

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Seward Generation, LLC	:	The Air Pollution Control Act
495 Plant Road	:	
New Florence, PA 15944	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 31st day of March 2021

by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and Seward Generation, LLC.

Findings

The Department has found and determined the following Findings:

A. The Department is the agency with the duty and authority to administer and enforce the Air Pollution Control Act, Act of January 8, 1960, P.L. 2119, *as amended*, 35 P.S. §§ 4001-4015 (“Air Act”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”); and the rules and regulations promulgated thereunder (“Regulations”).

B. Seward Generation, LLC is a limited liability company registered to do business in the Commonwealth of Pennsylvania that maintains a mailing address of 11 Lloyd Avenue, Latrobe PA 15650 (“Seward”).

C. Seward owns the Seward Generating Station, a waste coal-fired, steam electrical generation station located in Indiana County at 595 Plant Road, New Florence, PA 15944 (“Facility”).

D. NRG Maintenance Services, LLC (“NRG”) operates the Seward Generating Station under a contract with Seward.

E. At the Facility, Seward owns and operates, among other air contamination sources, two circulating fluidized bed waste coal-fired boilers identified as CFB Boiler 1 (“Source ID 034”) and CFB Boiler 2 (“Source ID 035”) (collectively, the “Boilers”), pursuant to Title V Operating Permit No. 32-00040 issued by the Department (“Permit”).

F. On February 11, 2013, the Department renewed the Permit, and the Permit was amended on August 26, 2013, February 10, 2014, and April 8, 2016.

G. On October 4, 2013, the United States Environmental Protection Agency designated Indiana County as non-attainment for the 1-hour Sulfur Dioxide (“SO₂”) National Ambient Air Quality Standard.

H. On June 3, 2017, Seward submitted a timely application to renew the Permit and on February 11, 2018 the Permit expired. As of the date of this Consent Order and Agreement, Seward is operating the Facility subject to the administratively extended terms and conditions of the expired Permit pursuant to 25 Pa. Code § 127.446(c).

I. In 2017, Seward began using waste coal with a lower sulfur content as fuel for the Boilers.

J. Between April 2017 and May 2019, Seward shut down the Boilers on various occasions, resulting in less than nine valid months of emissions data for the Boilers in each 12-month rolling reporting period during that time.

K. Beginning in May of 2019, Seward began to have 12-month rolling reporting periods with nine or more valid months of emissions data for the Boilers, which demonstrated that Seward was not reducing the Boilers’ combined emissions of sulfur oxides, expressed as SO₂, in the boiler and flyash reinjection system by at least 95% on a 12-month rolling average.

L. The Permit does not define or clarify the phrase “12-month rolling average.”

M. Seward believed that 11 valid months in a 12-month period were required in order to constitute a valid 12-month rolling average.

N. The Department has interpreted “12-month rolling average” as any nine valid months in a 12-month period.

O. Between July 5, 2019 and October 4, 2019, the Boilers did not operate.

P. Seward has provided information to the Department that indicates it is not able to reduce the Boilers’ combined emissions of sulfur oxides, expressed as SO₂, in the boiler and flyash reinjection system by at least 95% on a 12-month rolling average when using a high percentage of the lower sulfur waste coal in the fuel blend.

Q. Based on information provided by Seward, its inability to reduce emissions of sulfur oxides from the Boilers, expressed as SO₂, by at least 95% on a 12-month rolling average has resulted in additional emissions of SO₂ from the Boilers as compared to the SO₂ emissions that would be emitted if the SO₂ had been reduced by at least 95%, but Seward’s use of the lower sulfur waste coal has not caused it to exceed pounds-per-hour, pounds-per-mmBTU, or tons-per-year emissions limits for SO₂ in the Permit.

R. Seward did not seek approval from the Department before using the lower sulfur waste coal fuel because Seward believed that the Permit authorized the use of waste coal without any reference to, or restriction on, the sulfur content of the waste coal used as a fuel, and Seward also believed that the Permit condition requiring at least 95% reduction in SO₂ emissions was developed based on higher sulfur waste coal and was not intended to apply to the use of lower sulfur waste coal that still met the applicable SO₂ emission limits expressed as pounds-per-hour, pounds-per-mmBTU, and tons-per-year.

S. The Department has determined that Seward’s use of lower sulfur waste coal is a “modification” as that term is defined in 25 Pa. Code § 121.1.

Applicable Law

T. Seward is a “person,” as that term is defined in Section 3 of the Air Act, 35 P.S. § 4003.

U. Source ID 034 and Source ID 035 are each an “air contamination source,” as that term is defined in Section 3 of the Air Act, 35 P.S. § 4003, and 25 Pa. Code § 121.1.

V. Pursuant to Section E, Group Name: G01, Condition # 002 of the Permit, combined emissions of sulfur oxides from the Boilers, expressed as SO₂, shall be reduced in the boiler and flyash reinjection system by at least 95% on a 12-month rolling average, which is “Best Available Technology,” as that term is defined in 25 Pa. Code § 121.1, for sulfur reduction under the Permit.

