

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	
	)	
ALABAMA ENVIRONMENTAL	)	
COUNCIL, INC.	)	
Plaintiff-Intervenor,	)	
	)	
v.	)	Case No. 2:01-cv-00152-VEH
	)	
ALABAMA POWER COMPANY,	)	
Defendant.	)	
	)	
	)	

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**JOINT STIPULATION TO MODIFY CONSENT DECREE**

WHEREAS, Plaintiff the United States of America filed a Complaint in the Northern District of Alabama in 2001 against Alabama Power Company, alleging violations of the Clean Air Act (CAA). Such violations included a claim at the Plant Gaston Unit 5, Plant Barry Unit 5, Plant Greene County Unit 2, Plant Miller Unit 3, and Plant Miller Unit 4, and included two claims each at the Plant Barry Unit 2 and the Plant Gorgas Unit 10.

WHEREAS, on June 19, 2006, this Court entered a Partial Consent Decree in the above-captioned matter to resolve the alleged violations of the CAA at Plant Miller Unit 3 and Plant Miller Unit 4.

WHEREAS, in 2010, Plaintiff the United States of America dismissed the claims at Plant Gaston Unit 5, Plant Barry Unit 5, and one claim each at Plant Barry Unit 2 and Plant Gorgas Unit 10.

WHEREAS, Paragraph 115 of the Partial Consent Decree provides that “[t]he terms of this Consent Decree may be modified only by a subsequent written agreement signed by APC and EPA. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.”

WHEREAS, the Plaintiff the United States of America (“Plaintiff”), Plaintiff-Intervenor the Alabama Environmental Council, Inc. (“Plaintiff-Intervenor”), and Defendant Alabama Power Company (“APC”) have agreed to seek to modify the Partial Consent Decree in the manner set forth herein (referred to hereafter as the “Joint Modification”).

WHEREAS, the Partial Consent Decree did not settle the remaining alleged violations of the CAA at the Plant Barry Unit 2, Plant Gorgas Unit 10, or Plant Greene County Unit 2.

WHEREAS, the Parties agree and acknowledge that final approval of the United States and entry of this Joint Modification is subject to the procedures set forth in 28 CFR § 50.7, which provides for notice to be published in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that the Joint Modification is inappropriate, improper, or inadequate. No Party will oppose entry of this Joint Modification by this Court or challenge any provision of this Joint Modification unless the United States has notified the Parties, in writing, that the United States no longer supports entry of the Joint Modification.

NOW THEREFORE, and as described in the United States’ Notice of Lodging filed contemporaneously herewith, the Plaintiff, Plaintiff-Intervenor, and APC, hereby stipulate to modify the Partial Consent Decree, as follows:

1. Modify Paragraph 3 as follows:

3. A “30-Day Rolling Average Emission Rate” for:

(a) Plant Miller Unit 3 or Unit 4 means and is calculated by (A) summing the total pounds of the pollutant in question emitted from the Unit during an Operating Day and the previous twenty-nine (29) Operating Days; (B) summing the total heat input to the Unit in mmBTU during the Operating Day and during the previous twenty-nine (29) Operating Days; and (C) dividing the total number of pounds of pollutants emitted during the thirty (30) Operating Days by the total heat input during the thirty (30) Operating Days, and converting the resulting value to lbs/mmBTU. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Operating Day. Each 30-Day Rolling Average Emission Rate shall exclude all emissions that occur during all periods of startup, shutdown and malfunction as defined in 40 C.F.R. §60.2.

(b) Plant Gorgas Unit 10, Plant Barry Unit 1 and Unit 2, and Plant Greene County Unit 1 and Unit 2 means the average number of pounds of pollutant emitted per million BTU of heat input (“lb/mm BTU”) where such rate shall be calculated as a 30- Day Rolling Average. A 30-Day Rolling Average Emission Rate expressed as lb/mmBTU shall be determined by calculating the emission rate for a given Operating Day, and then arithmetically averaging the emission rates for the previous 29 Operating Days with that date. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Operating Day and shall, except for the Plant Gorgas Unit 10 NO<sub>x</sub> rate, include all periods of startup, shutdown, and malfunction. The NO<sub>x</sub> 30-Day Rolling Average Emission Rate for Plant Gorgas Unit 10 shall exclude all periods of startup, shutdown, and malfunction as defined in 40 C.F.R. § 60.2, and such emissions shall

instead be covered by the NO<sub>x</sub> 365-Day Rolling Average Emission Rate for Plant Gorgas Unit 10.

