GEORGIA
DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION

Richard E. Dunn, Director

Land Protection Branch
4244 International Parkway
Suite 104
Atlanta, Georgia 30354
404-362-2537

December 7, 2022

Mr. Aaron D. Mitchell
Georgia Power Company
241 Ralph McGill Blvd. NE
P.O. Box 1256
Atlanta, Georgia 30308

Email: aadmitch@southerco.com

VIA ELECTRONIC MAIL

RE: Consent Order EPD-SW-2963
Plant McDonough AP-1

Dear Mr. Mitchell:

The Environmental Protection Division (EPD) has enclosed a final, executed, Consent Order to provide an amicable disposition of the alleged violation. Georgia Power Company is expected to initiate all provisions set forth in the Order to achieve compliance. Failure to meet the actions described, in compliance with the corresponding deadlines, will subject Georgia Power Company to further administrative actions, which may include monetary penalties. Please direct all correspondence regarding this Consent Order to:

Environmental Protection Division
Land Protection Branch
C/O Keith Stevens
4244 International Parkway, Suite 104
Atlanta, Georgia 30354

If there are any questions concerning the proposed Consent Order, please contact Keith Stevens at (404) 362-2539 or Keith.Stevens@dnr.ga.gov.

Sincerely,

Richard E. Dunn
Director

Enclosure

STATE OF GEORGIA
DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION

IN RE: Georgia Power Company Plant McDonough-Atkinson 5551 South Cobb Dr. SE Smyrna, GA 30339 Cobb County Respondent.	)))))))	ORDER NO. EPD- -

CONSENT ORDER

Authority

WHEREAS, Georgia Power Company (collectively referred to herein as "Respondent") is the owner and operator, and is responsible for the closure of the Plant McDonough-Atkinson inactive Coal Combustion Residuals (CCR) surface impoundment unit 1 (AP-1) (hereinafter "Unit"); and

WHEREAS, the Director (the "Director") of the Environmental Protection Division of the Georgia Department of Natural Resources ("EPD") administers and enforces the Georgia Comprehensive Solid Waste Management Act, O.C.G.A. § 12-8-20, (the "Solid Waste Act"); and

WHEREAS, EPD administers and enforces the Rules for Solid Waste Management, GA. COMP. R. AND REGS. 391-3-4 (the "Solid Waste Rules"), which were promulgated and are in effect pursuant to the Solid Waste Act; and

WHEREAS, the Solid Waste Rules require inactive CCR surface impoundments to complete closure within five years of commencing closure activities.; and

WHEREAS, the Solid Waste Rules allow inactive CCR surface impoundments of 40 acres or smaller to extend the time to complete closure by no longer than two (2) years, if the owner or operator can demonstrate that it was not feasible to complete closure of the CCR unit within the required timeframes due to factors beyond the Respondent's control.

Civil Penalty

WHEREAS, O.C.G.A. § 12-8-30.6 provides that any person violating any provision of the Solid Waste Act or any permit condition or limitation issued or established pursuant to the Solid Waste Act, Solid Waste Rules, or negligently or willfully failing or refusing to comply with any final order of the Director shall be liable for a civil penalty not to exceed $25,000.00 per day for such violation.

Background

WHEREAS, on December 7, 2015, in compliance with the federal CCR regulations, the Respondent placed a Notification of Intent to initiate closure of the Unit in the operating record; and

WHEREAS, in January 2016, the Respondent initiated closure activities in compliance with the CCR regulations at the Unit; and

WHEREAS, the EPD adopted the CCR Rule, and it became effective on November 22, 2016, which required the Respondent to apply for a CCR closure permit by November 22, 2018; and

WHEREAS, in the first quarter of 2017, substantial closure construction of the Unit was complete, indicating the Respondent's good faith effort to complete closure by the regulatory deadline; and

WHEREAS, on November 20, 2018, the Respondent submitted a State CCR permit application to EPD in accordance with Rule 391-3-4-.10(9); and

WHEREAS, on November 20, 2018, the EPD acknowledged receipt of a complete application for Solid Waste Handling Permit from the Respondent, logged in as, APL No. 0337, for the consolidation and closure in place of the Unit; and

WHEREAS, on December 4, 2020, consistent with regulatory requirements, the Respondent requested an extension of two years to complete the closure construction activities and provided a narrative discussion of the basis for additional time beyond that specified in the closure plan; and

WHEREAS, on May 5, 2021, EPD representatives conducted a site visit to the Unit and observed the final cover to be substantially installed and in good condition; and

WHEREAS, Respondent qualified for a new closure deadline of December 7, 2022; and

WHEREAS, EPD and the Respondent are undergoing an iterative process of reviewing the permit application, and the Respondent requires final design requirements to complete construction and closure.

Alleged Violations

WHEREAS, the Respondent has not been able to complete closure of the Unit within five years of commencing closure activities and the two-year extension time in accordance with Solid Waste Rule 391-3-4-.10 (7), due to factors beyond the Respondent's control.

Conditions

WHEREAS, the Director has determined that an amicable disposition of the alleged violations set forth herein is in the best interest of the citizens of the State of Georgia.