W. Pursuant to Section E, Group Name: G01, Condition # 003 of the Permit, combined emissions of SO₂ from the Boilers shall be limited to 3,038.4 pounds of SO₂ per hour based on a 30-day rolling lb/mmBTU average determined in accordance with 25 Pa. Code, Chapter 139.

X. Pursuant to Section E, Group Name: G01, Condition # 005 of the Permit, combined emissions of SO₂ from the Boilers shall be limited to 0.6 lb/mmBTU based on a 30-day rolling lb/mmBTU average determined in accordance with 25 Pa. Code, Chapter 139.

Y. Pursuant to Section E, Group Name: G01, Condition # 006 of the Permit, combined emissions from the Boilers shall be limited to 13,308 tons of SO₂ per year during each consecutive 12-month period, updated monthly.

Z. Pursuant to 25 Pa. Code § 127.444, a person may not cause or permit the operation of a source unless the source is operated and maintained in accordance with specifications in the application and conditions in the operating permit issued by the Department.

AA. Pursuant to 25 Pa. Code § 127.11, a person may not cause or permit the modification of an air contamination source unless the modification has been approved by the Department.

Unlawful Conduct

BB. Seward's failure to reduce the Boilers' combined emissions of sulfur oxides, expressed as SO₂, in the boiler and flyash reinjection system by at least 95% on a 12-month rolling average as described in Paragraph K, above, violates 25 Pa. Code § 127.444 and the Permit.

CC. Seward's failure to obtain approval from the Department before using the lower sulfur waste coal that resulted in its inability to meet Section E, Group Name: G01, Condition # 002 of the Permit violates 25 Pa. Code § 127.11.

DD. The violations described in Paragraphs BB and CC, above, constitute unlawful conduct under Section 8 of the Air Act, 35 P.S. § 4008; a statutory nuisance under Section 13 of the Air Act, 35 P.S. § 4013; and subject Seward to civil penalty liability under Section 9.1 of the Air Act, 35 P.S. § 4009.1.

EE. Seward proposes to continue using lower sulfur waste coal fuel for the Boilers as an alternate operating scenario under the Permit.

Order

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Seward as follows:

1. Authority. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 4(9)(i) and 10.1 of the Air Act, 35 P.S. §§ 4004(9)(i) and 4010.1, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. Seward agrees that the Findings in Paragraphs A through AA are true and correct and, in any matter or proceeding involving Seward and the Department, Seward shall not challenge the accuracy or validity of these Findings.

b. The parties do not authorize any other persons to use the Findings in this Consent Order and Agreement in any matter or proceeding.

3. Corrective Action.

a. ***Alternate Operating Scenario for Lower Sulfur Fuel.*** Within 60 days after the date of this Consent Order and Agreement, Seward shall submit to the Department an administratively complete plan approval application that contains an analysis of the Best Available Technology for reduction of the Boilers' SO₂ emissions in the boiler and flyash reinjection system when using lower sulfur waste coal as fuel, which shall include, at a minimum, the following:

- i. A listing of separate tiers of sulfur content for the lower sulfur fuel that Seward is proposing to use;
- ii. The actual emissions from the Boilers when each tier of lower sulfur fuel is used; and
- iii. The actual percentage of sulfur reduction achieved.

b. For purposes of this Consent Order and Agreement, the term "administratively complete" means that the plan approval application contains the necessary information, maps, fees and other documents requested in the plan approval application, regardless of whether the information, maps and documents would be sufficient to justify issuance of the plan approval."

c. ***Compliance with the Permit.*** Until the Department issues a plan approval to Seward for the use of lower sulfur waste coal as fuel, Seward may continue using lower sulfur waste coal as fuel for the Boilers as an alternate operating scenario and in compliance with the conditions of the Permit other than Section E, Group Name: G01, Condition # 002 of the Permit.

d. **Monthly Boiler Sulfur Reduction Report.** On or before the 20th day of each month, Seward shall submit, in writing, to the Department the following information for the Boilers during the preceding calendar month:

- i. Monthly averages of actual SO₂ in and SO₂ out (lb/mmBTU);
- ii. Monthly average removal percentage of SO₂ in the boiler and flyash reinjection system;
- iii. Total tons of SO₂ emitted;
- iv. Projected SO₂ out (lb/mmBTU) at 95% removal efficiency;
- v. Projected tons of SO₂ emitted at 95% removal efficiency; and
- vi. The difference, in tons, between actual SO₂ emitted and theoretical SO₂ emitted at 95% removal efficiency.