2. Modify Paragraph 4 as follows:

4. A “365-Day Rolling Average Emission Rate”:

(a) For Plant Miller Unit 3 or Unit 4 means and is calculated by (A) summing the total pounds of the pollutant in question emitted from the Unit during an Operating Day and the previous three hundred sixty-four (364) Operating Days; (B) summing the total heat input to the Unit in mmBTU during the Operating Day and during the previous three hundred sixty-four (364) Operating Days; and (C) dividing the total number of pounds of pollutants emitted during the three hundred sixty-five (365) Operating Days by the total heat input during the three hundred sixty-five (365) Operating Days, and converting the resulting value to lbs/mmBTU. A new 365-Day Rolling Average Emission Rate shall be calculated for each new Operating Day. Each 365-Day Rolling Average Emission Rate shall include all emissions, including those that occur during all periods of startup, shutdown, and malfunction as defined in 40 C.F.R. § 60.2.

(b) For Plant Gorgas Unit 10 means the average number of pounds of pollutant emitted per million BTU of heat input (“lb/mmBTU”) where such rate shall be calculated as a 365-Day Rolling Average. A 365-Day Rolling Average Emission Rate expressed as lb/mmBTU shall be determined by calculating the emission rate for a given Operating Day, and then arithmetically averaging the emission rates for the previous 364 Operating Days with that date. A new 365-Day Rolling Average Emission Rate shall be calculated for each new Operating Day and shall include all periods of startup, shutdown, and malfunction, as defined in 40 C.F.R. § 60.2.

3. Modify Paragraph 5 as follows:

5. “30-Day Rolling Average Removal Efficiency” means:

(a) For Plant Miller Unit 3 and Unit 4, the percent reduction of the pollutant in question achieved by a Unit’s pollution control device over a 30-day period as determined by 40 C.F.R. Part 60, Appendix A, Method 19, Section 12.5.3. A new 30-Day Rolling Average Removal Efficiency shall be calculated for each new Operating Day. Each 30-Day Rolling Average Removal Efficiency shall exclude all emissions that occur during any period of malfunction (as defined in 40 C.F.R. § 60.2) of the FGD.

(b) For Plant Gorgas Unit 10, the percent reduction of the pollutant in question achieved by a Unit’s pollution control device over a 30-day period as determined by 40 C.F.R. Part 60, Appendix A, Method 19, Section 12.5.3. A new 30-Day Rolling Average Removal Efficiency shall be calculated for each new Operating Day. Each 30-Day Rolling Average Removal Efficiency shall include all emissions that occur during startup, shutdown, and malfunction (as defined in 40 C.F.R. § 60.2).

4. Modify Paragraph 8 as follows:

8. “Consent Decree” or “Decree” means the Partial Consent Decree entered by the court on June 19, 2006 and the “Joint Modification.”

5. Modify Paragraph 31 as follows:

31. “SO<sub>2</sub> Allowance” means:

(a) For the Partial Consent Decree, “allowance” as defined at 42 U.S.C. § 7651a(3): “an authorization, allocated to an affected unit by the Administrator [of EPA] under

[Subchapter IV of the Act], to emit, during or after a specified calendar year, one ton of sulfur dioxide.”

(b) For the Joint Modification, “allowance” means an authorization to emit a specified amount of SO<sub>2</sub> that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or the Alabama SIP.

