

STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF

NRG STERLINGTON POWER LLC
OUACHITA PARISH
ALT ID NO. 2160-00104

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
La. R.S. 30:2001, ET SEQ.

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ENFORCEMENT TRACKING NO.

AE-CN-01-0393

AGENCY INTEREST NO.

84706

SETTLEMENT

The following Settlement is hereby agreed to between NRG Sterlington Power, LLC (Respondent) and the Department of Environmental Quality, (Department), under authority granted by the Louisiana Environmental Quality Act, LSA- R.S. 30:2001, et seq., (the "Act").

I.

Respondent is an electrical power generator that owns and/or operates an electric power plant known as the Sterlington Facility located at or near 6310 Horseshoe Lake Road in Sterlington, Ouachita Parish, Louisiana. The facility operated under Air Permit No. 2160-00104-V0 issued on January 5, 1999. An air permit modification application with cover letter dated December 2000 was submitted to the Department and Air Permit No. 2160-00104-V1 was issued on February 13, 2002.

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II.

The allegations which form the basis of the enforcement action is:

On or about April 16, 2002, the Department received a hand delivered letter dated April 16, 2002, from the Respondent. The letter outlined the course of establishment of the facility and the installation of turbines at the facility. The letter noted that Koch Power, Inc. (Koch) was issued a permit for the construction and operation of a 200 megawatt (MW) peaking power plant known as the Koch Sterlington Power Plant. The letter continued that Koch had a practice of installing refurbished turbines and learned that the same electric output stated on the nameplates could not be achieved, even though the units were refurbished. Koch installed some turbines that were rated less than 25 MW. The air permit allowed for the installation of eight (8), 25 MW natural gas-fired turbines with a 200 MW electric generation output limit. Two of the turbines installed by Koch were rated at 17.5 MW. According to the letter, Koch was faced with either installing coolers to boost output or installing additional turbines to reach the 200 MW electric generation output limit. In the letter, the Respondent stated that it was their understanding that Koch believed that turbines could be installed until reaching the electric output generation limit of 200 MW since emissions would not increase due to the limit on hours of operation. According to the letter, Koch's personnel represented this belief to the Respondent. The letter continued to describe the relationship between Koch and the Respondent and the acquisition of the facility by the Respondent. According to the Respondent, in early 2000 after four units had been installed including both 17.5 MW turbines, a partnership developed with Koch. When NRG decided to acquire Koch's interest, the Respondent noted that the

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purchase agreement and closing documents contained representations and warranties by Koch that it possessed all of the necessary permits for the construction and operation of the facility, and therefore, the Respondent did not obtain an environmental consulting firm to review operations. The letter also noted that the Respondent installed additional turbines, including a ninth turbine during March 2001, based on the beliefs and representations made by Koch and noted that there were no emissions increases related to installation of the last turbine. The Department transferred the permit from Koch Power Louisiana LLC to NRG Sterlington Power LLC on December 20, 2000, due to the change of ownership that occurred on August 17, 2000.

On or about April 18, 2002, a representative of the Respondent met with the Department to discuss the information presented in the letter dated April 16, 2002, relative to the issue of the installation of turbines at the facility. The representative for the Respondent provided an explanation of the circumstances surrounding the installation of the turbines. The representative for the Respondent conveyed that a ninth turbine had been installed at the facility in March 2001, which was more than the eight turbines listed in the air permit. However, the representative for the Respondent explained that the total electrical output was still near 200 MW; none of the turbines were new, but were all refurbished and operated below nameplate capacity; and by remaining below the permitted 10,000 operating hours, the emission limits would not be surpassed. The representative of the Respondent maintained that there was no real increase in emissions due to the installation of the

ninth turbine, and that it only operated for the purposes of startup and vibration testing.