NOW THEREFORE, before the taking of any testimony and without adjudicating the merits of the parties' positions, the parties hereby resolve the allegations in this matter upon order of the Director and consent of Respondent as follows:

1. Within ninety (90) days of the issuance date of the final closure permit or within ten (10) months of execution of this Order, whichever comes first, the Respondent shall submit a milestone schedule for approval by the Division to complete closure of the Unit, in accordance with the Solid Waste Rule 391-3-4-.10(7).
2. Upon approval by EPD of the milestone schedule provided in Condition One, the schedule end date for completion of closure shall establish a revised closure deadline. After approval of the milestone schedule, the Respondent, if needed, may request revisions to it for approval by the Division.

Deadlines

Time is of the essence in this Consent Order. Compliance with any deadline that falls on a Saturday, Sunday or state-recognized holiday shall be by the next business day.

Addresses

All notices, correspondence, etc., from the Director and EPD to Respondent relating to this Consent Order shall be sent to:

Aaron D. Mitchell
241 Ralph McGill Blvd. NE
Atlanta, GA 30308

Respondent shall submit address changes to EPD in written notice sent by certified mail; such notice shall include this Order number.

All correspondence from Respondent to EPD relating to this Consent Order shall be sent to:

Solid Waste Permitting Unit
Attn: Keith Stevens
Environmental Protection Division
4244 International Parkway, Suite 104
Atlanta, GA 30354

Public Notice

This Consent Order may be subject to public notice and comment.

Required Submissions

Upon the submission of any reports, plans, schedules or other information required by any Condition(s) of this Consent Order, EPD shall review the submission to determine its completeness. If EPD determines that the submission is complete, EPD shall notify Respondent in writing that the submission is approved.

If EPD determines that the submission is incomplete, it shall provide Respondent with written notice of the deficiencies. Respondent shall have thirty (30) days from issuance of EPD's notice of deficiency to submit a corrected submission.

All submissions required by this Consent Order are, upon approval by EPD, incorporated by reference into, and made part of, this Consent Order. Any noncompliance with an approved submission shall be deemed noncompliance with this Consent Order.

Approval by EPD of any submission required by this Consent Order is not an agency determination that compliance with any state laws, regulations and/or permits, licenses, etc., will thereby be achieved, but is strictly limited to the completeness of the technical aspects of the submission with regards to the requirements of this Consent Order.

Force Majeure

Failure of Respondent to complete the requirement(s) of any Condition(s), other than payment obligations, by the deadline(s) specified therein may be excused by EPD if 1) Respondent's failure was caused by a force majeure event, and 2) Respondent complies with all notification requirements in this section. Respondent shall have the burden of proving to EPD that it was rendered unable, in whole or part, by the force majeure event to meet the deadline(s).

The term "force majeure event" as used herein shall be limited to the following: an act of war (whether declared or not), including an invasion, act of foreign enemies, or terrorism; a strike, lockout, or other labor or industrial blockade or embargo which is not attributable to any unreasonable action or inaction on the part of Respondent; public riot; specific incidents of exceptional adverse weather conditions or natural disasters such as a hurricane, flood, or earthquake; a fire or explosion affecting the Respondent's operations; failure to secure timely and necessary federal, state, or local approvals or permits, provided approvals or permits have been timely and diligently sought; and any other occurrence caused by unforeseeable circumstances beyond the reasonable control of Respondent, as determined by EPD in its sole discretion.

Within two (2) business days of learning of any force majeure event that may reasonably be expected to cause a deadline to be missed, Respondent shall notify EPD verbally or in writing. Within seven (7) business days of learning of any force majeure event that may reasonably be expected to cause a deadline to be missed, Respondent shall submit written notice to EPD of the force majeure event, the possible effects and the anticipated length (if known) of any delay. EPD shall review the submission and negotiate with Respondent regarding the length of the proposed extension of deadlines, if any. The Respondent shall exercise due diligence and adopt all reasonable measures to avoid or minimize any delay.

Effect of Order

Respondent consents and the Director executes this Consent Order solely for the purpose of addressing the alleged violations set forth herein. This Consent Order does not relieve Respondent of any obligations or requirements of any statute, rules, permit, or other matter administered by EPD except as specifically authorized herein, which authorization shall be strictly construed. This Consent Order is not a finding, determination, or adjudication of a violation of any state laws, rules, standards and/or requirements, nor does Respondent by consenting to this Consent Order make any admission with respect to any factual allegation contained in this Consent Order or to any liability to any third party.

Unless modified or terminated by a subsequent order, or otherwise specified in writing by the Director, this Order shall be deemed satisfied and terminated upon full, complete, and timely performance of each and every condition set forth herein.

Further Enforcement

Failure by Respondent to comply with any provision of this Consent Order may result in further enforcement action. Issuance of this Consent Order does not waive the Director's right to use the violation(s) alleged herein, upon sufficient evidence, to show past violations in any subsequent enforcement proceeding.

Finality

For the purpose of enforcement, this Consent Order constitutes a final order of the Director in accordance with applicable Georgia law. By agreement of the parties, this Consent Order shall be final and effective immediately upon execution by the Director, shall not be appealable, and Respondent does hereby waive all administrative proceedings and judicial hearings on the terms and conditions of this Consent Order.

Electronic Signatures

The parties agree that any electronic signatures on this Consent Order constitute original, valid signatures pursuant to the Uniform Electronic Transactions Act, O.C.G.A. § 10-12-1 *et seq*.

It is so ORDERED and CONSENTED TO on the following date December 7, 2022.

For the Georgia Environmental Protection Division:

By: _____

Richard E. Dunn, Director

For Respondent:

By: _____

Printed Name: Aaron D. Mitchell

Title: Vice President, Environmental Affairs