6. Add new Paragraphs 33.1, 33.2, 33.3., 33.4, and 33.5 as follows:

33.1. “Annual Tonnage Limitation” means the limitation, as specified in the Joint Modification, on the number of tons of pollutant that may be emitted from the Plant Greene County Unit 1 and Unit 2 during the relevant calendar year (i.e., January 1 through December 31), and shall include all emissions of the specified pollutant that occur during all periods of operation, including startup, shutdown, and malfunction.

33.2. “Plant Barry” means Unit 1 and Unit 2 only of the James M. Barry Electric Generating Plant, located near Bucks, Alabama. Plant Barry Unit 1 and Unit 2 exhaust to a common stack with all emissions monitored in the duct work to that common stack. Compliance with any Emission Rates set forth in this Joint Modification as applicable to Plant Barry Unit 1 and Unit 2 shall be determined based on that monitoring in the common duct/stack for the two units together as if they were a single unit. A violation of any such Emission Rate based on common stack measurements shall be a single violation.

33.3. “Plant Gorgas” means Unit 8, Unit 9, and Unit 10 only of the Gorgas Steam Electric Generating Plant, located near Parrish, Alabama. Under normal operating

conditions<sup>1</sup>, Plant Gorgas Unit 8, Unit 9, and Unit 10 exhaust to a common FGD and from there to a common stack where SO<sub>2</sub> emissions are monitored. Compliance with any SO<sub>2</sub> removal efficiency set forth in this Joint Modification as applicable to Plant Gorgas Unit 8, Unit 9, and Unit 10 shall be determined based on that monitoring in the common stack for the three units together as if they were a single unit. A violation of any such SO<sub>2</sub> removal efficiency based on common stack measurements shall be a single violation.

33.4. “Plant Greene County” means Unit 1 and Unit 2 only at the Greene County Electric Generating Plant, located near Forkland, Alabama. Plant Greene County Unit 1 and Unit 2 exhaust to a common stack where all emissions are monitored. Compliance with any Emission Rates set forth in this Joint Modification as applicable to Plant Greene County Unit 1 and Unit 2 shall be determined based on that monitoring in the common stack for the two units together as if they were a single unit. A violation of any such rate based on common stack measurements shall be a single violation.

33.5 “NO<sub>x</sub> Allowance” means an authorization to emit a specified amount of NO<sub>x</sub> that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or the Alabama SIP.

7. Add a new Paragraph 34.1 as follows:

34.1. Beginning April 1, 2016, APC shall operate SCR technology on a year-round basis at Plant Gorgas Unit 10 consistent with the technological limitations, manufacturers’ specifications, and good engineering and maintenance practices for SCRs

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<sup>1</sup> The Pressure Relief Vent associated with Plant Gorgas Unit 8 and Unit 9 is subject to requirements of the Title V operating permit for Plant Gorgas.

and so as to minimize NO<sub>x</sub> emissions to the extent reasonably practicable, whenever Gorgas 10 is in operation and combusting fossil fuel.

8. Add a new Paragraph 35.1 as follows:

35.1. For Plant Gorgas Unit 10, beginning April 1, 2016, APC shall comply with both of the following NO<sub>x</sub> emission rates: (1) a 30-Day Rolling Average NO<sub>x</sub> Emission Rate of 0.100 lb/mmBtu, and (2) a 365-Day Rolling Average NO<sub>x</sub> Emission Rate of 0.220 lb/mmBtu, both measured by a new CEMS to be installed and certified in the Unit 10 duct work following the SCR and before the confluence with flue gas from Unit 8 and Unit 9. The first averaging period for each of the above emission rates shall begin with the first Operating Day on or after April 1, 2016.

9. Add a new Paragraph 39.1 as follows:

39.1 Beginning 60 days after entry of the Joint Modification, APC shall combust only natural gas in Plant Barry Unit 1 and Unit 2.

(i) Beginning 60 days after entry of the Joint Modification, APC shall comply with a 30-Day Rolling Average NO<sub>x</sub> Emission Rate of 0.200 lb/mmBtu at the common duct/stack for Plant Barry Unit 1 and Unit 2. The first averaging period for the above Emission Rate shall begin with the first Operating Day on or after 60 days after entry of the Joint Modification.

