

Alabama Department of Environmental Management

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June 5, 2009

**CERTIFIED MAIL NO. 7007 0710 0001 6204 3060**  
**RETURN RECEIPT REQUESTED**

Mr. Steve San Miguel  
Environmental Specialist  
Florida Gas Transmission Company  
1967 Commonwealth Lane  
Tallahassee, FL 32303



Dear Mr. San Miguel:

**RE: Consent Order No. 09-076-CAP**  
**Facility No. 503-3028**  
**Station 11-Mt. Vernon, Alabama**

Please find enclosed ADEM Consent Order No. 09-076-CAP which requires Florida Gas Transmission Company to take certain actions in regard to alleged violations of the Alabama Air Pollution Control Act. This Order has been issued with the consent of Florida Gas Transmission Company and the Department. Please note that the assessed civil penalty is due within 45 days of the effective date of the Order.

If you have any questions concerning this matter, please contact Kimberly Andrews at (334) 270-5691.

Sincerely,

Ronald W. Gore, Chief  
Air Division

Enclosure

RWG/KMA



cc: Mr. Jacob Krautsch, Florida Gas Transmission Co. (via e-mail, cover letter only)  
Mr. Charles Wait, Florida Gas Transmission Co. (via e-mail, cover letter only)



**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

**Florida Gas Transmission Company LLC**)

Compressor Station 11 )

Mt. Vernon, Mobile County, Alabama )

Air Facility ID No. 503-3028)

**CONSENT ORDER NO. 09-076-CAP**

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department") and Florida Gas Transmission Company LLC (hereinafter, "the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. The Permittee is the owner and/or operator of a natural gas compressor station (Air Facility ID No. 503-3028) located in Mt. Vernon, Mobile County, Alabama (hereinafter, "the Facility").

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to

administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. On December 29, 2005, the Department issued a Title V Major Source Operating Permit (hereinafter, "MSOP") to the Permittee pursuant to ADEM Admin. Code r. 335-3-16-.03. Unit Specific Proviso No. 2(a) of the MSOP for Emission Unit No. 006 (a reciprocating engine denoted by the Permittee as Engine No. 1106, hereinafter, "the Engine") specified that the Permittee shall not allow emissions of nitrogen oxides (NOx) from the Engine in excess of 10.58 pound per hour (lb/hr). This NOx emission limit is a Best Available Control Technology (BACT) limit resulting from review under Prevention of Significant Deterioration (ADEM Admin. Code r. 335-3-14-.04). The Engine utilizes lean combustion technology to achieve this BACT limit. Unit Specific Proviso No. 4(b) of the MSOP requires the Permittee to conduct emissions testing on the Engine semiannually to determine compliance with the NOx limit.

5. On November 13, 2008, the Permittee conducted an emissions test on the Engine. The Permittee conducted a preliminary review of the results of the test on the same day. The results indicated that the Engine exceeded the applicable NOx emission limit during the test. Following this determination, the Permittee adjusted the fuel program to the Engine, conducted another emissions test, and conducted a preliminary review of the results of the subsequent test on the same day. The results indicated that the Engine was in compliance with the applicable NOx emission limit during the subsequent test. The Permittee notified the Department of the failed emissions test via telephone on the day that the test was conducted.

6. On December 8, 2008, the Department received the emissions test report for the tests performed on November 13, 2008. The report indicated that during the

initial emissions test, the Engine had an average NOx emission rate of 29.04 lb/hr. The report also indicated that during the subsequent emissions test, the Engine had an average NOx emission rate of 9.74 lb/hr.

7. On December 29, 2008, the Department issued a Notice of Violation (NOV) to the Permittee for emitting NOx at a rate greater than 10.58 lb/hr from the Engine. The NOV requested that the Permittee submit a written response to the Department by January 28, 2009.

8. On January 28, 2009, the Department received the Permittee's response to the December 29, 2008 NOV. The response indicated that the Engine had been operated utilizing the incorrect fuel program for 672 hours during the period of October 7, 2008 through November 13, 2008.

9. The Permittee consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

10. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

### ***CONTENTIONS***

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and

degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Department considers the Permittee's failure to operate the Engine in proper manner to be a serious violation in that it allowed excess NO<sub>x</sub> emissions to be emitted to the environment. NO<sub>x</sub> is a precursor for the formation of ground-level ozone. Excess NO<sub>x</sub> emissions can affect an area's ability to comply with the National Ambient Air Quality Standard for Ozone.

B. THE STANDARD OF CARE: The Permittee did not exhibit a standard of care commensurate with applicable regulatory standards.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any significant economic benefit that the Permittee may have achieved as a result of the above-mentioned violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee shut down the Engine immediately upon discovery of the failed emissions test and corrected the fuel program. The Permittee performed a subsequent emissions test the same day following the readjustment of the fuel program.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department has issued three NOV's to the Permittee. In February 2001, the Department issued an NOV for

failure to pay operating permit fees in a timely manner for two consecutive years. In February 2002, the Department issued an NOV for the exceeding a NOx emission limit applicable to Emission Unit 007 (Engine No. 1107). In March 2002, the Department issued an NOV for failing to report a permit deviation in a timely manner. In October 2002, the Department issued a Consent Order to address the violations cited in the February 2002 and March 2002 NOVs.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

### ***ORDER***

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$8,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within

forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

C. The Permittee agrees that, immediately upon the effective date of this Consent Order, it shall operate in compliance with all conditions and requirements contained in its MSOP at all times.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that this Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and

conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute



possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

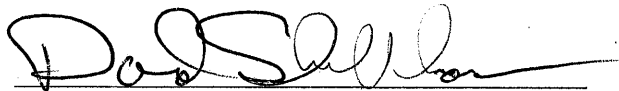
M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an

existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

**FLORIDA GAS TRANSMISSION  
COMPANY LLC**



(Signature of Authorized Representative)

David Shellhouse

(Printed Name)

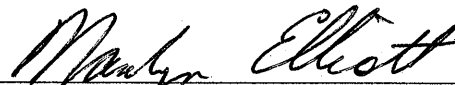
Vice President

(Printed Title)

4/14/09

Date Signed

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**



Onis "Trey" Glenn, III

Director

06/05/2009

Date Executed