

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

October 17, 2014

CERTIFIED MAIL #91 7199 9991 7030 3340 5780

Mr. John Ustica
Plant Manager
Siemens Energy, Inc. Electrical Components Plant
1901 Briarwood Avenue Southwest
Fort Payne, Alabama 35967

Dear Mr. Ustica:

Subject: **Consent Order No. 15-004-CHW**
Siemens Energy, Inc. Electrical Components Plant
Fort Payne, DeKalb County, Alabama
EPA Identification Number ALD982088379

Enclosed is a copy of Consent Order Number 15-004-CHW, which constitutes an agreement between the Siemens Energy, Inc. Electrical Components Plant and the Alabama Department of Environmental Management. This Order requires the Siemens Energy, Inc. Electrical Components Plant to take certain actions at the facility in regard to alleged violations of the Alabama Hazardous Wastes Management and Minimization Act of 1978. This Order was signed by ADEM's Director and became effective as of October 17, 2014. As described in Order Item A, the Siemens Energy, Inc. Electrical Components Plant has forty-five days from that date to pay the civil penalty assessed therein.

Should you have any questions, please feel free to contact Corey Holmes of my staff at (334) 270-5630.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip D. Davis", is written over a horizontal line.

Phillip D. Davis, Chief
Land Division

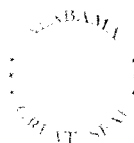
PDD/CH/nbf

Enclosure

CC via email: Kenneth Larson, Siemens Energy, Inc.
César Zapata, EPA Region 4
Paula Whiting, EPA Region 4
Jerome Hand, ADEM Office of External Affairs
Chris Sasser, ADEM Office of General Counsel

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S. W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Siemens Energy, Inc.- Electrical Components
Plant
Fort Payne, DeKalb County, AL
EPA Identification Number ALD982088379**

ORDER NO. 15-004-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department” or “ADEM”) and Siemens Energy Inc. - Electrical Components Plant (hereinafter “Siemens”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter “AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24, (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Siemens owns and operates an electrical generator and exciter components manufacturing facility with EPA ID No. ALD982088379, located at 1901 Briarwood Avenue SW in Fort Payne, DeKalb County, Alabama. At all times relevant to these findings, Siemens was a large quantity generator of hazardous waste.

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 agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer

and enforce the provisions of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

DEPARTMENT'S CONTENTIONS

4. On February 19, 2014, a representative of the Department conducted a compliance evaluation inspection (CEI) of Siemens to determine compliance with all applicable requirements of Division 14 of the ADEM Administrative Code.

5. Based on the CEI, the Department determined that Siemens violated certain requirements of Division 14 of the ADEM Administrative Code. Specifically, the Department identified the following violations:

a) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(ii), a generator may accumulate as much as 55 gallons of hazardous waste at or near the point of generation where wastes initially accumulate, without a permit and without complying with 335-14-3-.03(5)(a), provided that the containers are marked with either the words "Hazardous Waste" or with other words that identify the contents of the containers.

Siemens did not label or mark one 35-gallon satellite container, located in the Vacuum Pressure Impregnation (VPI) Room, with either the words "Hazardous Waste" or with other words describing the contents.

b) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(i) referencing ADEM Admin. Code r. 335-14-6-.09(4)(a), a generator may accumulate as much as 55 gallons of hazardous waste at or near the point of generation without a permit and without complying with 335-14-3-.03(5)(a), provided that the containers holding hazardous waste must always be closed, except when it is necessary to add or remove waste.

Siemens did not keep closed one 35-gallon satellite container, located in the VPI Room. The drum's locking ring was not tightened securely.

c) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.04(4)(b), a copy of the required contingency plan and all revisions to the plan must be submitted to all local law enforcement, fire departments, hospitals, and ADEM Field Operations Division and local emergency response teams that may be called upon to provide emergency services. Documentation of compliance with this requirement must be maintained at the facility.

Siemens did not maintain documentation demonstrating that an up-to-date contingency plan had been submitted to the required state and local emergency responders.

d) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code rs. 335-14-6-.02(7)(c), the generator shall ensure that facility personnel take part in an annual review of the initial hazardous waste training required in 335-14-6-.02(7)(a).

Siemens did not provide the required employees with the annual review of the initial hazardous waste management training in calendar year 2013.

e) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.02(6)(d), the generator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

Siemens did not include the date and time of inspections or name of the inspector on the 90-day storage area inspection log.

f) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(b), a large quantity generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 335-14-5 and 335-14-6, and the permit requirements of 335-14-8 unless he has been granted an extension to the 90-day period.

ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the "storage" of any "hazardous waste" as identified or listed in Chapter 335-14-2.

Siemens accumulated hazardous waste on site for greater than ninety days without requesting an extension to the 90-day period or obtaining a hazardous waste storage facility permit. At the time of the inspection, there was one 5-gallon bucket holding hazardous waste with an accumulation start date of August 9, 2013 in the hazardous waste container storage area. In addition, there was one plastic tray holding hazardous laboratory waste containers of various capacities located in the hazardous waste container storage area. The tray was marked with an accumulation start date of August 21, 2013.