The Respondent submitted a letter dated July 16, 2002, in response to the April 18, 2002, meeting. The response provided additional information concerning the dates of installation of the nine turbines. The Respondent's letter noted that Koch had begun installation of four turbines, including two 17.5 MW units, by the first quarter of 2000. According to the letter, the Respondent purchased Koch's interest in the facility and became the operator in August 2000. Construction of two more turbines began in September 2000 and construction began on an additional two turbines in December 2000. The Respondent began pouring the foundation for the ninth turbine in January 2001 and installation occurred in March 2001. The Respondent noted that the refurbished units were incapable of achieving their original nameplate capacity and even considering the ninth turbine, the facility had not exceeded 200 MW output limit. Based on the information provided by the Respondent, the following violation was noted:

In accordance with Air Permit No. 2160-00104-V0, the Respondent was only authorized to install eight (8), 25 MW turbines. However, while operating under Air Permit No. 2160-00104-V0, the Respondent had on site and operated two (2), 17.5 MW turbines and seven (7) turbines with nameplate capacities of 25 MW. The Respondent's failure to install equipment as proposed in the air permit application and described in Air Permit 2160-00104-V0 is a violation of the Louisiana Air Emissions Permit General Condition No. I of Air Permit No. 2160-00104-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.

The Respondent submitted a permit modification application with a cover letter dated December 2000 in which the Respondent proposed to install two (2) additional 17.5 MW turbines for a total of ten (10) turbines. The modified Air Permit was issued on or about February 13, 2002, and

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permitted eight (8), 25 MW turbines and two (2), 17.5 MW turbines.

On or about November 5, 2002, a file review of the Respondent's facility was performed to determine the degree of compliance with the Act and the Air Quality Regulations.

The following violation was noted during the course of the review:

The Department received the Respondent's January through June 2001 semiannual monitoring report dated October 5, 2001. The Respondent failed to submit the semiannual monitoring report to the Department by September 30, 2001. This is a violation of Part 70 General Condition K of Air Permit Number 2160-00104-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.

III.

On September 2, 2003, a Consolidated Compliance Order and Notice of Potential Penalty was issued to Respondent and, in response thereto, Respondent made a timely request for a meeting.

IV.

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

V.

Nonetheless, the Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of FOUR THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$4,500.00) of which FIVE HUNDRED FIFTY EIGHT AND 62/100 DOLLARS (\$558.62) represents DEQ's enforcement costs in settlement of the claims set forth in this agreement. The total amount of money expended by

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Respondent on cash payments to DEQ as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

VI.

Respondent further agrees that the Department may consider the inspection report(s), the Notice of Potential Penalty Assessment and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action the Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VIII.

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement

IX.

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act.

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X.

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Ouachita Parish. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

XI.

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Penalties are to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Office of Management and Finance, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303.

XII.

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XIII.

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

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WITNESSES:

RESPONDENT

Judy Hebert

BY: Alan D Williams

Debra J. Landry

NAME: Alan D Williams

TITLE: Vice President



THUS DONE AND SIGNED before me this 27th day of Feb, 2004, in New Roads, Louisiana, Parish of Pointe Coupee.

Wendy R. Decker
NOTARY PUBLIC

WITNESSES:

STATE OF LOUISIANA

Mike D. McDaniel, Ph.D., Secretary
Dept. of Environmental Quality

St. Paul

[Signature]

BY: Harold Leggett
Harold Leggett, Ph.D., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED before me this 11 day of May, 2004, in Baton Rouge, Louisiana.

Christopher A. Katchoff
NOTARY PUBLIC

Approved: R. Bruce Hammatt
R. Bruce Hammatt, Assistant Secretary



CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

April 29, 2004

Mike D. McDaniel, Secretary
La. Department of Environmental Quality
Office of the Secretary
P.O. Box 4301
Baton Rouge, LA 70821-4301

Re: Review of DEQ Settlement;
NRG Sterlington Power, LLC
AE-CN-01-0393; AI #84706

Dear Secretary McDaniel:

Pursuant to the authority granted to me by R.S. 30:2050.7(E)(2)(a), I approve the above referenced settlement.

Sincerely,


NICHOLAS GACHASSIN
First Assistant Attorney General

NG/cbw

RECEIVED

MAY 10 2004

**LA Dept. of Environmental Quality
LEGAL DIVISION**