4. Civil Penalty Settlement.

a. Seward consents to the assessment of a civil penalty of **\$108,000** which shall be paid in full upon signing this Consent Order and Agreement. This payment, in addition to the payments described in Paragraph 4.b., below, is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs BB and CC, above and shall preclude any further assessments of civil penalties against any entity for these violations. Payments shall be by corporate check or the like made payable to "Commonwealth of Pennsylvania Clean Air Fund" and sent to the individual identified in Paragraph 10, below.

b. Upon execution of this Consent Order and Agreement and continuing until Seward either: 1) receives a Department-approved Plan Approval for the use of lower sulfur waste coal as an alternate operating scenario for the Boilers; or 2) Seward complies with Section E, Group Name: G01, Condition # 002 of the Permit; Seward shall pay to the Department a monthly civil penalty of \$3,500 for each month that Source ID 034 or Source ID 035 operates without complying

with Section E, Group Name: G01, Condition # 002 of the Permit. The monthly civil penalty shall be due automatically and without notice by the 20th day of each following month.

5. Stipulated Civil Penalties.

a. In the event Seward fails to comply in a timely manner with any term or provisions of this Consent Order and Agreement, Seward shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$500 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the 15th day of each succeeding month, shall be by corporate check or the like made payable to "Commonwealth of Pennsylvania Clean Air Fund," and shall be sent to the individual identified in Paragraph 10, below.

c. Any payment under this paragraph shall neither waive Seward's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Seward's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Seward's liability for civil penalties arising from the violations of this Consent Order and Agreement for which the payment is made and shall preclude any further assessments of civil penalties against Seward for the event or violations for which the stipulated penalties are paid.

d. Stipulated civil penalties shall be due automatically and without notice.

6. Additional Remedies.

a. In the event Seward fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph and Paragraph 5 (Stipulated Civil Penalties) are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

7. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. Seward reserves the right to challenge any action which the Department may take to require those additional measures.

8. Liability of Seward. Seward shall be liable for any violation of this Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Except as provided in Paragraph 9.c., below, Seward shall also be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

9. Transfer of Seward or the Facility.

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in Seward, the Facility, or any part thereof.

b. If Seward intends to transfer any legal or equitable interest in Seward, the Facility, or any part thereof which is affected by this Consent Order and Agreement, Seward shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least 30 days prior to the contemplated transfer and shall simultaneously inform the Department of such intent pursuant to Paragraph 10, below.

c. The Department in its sole discretion may agree to modify or terminate Seward's duties and obligations under this Consent Order and Agreement upon transfer of Seward, the Facility, or any part thereof which is affected by this Consent Order and Agreement. Seward waives any right that it may have to challenge the Department's decision in this regard.

10. Correspondence with Department. All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Eric A. Gustafson
Regional Air Quality Program Manager
Pennsylvania Department of Environmental Protection
230 Chestnut Street
Meadville, PA 16335
Phone: 814.332.6940
Facsimile: 814.332.6121

11. Correspondence with Seward. All correspondence with Seward concerning this Consent Order and Agreement shall be addressed to:

R. Christopher Anderson
General Counsel and Corporate Secretary
Seward Generation, LLC.
1501 Ligonier Street
Latrobe, PA 15650

Seward shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

12. Severability. The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

13. Entire Agreement. This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent of any provisions herein in any litigation or any other proceeding.

14. Attorney Fees. The parties shall bear their respective attorney fees, expenses, and other costs in the prosecution or defense of this matter or any related matters arising prior to execution of this Consent Order and Agreement.

15. Modifications. No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

16. Titles. A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph but shall not be treated as controlling.

17. Decisions Under Consent Order and Agreement. Seward waives its rights to appeal to the Environmental Hearing Board any decision that the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Except as provided in Paragraph 9.c., above, the Department agrees that any objection that Seward may have to the decision may be raised as a defense in any Court where the Department enforces this Consent Order and Agreement.

18. Termination. This Consent Order and Agreement shall terminate when: 1) the Department approves Seward's application for a plan approval for the alternate operating scenario for lower sulfur fuel; and 2) Seward pays all penalties due under Paragraphs 4 and 5, above.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Seward certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Seward; that Seward consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Seward hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by Seward's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR SEWARD GENERATION, LLC:



James Panaro
Executive Vice President



Name: R. Christopher Anderson
Secretary



Michael Winek
Attorney for Seward Generation, LLC

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Eric A. Gustafson
Regional Manager
Air Quality Program
Northwest Region



Carl D. Ballard
Assistant Counsel

Company: Seward Generation LLC

Vendor: Comm of Pennsylvania-Clean Air Fund

Date: 3/18/2021 12:00:00AM

Invoice No.	Invoice Date	Description	Gross Amount	Discount	Net Amount
2021SO2COA	3/18/2021	SO2 Civil Penalty	108,000.00		108,000.00

RECEIVED

MAR 26 2021

Environmental Protection
Northwest Regional Office

018434	Comm of Pennsylvania-Clean Air Fund	108,000.00	0.00	108,000.00
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**Seward
Generation**
1501 Ligonier Street
Latrobe, PA 15650
(724) 879-4264

M&T Bank
60-295/313

Check #

018434

3/18/2021

ONE HUNDRED EIGHT THOUSAND AND XX / 100 ----- \$108,000.00

Comm of Pennsylvania-Clean Air Fund
PA Dept of Environmental Protection-NWRO
230 Chestnut Street
Meadville PA 16335

Marie L. McCombs