6. On April 10, 2014, the Department issued to Siemens a Notice of Violation, citing violations of the hazardous waste program regulations that were observed or existed at the time of the February 9, 2014 CEI.

7. On May 6, 2014, the Department received Siemens' response to the April 10, 2014 Notice of Violation.

8. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), 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(s) 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 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 a violation continues shall constitute a separate violation.

9. In arriving at this civil penalty, the Department has considered the following:

(a) SERIOUSNESS OF THE VIOLATIONS: The Department noted six violations of ADEM Admin. Code div. 335-14 and the AHWMMMA. In arriving at the civil penalty, the Department considered the general nature and magnitude of the violations along with the available evidence of irreparable harm to the environment or threat to the public.

(b) THE STANDARD OF CARE: In considering the standard of care manifested by Siemens, the Department noted that the violations listed above were easily avoidable. Consequently, Siemens did not exhibit a standard of care commensurate with applicable regulatory standards.

(c) ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department does not have any evidence indicating that Siemens received an economic benefit by delaying compliance.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of the nature, extent, and degree of success of Siemens' efforts to minimize or mitigate the effects of the violations noted in this action upon the environment.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Siemens has a documented history of noncompliance with respect to the ADEM Administrative Code.

(f) THE ABILITY TO PAY: Siemens has not alleged an inability to pay the civil penalty.

(g) OTHER FACTORS: It should be noted that this Consent Order is a negotiated settlement and, therefore, the Department has compromised the amount of the appropriate penalty that is warranted in the spirit of cooperation and the desire to resolve this matter amicably without incurring the unwarranted expense of litigation (See Attachment A, which is made a part of the Department's contentions).

10. The Department neither admits nor denies Siemens' contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to

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

SIEMENS' CONTENTIONS

11. Siemens neither admits nor denies the Department's contentions. Siemens consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. As such, neither the execution hereof nor the payment required herein shall be deemed or construed at any time for any purpose by anyone (including but not limited to other parties who may bring claims in any legal, administrative or other proceeding) as an admission of liability.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, Siemens, along with the Department, desires to resolve and settle the alleged violation 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., as amended, as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Siemens agree to enter into this Consent Order with the following terms and conditions:

A. Siemens agrees to pay to the Department a civil penalty in the amount of \$10,100 in settlement of the violation 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. Siemens 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 or other payment methods acceptable to the Department and shall be remitted to:

Office of General Counsel

Alabama Department of Environmental Management

P.O. Box 301463

Montgomery, Alabama 36130-1463

Any payment submitted to the Department pursuant to this Order shall reference Siemens' name and address, and the ADEM Administrative Order number of this action.

C. Siemens agrees that, independent of this Consent Order, Siemens shall comply with all terms, conditions, and limitations of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

D. The Department and Siemens (hereinafter 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, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations cited in this Consent Order.

F. Siemens 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, Siemens 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.

H. The parties 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 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; Siemens agrees not to 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 parties 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 Siemens does hereby waive any hearing on the terms and conditions of this Consent Order.

J. The parties agree that this Consent Order shall not affect Siemens' obligation to comply with any Federal, State, or local laws or regulations.

K. The parties agree that final approval and entry into this Consent 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 Consent Order.

L. The parties agree that, should any provision of this Consent 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.

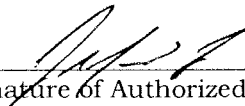
M. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

N. The parties agree that, except as otherwise set forth herein, this Consent 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 Siemens of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Siemens Energy Inc. - Electrical
Components Plant

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

John J. Listica
(Printed Name)

Plant Manager
(Printed Title)

September 3, 2014
(Date Signed)


Lance R. LeFleur
Director

OCT 17 2014

(Date Executed)

Attachment A

**Siemens Energy Inc., Electrical Components Plant
Fort Payne, DeKalb County
EPA Identification Number ALD982088379**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to keep closed hazardous waste container	1	\$100	\$50	\$50	
Failure to label hazardous waste container	1	\$100	\$50	\$50	
Failure to maintain or provide documentation demonstrating the contingency plan was sent to emergency responders	1	\$100	\$50	\$0	
Failure to provide hazardous waste training in calendar year 2013	1	\$1,000	\$500	\$500	
Failure to provide date, time, and name of inspector on the 90-day storage area inspection log	1	\$100	\$50	\$0	
Accumulating hazardous waste on site for greater than 90 days	1	\$10,000	\$1,000	\$0	Total of Three Factors
TOTAL PER FACTOR		\$11,400	\$1,700	\$600	\$13,700

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	(\$3,600)
Total Adjustments (+/-) <i>Enter at Right</i>	(\$3,600)

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$13,700
Total Adjustments (+/-)	(\$3,600)
FINAL PENALTY	\$10,100

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.