(ii) In determining compliance with this Emission Rate for Plant Barry Unit 1 and Unit 2, APC shall use data from CEMS operated in accordance with 40 C.F.R. Part



75; however, the missing data substitution procedures of 40 C.F.R. Part 75 shall not apply to such determinations.

10. Add a new Paragraph 39.2 as follows:

39.2 Beginning January 1, 2017, APC shall combust only natural gas in Plant Greene County Unit 1 and Unit 2.

(i) Beginning January 1, 2017, APC shall comply with a 30-Day Rolling Average NO<sub>x</sub> Emission Rate of 0.280 lb/mmBtu at the common stack for Plant Greene County Unit 1 and Unit 2. The first averaging period for the above Emission Rate shall begin with the first Operating Day on or after January 1, 2017. In determining compliance with this emission limit, APC shall use data from CEMS operated in accordance with 40 C.F.R. Part 75; however, the missing data substitution procedures of 40 C.F.R. Part 75 shall not apply to such determinations.

(ii) Beginning January 1, 2017, APC shall comply with a total annual NO<sub>x</sub> emission limitation of 4,790 tons per year for Plant Greene County Unit 1 and Unit 2. In determining compliance with this emission limit, APC shall use data from CEMS operated in accordance with 40 C.F.R. Part 75, including the missing data substitution procedures of 40 C.F.R. Part 75.

11. Add a new Paragraph 41.1 as follows:

41.1. Beginning April 1, 2016, APC shall operate the FGD on a year-round basis at Plant Gorgas Unit 8, Unit 9, and Unit 10 consistent with the technological limitations,

manufacturers' specifications, and good engineering and maintenance practices for the FGD and so as to minimize SO<sub>2</sub> emissions to the extent reasonably practicable.

12. Add a new Paragraph 43.1 as follows:

43.1. For each 30-day period which begins on or after April 1, 2016, APC shall comply with a 30-Day Rolling Average Removal Efficiency of 95% for SO<sub>2</sub> for Plant Gorgas Unit 8, Unit 9 and Unit 10. Notwithstanding any other requirement, SO<sub>2</sub> emissions during any hour of operation when neither Plant Gorgas Unit 8, Unit 9 nor Unit 10 is combusting coal shall be subject only to the requirement to combust either natural gas or distilled fuel oil only and shall not be subject to the otherwise applicable 30-Day Rolling Average Removal Efficiency requirement.

13. Add a new Paragraph 53.1 as follows:

53.1. As applied to emission reductions generated by APC to comply with the requirements of the Joint Modification, Paragraph 53 above shall apply to SO<sub>2</sub> and NO<sub>x</sub> emission reductions only. Further, emission reductions obtained by the permanent retirement of Plant Barry Unit 3 and Plant Gorgas Unit 6 and Unit 7 may be used as creditable contemporaneous emission decreases for the purpose of obtaining netting credit in each permit application for any new auxiliary boilers constructed at Plant Barry to provide startup steam support for Plant Barry Unit 5 and at Plant Gorgas to provide startup steam support for Plant Gorgas Unit 10.

14. Add a new Paragraph 56.1 as follows:

56.1 The provisions of Paragraphs 56, 57, 58, and 59 have been satisfied and are not applicable to the entry of the Joint Modification.

15. Modify Paragraph 60 as follows:

60. Beginning January 1, 2021, APC shall not sell, trade, or otherwise exchange any excess emission allowances outside of the APC system. For purposes of this provision:

(a) "Excess emission allowances" shall mean:

(1) For Plant Miller, all SO<sub>2</sub> emission allowances generated by the operation of Plant Miller Units 3 and 4 that APC does not need to meet applicable state or regulatory requirements for those units, including the Clean Air Interstate Rule;

(2) For Plant Gorgas and Plant Barry, all SO<sub>2</sub> and NO<sub>x</sub> emission allowances generated by the operation of Plant Gorgas Unit 10 and Plant Barry Unit 2 that APC does not need to meet applicable state or regulatory requirements for those units.

