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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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January 25, 2005

Mr. Ken Skroback
Vice President of Bulk Power and Delivery
Alabama Electric Cooperative
P O Box 550
Andalusia, Alabama 36420

Re: Final Consent Order 05-035-CWP
Alabama Electric Cooperative
Andalusia, AL
NPDES Permits McWilliams Plant AL0002844 and McIntosh Plant AL0054950

Dear Mr. Skroback:

Please find enclosed ADEM Consent Order No. 05-035-CWP. This Order has been issued with the consent of Alabama Electric Cooperative and the Department. Please note that the assessed civil penalty is due within 45 days.

Should you have any questions concerning this matter, please contact Sheri Festoso at (334) 271-7851.

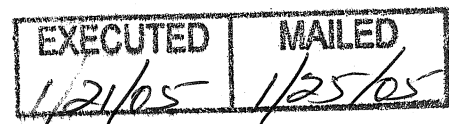
Sincerely,

A handwritten signature in cursive script, reading "James E. McIndoe".

James E. McIndoe, Chief
Water Division

Enclosure

cc: Olivia Rowell – Office of General Counsel
Eric Sanderson – ADEM (e-mail)
Sheri Festoso – ADEM (e-mail)
Arthur Collins – US EPA Region IV
ADEM – Public Affairs Office (e-mail)
Darlene Gregory – ADEM (e-mail)



**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Alabama Electric Cooperative)
Andalusia, AL)

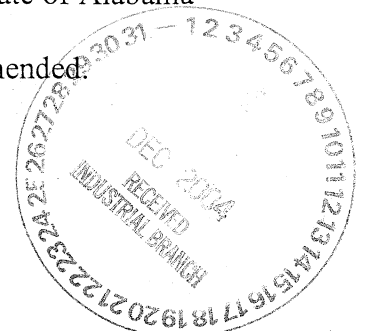
NPDES AL0002844 and AL0054950)

CONSENT ORDER NO. 05-035-CWP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama, 1975, §§ 22-22A-1 through 22-22A-16, as amended, the Alabama Water Pollution Control Act, Code of Alabama, 1975, §§ 22-22-1 through 22-22-14, as amended, and § 307 of the Federal Water Pollution Control Act, 33 U.S.C. § 1317, and with the consent of Alabama Electric Cooperative (AEC), the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS:

1. Alabama Electric Cooperative (hereinafter, "Permittee") operates the AEC McWilliams Plant and the AEC McIntosh Plant for the production of electricity. The McWilliams Plant is located in Andalusia, Alabama. The McIntosh Plant is located in McIntosh, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended.



3. The Department issued a National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit to the Permittee on September 24, 1999, authorizing the discharge of pollutants from the McWilliams Plant to the Conecuh River. The Department issued a NPDES Permit to the Permittee on September 24, 1999, authorizing the discharge of pollutants from the McIntosh Plant to Bilbo Creek.

4. The Permit was issued subject to certain terms, conditions, and limitations, including the following requirement: "If the permittee intends to continue to discharge beyond the expiration date of this permit, the permittee shall file a complete permit application for reissuance of this permit at least 180 days prior to its expiration. If the permittee does not intend to continue discharge beyond the expiration of this permit, the permittee shall submit written notification of this intent which shall be signed by an individual meeting the signatory requirements for a permit application as set forth in ADEM Administrative Code Rule 335-6-6-.09."

5. Failure of the permittee to submit a complete application for reissuance at least 180 days prior to permit expiration voids the automatic continuation of the expiring permit provided by ADEM Administrative Code Rule 335-6-6-.06 and should the permit not be reissued for any reason any discharge after expiration of this permit is an unpermitted discharge.

6. The Department received incomplete permit applications for both facilities on September 30, 2004.

7. The Permittee failed to submit a complete application 180 days prior to permit expiration. The permits expired on September 30, 2004, therefore, the Permittee is currently discharging without a permit.

8. Entry into this Consent Order by the Permittee does not indicate agreement with certain Findings presented in the Order. Based upon a spirit of cooperation and a desire to amicably resolve this matter, the Permittee does agree not to contest this Order. Based upon its spirit of cooperation and its desire to amicably resolve this matter, as well as its willingness to comply with the provisions of the Alabama Water Pollution Control Act and the Federal Water Pollution control Act and their implementing regulations, the Permittee agrees to all of the terms of this Consent Order.

9. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

ORDER

Based upon the foregoing **FINDINGS** and pursuant to Code of Alabama 1975, §§ 22-22A-5(10), 22-22A5-(12), 22-22A-5(18), 22-22-9(i) and 22-22-9. The Department hereby ORDERS and the Permittee AGREES:

A. That, within 45 days from the effective date of this Consent Order, the Permittee will pay to the Department, a civil penalty in the amount of two thousand (\$4,000) for the violations cited herein.

B. That, not later than 45 days from the effective date of this Consent Order, the Permittee shall submit a complete permit application as specified in ADEM Administrative Code Rule 335-6-6-.09.

C. Until such time the NPDES permits are re-issued, the Permittee shall comply with the terms, limitations, and conditions of the NPDES Permits issued on September 24, 1999.

D. That, the Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

E. That, 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 a court of competent jurisdiction. 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.

F. 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.

G. That, by agreement of the parties, 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.

ALABAMA ELECTRIC COOPERATIVE

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: Ken Henslock

By:

Jim W. W. W.

Its: Vice President Bulk Power &
Delivery

Its:

Acting Director

Date: November 30, 2004

Date:

21 JAN 2005