

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

A SPECIAL ORDER BY CONSENT ISSUED TO

**Old Dominion Electric Cooperative and Virginia Electric and Power Company
Clover Power Station
Virginia Water Protection Permit No. 89-1282**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Old Dominion Electric Cooperative and Virginia Electric and Power Company (“ODEC/VP”) for the purpose of ensuring compliance with the water withdrawal provisions of VWP Permit No. 89-1282 during drought conditions.

SECTION B: Definitions

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

1. **AVa. Code@** means the Code of Virginia (1950), as amended.
2. **ABoard@** means the State Water Control Board, a permanent citizen board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. **ADepartment@** or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. **ADirector@** means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.

6. "Owners" mean Old Dominion Electric Cooperative and Virginia Electric and Power Company, corporations certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the Clover Power Station located in Halifax County.
8. "Permit" means VWP permit number 89-1282, which became effective March 1, 2000 and expires March 2, 2012.
9. "Regulation" means the Virginia Water Protection Permit Regulation, (9 VAC 25-210-10 et seq.).
10. "State Water Control Law" means Va. Code §§ 62.1-44.15:5 et seq., pertaining to Virginia Water Protection Permits.

SECTION C: Findings of Fact and Conclusions of Law

1. ODEC/VP withdraws water pursuant to their Permit from the Roanoke (Staunton) River downstream of the Smith Mountain/Leesville Hydroelectric Project ("the Dam"). The Facility is one of several downstream facilities dependant on regular releases from the Dam and sideflow runoff from the intervening drainage area between the dam and the intake to maintain the minimum instream flows necessary for water withdrawal.
2. The Dam is operated by American Electric Power Company ("AEP") and is obligated under Article 29 of Appalachian Power Company License from the Federal Energy Regulatory Commission ("FERC") for Project Number 2210 (Smith Mountain /Leesville Hydroelectric Project) to release a minimum average weekly flow of 650 cubic feet per second (cfs) from the Dam.
3. The FERC license issued to AEP was modified on May 19, 2000 to allow DEQ, upon request by AEP, to grant a variance to the minimum average weekly release flow requirement of 650 cubic feet per second (cfs). Periodically since 1998 DEQ and FERC have issued variances to AEP for the purposes of conserving water during drought conditions while attempting to continue to meet a variety of non-commensurable objectives including water supply, hatchery operations, water based recreation, the maintenance of water quality and the protection of aquatic life.
4. The VWP Permit issued to ODEC/VP contains conditions that automatically reduce the required minimum instream flowby whenever a variance is granted to AEP to reduce releases from Leesville Dam.

5. On June 14, 2002 DEQ issued a variance to AEP that allows AEP to conserve water. Despite the triggering of lower flowby limits, on June 19, 2002, the combination of sideflows and the releases from Leesville dam were insufficient to produce streamflow at the Randolph gage that would allow ODEC/VP to pump water under their reduced drought minimum instream flowby conditions.
6. The current drought affecting the Roanoke River Basin originated in July 1998 and is expected to continue indefinitely. Accordingly, it is likely that AEP will continue to take measures to conserve water, and that these measures will prevent ODEC/VP from being able to withdraw water under its current permit conditions.
7. The reduced minimum instream flowby levels for use during drought conditions included in the Permit have not been verified by field data.
8. From time to time during variance conditions DEQ requires AEP to release more water than is needed for aquatic life and water quality. Such releases are specifically intended to provide relief for recreation and hatchery operations. Also from time to time during variance conditions streamflow can spike upward due to local precipitation events. If the ODEC/VP Facility had the ability to pump and store more of the water during these temporary peaks, it could maximize the use of available water.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority of Va. Code § 62.1-44.15(8a), orders and ODEC/VP agrees that to ensure compliance with the water withdrawal requirements of its permit, ODEC/VP shall perform the actions described in **Appendix A** to the Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of ODEC/VP, for good cause shown by ODEC/VP, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those matters specifically identified herein. This Order shall not preclude the Board or the Director from taking any other action authorized by law.
3. For purposes of this Order and subsequent actions with respect to this Order, ODEC/VP admits the jurisdictional allegations, but does not admit the factual findings and conclusions of law contained herein.
4. ODEC/VP 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. ODEC/VP declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the State Water 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 enforce this Order.
6. Failure by ODEC/VP 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. ODEC/VP 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 occurrence. ODEC/VP shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ODEC/VP shall notify the DEQ Director in writing 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 Director within 48 hours of learning of any condition above, which ODEC/VP 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, their 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 ODEC/VP. Notwithstanding the foregoing, ODEC/VP agrees to be bound by any compliance date and the conditions in paragraph 1 of Appendix A that precedes the

effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to ODEC/VP. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve ODEC/VP from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. Except as specified above, nothing herein shall be construed as altering, modifying, or amending any term or condition contained in any permit issued to ODEC/VP by DEQ.
13. By its signature below, ODEC/VP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

Old Dominion Electric Cooperative voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of _____, 2002, by _____, who is
(name)

_____ of _____.
(title)

Notary Public

Virginia Electric and Power Company voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of
_____, 2002, by _____, who is
(name)

_____ of _____.
(title)

Notary Public

Appendix A
Old Dominion Electric Cooperative and Virginia Electric and Power Company
Clover Power Plant
VWP Permit No. 89-1282

1. During the period beginning with the effective date of this Order and lasting until completion of the studies described below, ODEC/VP may withdraw up to 15 million gallons per day from the Roanoke (Staunton) River whenever streamflow as measured at the Randolph gage is above the Leesville base release plus 60 cubic feet per second but below the minimum instream flowby limits of VWP permit 89-1282; otherwise ODEC/VP may withdraw their full permitted amount of 21.6 million gallons per day.
2. By **October 31, 2002**, ODEC/VP shall submit a study plan analyzing the costs and benefits of using water storage to alleviate the need for water withdrawal during drought conditions. The study shall compare the cost and practicability of building storage onsite, building storage off-site and leasing storage off-site with the benefits of avoiding plant shut down under existing Permit conditions. The study shall examine the frequency and duration with which sideflows between Leesville Dam and Randolph gage are less than or equal to 198 to 270 cubic feet per second between June 1 and April 15 as the basis for when storage would be beneficial. The study will also evaluate the feasibility of increasing the maximum pumping capacity used to refill the storage pond.
3. By **September 30, 2003**, ODEC/VP shall complete the study outlined in the plan and submit the completed study.
4. By **September 30, 2003**, ODEC/VP shall submit a permit modification request to increase the maximum pumping capacity of the pumps used to refill the storage pond unless the storage study shows that such action is not feasible. The feasibility determination will include an evaluation of financial and environmental considerations.
5. By **October 31, 2002**, ODEC/VP shall submit a plan for conducting an instream flow study designed to establish the minimum instream flowby necessary to protect aquatic resources. ODEC/VP shall consult with the Department of Game and Inland Fisheries (DGIF) to develop a study plan, recognizing that ODEC/VP cannot control AEP releases. ODEC/VP may partner with AEP or other responsible stakeholders to cost share the instream flow study for the reach of the river below Leesville Dam to the headwaters of Buggs Island Lake. If ODEC/VP cost shares the instream flow study with other stakeholders, a cost sharing agreement shall be submitted as part of the plan. The completion date for the complete river study shall be identified in the plan. Alternatively, if ODEC/VP chooses not to cost share an instream flow study with other stakeholders, then ODEC/VP is only required to produce an instream flow study for the reach of the Roanoke (Staunton) River between the Randolph gage and the headwaters of Buggs Island Lake. The study of the shorter reach shall be completed by December 1, 2003 or such later date as agreed upon through consultation with DGIF in order to achieve necessary flow rates.

6. All submissions required under this Appendix shall be sent to:
Department of Environmental Quality
Office of Water Permits
ATTN: Joe Hassell
629 East Main Street
Richmond, Virginia 23219