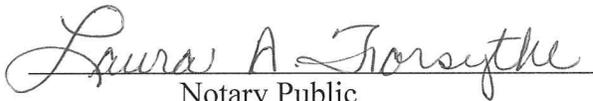
NOVEC Energy Production voluntarily agrees to the issuance of this Order.

Date: 5/9/16 By: , STAN FEUERBERG, MANAGER  
Stan Feuerberg Manager  
NOVEC Energy Production

Commonwealth of Virginia

City/County of Prince William

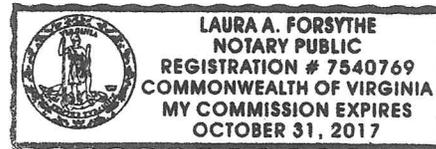
The foregoing document was signed and acknowledged before me this 9th day of  
May, 2016, by Stan Feuerberg who is  
Manager of NOVEC Energy Production, on behalf of NOVEC  
Energy Production.

  
Notary Public

7540769  
Registration No.

My commission expires: 10.31.17

Notary seal:



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