(3) For Plant Greene County, (i) 60% of all SO<sub>2</sub> and NO<sub>x</sub> emission allowances generated by the operation of Plant Greene County Unit 2 that APC does not need to meet applicable state or regulatory requirements for those units, and (ii) an amount of allowances equivalent to 40% of all SO<sub>2</sub> and NO<sub>x</sub> emission allowances generated by the operation of Greene County Unit 2 that APC does not need to meet applicable state or regulatory requirements for these units, the source of which may be any coal-fired unit in the APC system.

(b) "the APC system" shall mean all coal-fired electric generating units that APC owns or operates at the time the restriction in this Paragraph applies.

16. Add a new Section IX-A and a new Paragraph 60.1 as follows:

IX-A. UNIT RETIREMENTS

60.1. No later than 60 days after entry of the Joint Modification, APC shall permanently retire Plant Barry Unit 3, Plant Gorgas Unit 6, and Plant Gorgas Unit 7.

17. Add Section IX-B and Paragraph 60.2 as follows:

IX-B. MITIGATION

60.2. APC will invest \$1,500,000 within three years after entry of the Joint Modification into either or both of the two types of electric transportation projects described below (“Projects”). In the event additional time is needed to complete prudent investment of the full amount designated, one additional year will be added to the three-year period upon notification by APC to EPA.

(i) APC will install Electric Vehicle Supply Equipment (“EVSE”) commonly referred to as ‘Charging Stations’ in strategic locations such as public parking facilities at workplace locations, retail centers, hospitals, college campuses, airports, multi-unit dwellings, and military bases. APC retains the sole discretion to tailor the amount of investment in this type of Project to the level of support and readiness demonstrated by local governments, military base authorities and property owners or lessees where Charging Stations might be installed. Charging Stations installed as part of this Project may be owned, operated, and maintained by APC, the property owner, or any other third party. APC’s expenses associated with Charging Station marketing, installation, maintenance, repair, and replacement during the time period allowed for this project will be credited to this project dollar for dollar. APC shall select Charging Station types and

locations, giving priority to locations in areas of Alabama with past air quality concerns, such as the greater Birmingham area.

(ii) APC will install electric charging infrastructure for Birmingham Shuttlesworth International Airport (BHM) to support electric ground support equipment at BHM, such as tow tractors, belt and container loaders, pushback tractors, and ground power units. APC retains the sole discretion to tailor the amount of investment in this type of Project to the level of support and readiness demonstrated by the Birmingham Airport Authority and participating airlines. APC's expenses associated with installation, maintenance, repair, and replacement of airport electric charging infrastructure incurred during the time period allowed for this Project will be credited to this project dollar for dollar.

(iii) APC may fund the Projects through other entities, including public/private partnerships already involved in the field. However, APC will notify EPA of each such entity through whom mitigation project funds will be invested and provide a description of roles and responsibilities of each such entity.

(iv) APC will provide to EPA semi-annual progress reports and one final report including amounts invested in each type of Project, the number, location and type of equipment installed to date, the number, location and type of equipment planned for future installations, and available information regarding current usage of the installed equipment.

(v) Expenses for APC's or its affiliates' "in-house" support personnel for design, implementation, and management of the Projects or compliance with Joint Modification requirements associated with the Projects, and APC expenses of supplying

electric service to such Charging Stations and infrastructure will not be credited to this Project.

(vi) Apart from investing the designated amount of money for the aforementioned designated purposes during the designated period, APC has, as a part of the Joint Modification, no further or continuing duties with regard to the Project equipment and facilities installed.

