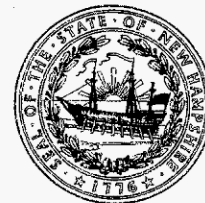




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

March 1, 2004

ConEd Development
Attn: Alan Douglass
15 Agawam Avenue
West Springfield, MA 01089

Re: Docket No. AF 05-018 – Newington Energy, LLC

Dear Mr. Douglass:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in the above-captioned matter executed by Robert R. Scott, Air Resources Division Director, and accepted by Commissioner Michael P. Nolin on March 1, 2005. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Sclafani,
Legal Assistant

cc: Robert R. Scott, Director, DES Air Resources Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Ray Walters, DES ARD
DES Public Information Officer
R. Kurowski, EPA Region I
J.O'Reilly, Chairman of Selectmen, Town of Newington



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Newington Energy, LLC
99 Old Dover Road
Newington, NH 03801

Re: State Permit No: FP-T-0036
EPA PSD Permit No: 044-121NH10

**ADMINISTRATIVE FINE
BY CONSENT
No. AF 05-018**

I. INTRODUCTION

This Administrative Fine by Consent is entered into between the Department of Environmental Services, Air Resources Division, and Newington Energy, LLC, pursuant to RSA 125-C:15,I-b. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Air Resources Division ("DES"), is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Newington Energy, LLC ("NEL") is a New Hampshire Limited Liability Company with a mailing address of 99 Old Dover Road, Newington, New Hampshire 03801.

III. BACKGROUND

1. RSA 125-C authorizes the Department of Environmental Services to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted the N.H. Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15,I-b(b) authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 125-C and rules promulgated pursuant thereto.
3. RSA 125-C:6 authorizes DES to establish and operate a statewide system under which permits shall be required for the construction, installation, operation or material modification of air pollution devices and sources. Pursuant to this authority, the Commissioner of DES has adopted N.H. Admin. Rules Env-A 600.
4. RSA 125-C:2,XI defines a stationary source as "any building, structure, facility, or installation which emits or which may emit any regulated air pollutant".

5. NEL operates a 525 megawatt Combustion Turbine Facility (“the Facility”) that generates electricity and is located at 99 Old Dover Road in Newington, New Hampshire.
6. On April 26, 1999, and as amended on September 7, 2001, DES and the US EPA issued to NEL a joint State of New Hampshire Temporary Permit No. FP-T-0036 and Federal Prevention of Significant Deterioration (“PSD”) Permit No. 044-121NH10 (“the Permit”) for the Facility.
7. The Permit provides that DES has authority for Sections I – IV and VI – XXII of the Permit, and that the US EPA has authority for Sections I - III, IV.B, V, IX – XV, and XVII – XXII of the Permit.
8. On July 9, 2002, the US EPA approved DES’s request to accept full delegation of the PSD program, including the authority to enforce PSD permits already issued by the US EPA. The US EPA then approved a revision to the New Hampshire State Implementation Plan on December 28, 2002, giving DES full authority for the PSD program.
9. Condition III.X of the Permit requires the cooling tower at the Facility to be equipped with High Efficiency Drift Eliminators to minimize water drift losses and plume visibility.
10. Condition III.Y of the Permit limits the cooling tower drift to 0.0005 percent of the circulating water flow rate.
11. Condition XIV of the Permit requires NEL to conduct an initial performance test for cooling tower drift using a DES-approved test method within 60 days of achieving maximum operation of the Facility, but no later than 180 days after initial start-up of the Facility.
12. Startup of the Facility occurred on June 19, 2002. NEL conducted an initial performance test for cooling tower drift on September 16 and September 22, 2002.
13. On November 6, 2002, the final stack test report was hand-delivered to DES which showed that NEL had exceeded the allowable cooling tower drift rate of 0.0005 percent of the circulating water flow rate. NEL exceeded the limit for drift with an average measured drift rate of 0.00056 percent of the circulating water flow rate.
14. In the cover letter to the final stack test report, NEL, via its attorney, stated that the manufacturer of the cooling tower, the engineering consultant, and the testing company had been consulted as to the reason why the cooling tower failed to comply with Condition III.Y of the Permit. The reasons for the failure were still being investigated, although a number of possible causes had already been determined. NEL expected to re-test in May 2003.
15. On November 22, 2002, DES responded to NEL, via its attorney, regarding its submittal of the cooling tower drift test results to DES. In the letter, DES requested that NEL respond within 30 days with a date for a scheduled retest of the cooling tower.
16. In a letter to DES dated December 9, 2002, NEL, via its attorney, formally proposed that the cooling tower retest begin on May 29, 2003.