18. Modify Paragraph 61 as follows:

61. Not later than forty-five (45) days after entry of the Partial Consent Decree, APC shall pay to the United States \$100,000 to resolve the United States' claim for a civil penalty as to claims at Plant Miller Unit 3 and Unit 4. Not later than forty-five (45) days after entry of the Joint Modification, APC shall pay to the United States \$100,000 to resolve the United States' claim for a civil penalty as to claims at Plant Barry Unit 2, Plant Greene County Unit 2, and Plant Gorgas Unit 10. The payment shall be made by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing USAO File Number 2001V00043 and DOJ Case Number 90-5-2-1-06994 and the civil action case name and case number of this action. The costs of such EFT shall be APC's responsibility. Payment shall be made in accordance with instructions provided to APC by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Alabama. Any funds received after 2:00 pm. EDT shall be credited on the next business day. At the time of payment, APC shall provide notice of payment, referencing the USAO File Number, the DOJ Case

Number, and the civil action case name and case number, to the Department of Justice and to EPA in accordance with Section XVIII (Notices) of this Consent Decree.

19. Add a new Paragraph 64.1 as follows:

64.1. Entry of the Joint Modification shall resolve all civil claims for relief as to Plant Barry Unit 2, Plant Greene County Unit 2, and Plant Gorgas Unit 10, that were alleged by the United States in its Initial Complaint and Amended Complaint and all claims for relief as to Plant Barry, Plant Greene County, and Plant Gorgas that were alleged by AEC in its Complaint.

20. Add a new Paragraph 65.1 as follows:

65.1. Beginning thirty (30) days after the end of the first full calendar quarter following the entry of the Joint Modification, continuing on a semi-annual basis until the obligations of the Joint Modification are either (1) satisfied, (2) incorporated into federally enforceable Title V operating permits, or (3) terminated pursuant to Paragraphs 131 or 132 of the Consent Decree, whichever is earlier, and in addition to any other express reporting requirement in this Consent Decree, APC shall submit to EPA a progress report regarding Plant Barry Unit 1, Unit 2, and Unit 3, Plant Greene County Unit 1 and Unit 2, and Plant Gorgas Unit 6, Unit 7, Unit 8, Unit 9, and Unit 10.

21. Modify Paragraph 69 as follows:

69. For any failure by APC to comply with the terms of this Consent Decree, and subject to the provisions of Sections XIV (Force Majeure) and XV (Dispute Resolution),

APC shall pay, within thirty (30) days after receipt of written demand by the United States, the following stipulated penalties to the United States:

<b>Consent Decree Violation</b>	<b>Stipulated Penalty (Per day per violation, unless otherwise specified)</b>
a. Failure to make payment as specified in Section X (Civil Penalty) of this Consent Decree	\$10,000
b. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO <sub>x</sub> , 30-Day Rolling Average Removal Efficiency for SO <sub>2</sub> , or Emission Rate for PM set forth in or established pursuant to this Consent Decree	\$ 5,000
c. Failure to comply with any applicable 365-Day Rolling Average Emission Rate established by this Consent Decree	\$200,000 for a 365-Day Rolling Average Emission Rate violation, plus \$5,000 for each subsequent 365-Day Rolling Average Emission Rate violation that includes any day in a previously-assessed 365-Day Rolling Average Emission Rate violation
d. Failure to install or operate Mercury CEMS as specified in Section VII	\$1,000 per day per violation
e. Failure to donate SO <sub>2</sub> Allowances or limit the use of excess allowances as required by Section IX	(a) \$32,500 plus (b) \$1,000 per day
f. Any other violation of this Consent Decree	\$1,000
g. Failure to operate emissions controls, to combust only natural gas, or to retire a unit, as required by this Joint Modification	\$10,000 per Day per violation during the first 30 Days; \$37,500 per Day per violation thereafter
h. Failure to complete the Mitigation required under Section IX-B of the Joint Modification	\$1,000 per Day per violation during the first 30 Days; \$5,000 per Day per violation thereafter
i. Failure to comply with the Annual Tonnage Limitation set forth in Paragraph 39.2	\$5,000 per ton for the first 100 tons over the Limitation and \$10,000 per ton for each additional ton above 100 tons.