17. In a letter to DES dated April 22, 2003, NEL provided an update of the repairs and improvements that it and Marley, the cooling tower manufacturer, had made to improve the performance of the cooling tower and to minimize cooling tower drift emissions.

18. On June 2 and June 6, 2003, NEL conducted a second performance test for cooling tower drift. On July 23, 2003, DES received the final stack test report which showed that NEL had again exceeded the allowable cooling tower drift rate of 0.0005 percent of the circulating water flow rate. NEL exceeded the limit for drift during the second test with an average measured drift rate of 0.00071 percent of the circulating water flow rate.

19. In a letter dated July 25, 2003, NEL, via its attorney, submitted an action plan to re-examine and identify the factors contributing to the failure, perform corrective actions, and conduct a third test of the cooling tower.

20. On September 5 and September 8, 2003, NEL conducted a third test for cooling tower drift. On October 21, 2003, DES received the final stack test report which showed that NEL was in compliance with the cooling tower drift rate of 0.0005 percent of the circulating water flow rate. The test results showed that NEL's cooling tower had an average measured drift rate of 0.0004 percent of the circulating water flow rate.

IV. ALLEGATIONS

1. NEL violated Condition III.Y of the Permit by exceeding the maximum allowable cooling tower drift rate of 0.0005 percent of the circulating water flow rate. From September 16, 2002 until June 2, 2003, NEL emitted at an average measured drift rate of 0.00056 percent of the circulating water flow rate.

2. NEL violated Condition III.Y of the Permit by exceeding the maximum allowable cooling tower drift rate of 0.0005 percent of the circulating water flow rate. From June 2, 2003 until September 5, 2003, NEL emitted at an average measured drift rate of 0.00071 percent of the circulating water flow rate.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. Pursuant to RSA 125-C, DES has determined the violation identified in Paragraph IV.1 above to be a minor deviation from the requirements with a minor potential for harm. RSA 125-C:15, I-b specifies a fine range of \$100 to \$1,000. For this violation, DES proposes a fine of \$325 for each of the 9 months during which NEL was in violation of this standard, or a total of \$2,925.

2. Pursuant to RSA 125-C, DES has determined the violation identified in Paragraph IV.2 above to be a minor deviation from the requirements with a moderate potential for harm. RSA 125-C:15, I-b specifies a fine range of \$601 to \$1,250. For this violation, DES proposes a fine of \$750 for each of the 3 months during which NEL was in violation of this standard, or a total of \$2,250.

3. NEL agrees to pay the proposed fines of \$5,175 upon execution of this agreement by an authorized representative of NEL.

4. Payment of the amount of \$5,175 under Paragraph V.3 shall be made by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

5. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

6. By executing this Administrative Fine by Consent, NEL waives its right to a hearing on or any appeal of the administrative fine identified in Paragraphs V.1 and V.2, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction. Other than such enforcement action, DES shall pursue no further administrative action against NEL relative to the allegations contained herein.

7. The parties have entered into this Administrative Fine by Consent to avoid the time and cost of litigation. Except as described in Paragraph V.6, above, this agreement shall not constitute, or be construed as, an admission of liability by NEL, or a waiver of any right, course of action, or defense otherwise available to it.

8. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of NEL, the Director of the Air Resources Division and the Commissioner of DES.

9. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default shall be deemed a waiver of its rights with regard to that breach or default, nor shall such failure be construed as a waiver of the right to enforce each and all of the provisions of this agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

NEWINGTON ENERGY, LLC

COPY

Duly Authorized
John A. McTear
Vice President

2/24/05
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY

Robert R. Scott, Director
Air Resources Division

2/28/05
Date

COPY

Michael P. Nolin, Commissioner
Department of Environmental Services

03 01 05
Date

- cc: G. Hamel, DES Legal Unit
- Public Information Officer, DES PIP Office
- R. Kurowski, EPA Region 1
- J. O'Reilly, Chairman of Selectmen, Town of Newington
- AFS # 3301590793