22. Modify Paragraph 98 as follows:



98. Within one hundred eighty (180) days after the date of entry of the Joint Modification, APC shall modify any applicable Title V permit application(s), or apply for amendments of its Title V permits, to include operational, maintenance, and control technology requirements established by the Consent Decree and Joint Modification, including but not limited to: any applicable (a) Emission Rates, together with their relevant monitoring requirements and averaging periods, (b) Annual Tonnage Limitations, (c) the requirements pertaining to the prohibition on netting credits or offsets, and the limitation on the use of excess allowances, and (d) requirements related to combusting natural gas only at specified units as required under the Joint Modification.

23. Modify Paragraph 105 as follows:

105. Unless otherwise provided herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States of America:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
DJ# 90-5-2-1-06994

and

Director, Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building [2242A]  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

and

Regional Administrator  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

As to EPA:

Regional Administrator  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

As to AEC:

Michael Churchman, Executive Director  
Alabama Environmental Council  
2014 6<sup>th</sup> Avenue North, #200  
Birmingham, AL 35203

As to APC:

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(205) 992-6371

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Daniel S. Reinhardt

Margaret C. Campbell  
Troutman Sanders LLP  
600 Peachtree Street, Suite 5200  
Atlanta, GA 30308  
(404) 885-3000

24. Add a new Paragraph 113.1 as follows:

113.1. The effective date of the Joint Modification shall be the date upon which the Joint Modification is entered by the Court.

25. Add a new Paragraph 132.1 as follows:

132.1. Conditional Termination of Enforcement of the Joint Modification Through the Consent Decree.

After APC:

(a) has successfully completed construction, and has maintained operation of pollution controls as required by the Joint Modification for one year; and

(b) has applied to revise its Title V operating permit pursuant to the Joint Modification and has obtained a final federally enforceable operating permit issued under the Alabama SIP that includes as enforceable permit terms the requirements set forth in Paragraphs 34.1, 35.1, 39.1, 39.2, 41.1, 43.1, 60 and 60.1 of the Joint Modification;

then APC may so certify these facts to the United States and this Court. If the Plaintiffs do not object in writing with specific reasons within forty-five (45) days of receipt of APC's certification, then, for any Consent Decree violations that occur after the filing of notice, the United States may pursue enforcement of the requirements contained in the Title V operating permit or other federally enforceable operating permit issued under the Alabama SIP through the applicable permit but not through this Consent Decree and APC may, by motion to this Court,

seek termination of the provision or provisions of this Consent Decree that imposed the requirement or the Consent Decree in its entirety.

26. All provisions of the Consent Decree unaffected by these modifications shall operate in conjunction with these new provisions in the same manner as had the new provisions been included in the Decree when it was entered by the Court in the above-captioned action.

27. Except as specifically provided in this Joint Stipulation, the Parties intend that all other terms and conditions of the Consent Decree will remain unchanged and in full effect.

Signature Page for Joint Stipulation to Modify *United States of America, et. al. v. Alabama Power Company* Consent Decree

FOR THE UNITED STATES DEPARTMENT OF JUSTICE

Respectfully submitted,

/s/ John C. Cruden  
JOHN C. CRUDEN  
Assistant Attorney General  
Environment and Natural Resources  
Division  
United States Department of Justice

/s/ James A. Lofton  
JAMES A. LOFTON  
Counsel to the Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice

/s/ James W. Beers, Jr.  
JAMES W. BEERS, JR.  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice

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/s/ Joyce White Vance  
JOYCE WHITE VANCE  
United States Attorney  
Northern District of Alabama

/s/ Lane Hines Woodke  
LANE HINES WOODKE  
Assistant United States Attorney  
Northern District of Alabama

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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respectfully submitted,

/s/Cynthia Giles  
CYNTHIA GILES  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
United States Environmental  
Protection Agency

/s/ Phillip A. Brooks  
PHILLIP A. BROOKS  
Director, Air Enforcement Division  
United States Environmental  
Protection Agency

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FOR ALABAMA POWER COMPANY:

/s/ Matthew W. Bowden  
MATTHEW W. BOWDEN  
Vice President, Environmental Affairs  
Alabama Power Company



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FOR ALABAMA ENVIRONMENTAL COUNCIL

By: /s/ Michael Churchman  
MICHAEL CHURCHMAN  
Executive Director