EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-0887-AIR-E **TCEQ ID:** RN100226919 **CASE NO.:** 30091

RESPONDENT NAME: Coleto Creek Power, LP

ORDER TYPE:

X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	X AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	__PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	__WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: Coleto Creek Power Station, 45 Farm-to-Market Road 2987, Fannin, Goliad County

TYPE OF OPERATION: Electricity generation plant

SMALL BUSINESS: ___ Yes __X__ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on December 18, 2006. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, Enforcement Division, MC 219, (512) 239-1768

TCEQ Enforcement Coordinator: Ms. Lindsey Jones, Enforcement Division, Enforcement Section III, MC 149, (523) 239-4930; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

TCEQ Field Investigator: Ms. Micole Gonzales, Corpus Christi Regional Office, MC R-14, (361) 825-3150

Respondent: CT Corporation System, Registered Agent for Coleto Creek Power, LP, 350 North St. Paul Street, Dallas, Texas 75201
Ms. Jacqueline Chester, Coleto Creek Power, LP, P.O. Box 8, Fannin, Texas 77960
Mr. Kenny L. Draper, Operations Supervisor, Coleto Creek Power, LP, P.O. Box 8, Fannin, Texas 77960

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __ Routine __ Enforcement Follow-up _X_ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** May 16, 2006 **Date of NOE Relating to this Case:** June 14, 2006 (NOE) **Background Facts:** This was a routine record review. One violation was documented. **AIR** Failed to report all instances of deviations on the semi-annual deviation report and to report this failure on the subsequent annual certification report. Specifically, the semi-annual deviation report for the period of April 8, 2005 through October 7, 2005 did not report the deviation for failure to submit complete semiannual and annual deviation reports for the period of April 8, 2004 through April 8, 2005, and the annual certification for April 8, 2005 through April 7, 2006 did not note this as a deviation [30 TEX. ADMIN. CODE §§ 122.145(2)(A) and 122.146(5)(D), Federal Operating Permit No. O-00025, Compliance Certification Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $2,400 **Total Deferred:** $480 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $960 **Total Paid to General Revenue:** $960 **Site Compliance History Classification:** __High _X_ Avg. __Poor **Person Compliance History Classification:** __High _X_ Avg. __Poor **Major Source:** _X_ Yes __ No **Applicable Penalty Policy:** September 2002	**Corrective Action Taken:** 1) The Executive Director recognizes that Coleto Creek Power submitted a corrected semi-annual deviation report for the period of April 8, 2005 through October 7, 2005 on May 19, 2006 and a corrected annual compliance certification for the period of April 8, 2005 through April 7, 2006 on June 7, 2006 to the TCEQ Corpus Christi Regional Office. **Ordering Provisions:** 2) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A).

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision May 19, 2005*

DATES					
Assigned	20-Jun-2006				
PCW	06-Jul-2006	Screening	05-Jul-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Coleto Creek Power, LP		
Reg. Ent. Ref. No.	RN100226919		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Major Source

CASE INFORMATION

Enf./Case ID No.	30091	No. of Violations	1
Docket No.	2006-0887-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Scott Barnett
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $2,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 21% Enhancement *Subtotals 2, 3, & 7* $525

Notes: Penalty enhancement due to two NOVs for a same or similar violation and six NOVs for unrelated violations, including four self-reported effluent violations. Penalty reduction due to one Notice of Intent.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The Respondent does not meet culpability criteria.

Good Faith Effort to Comply 25% Reduction *Subtotal 5* -$625

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		*(mark with a small x)*

Notes: The Respondent returned to compliance on June 7, 2006.

Economic Benefit 0% Enhancement* *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$10
Approx. Cost of Compliance	$1,500

SUM OF SUBTOTALS 1-7 Final Subtotal $2,400

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $2,400

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $2,400

DEFERRAL 20% Reduction Adjustment -$480

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $1,920

Screening Date	05-Jul-2006	**Docket No.** 2006-0887-AIR-E	**PCW**
Respondent	Coleto Creek Power, LP		*Policy Revision 2 (September 2002)*
Case ID No.	30091		*PCW Revision May 19, 2005*
Reg. Ent. Reference No.	RN100226919		
Media [Statute]	Air Quality		
Enf. Coordinator	Scott Barnett		

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action *(number of NOVs meeting criteria)*	2	10%
	Other written NOVs	6	12%
Orders	Any agreed final enforcement orders containing a denial of liability *(number of orders meeting criteria)*	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government *(number of judgements or consent decrees meeting criteria)*	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government *(number of counts)*	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were*	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which violations were disclosed)*	0	0%
		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) **21%**

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) **0%**

>> Compliance History *Person* Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) **0%**

>> Compliance History Summary

Compliance History Notes

Penalty enhancement due to two NOVs for a same or similar violation and six NOVs for unrelated violations, including four self-reported effluent violations. Penalty reduction due to one Notice of Intent.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **21%**

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	05-Jul-2006
Docket No.	2006-0887-AIR-E
Respondent	Coleto Creek Power, LP
Case ID No.	30091
Reg. Ent. Reference No.	RN100226919
Media [Statute]	Air Quality
Enf. Coordinator	Scott Barnett
Violation Number	1
Primary Rule Cite(s)	Federal Operating Permit ("FOP") No. O-00025, Compliance Certification Terms and Conditions
Secondary Rule Cite(s)	30 Tex. Admin. Code §§ 122.145(2)(A) and 122.146(5)(D), and Tex. Health & Safety Code § 382.085(b)
Violation Description	As owner and operator of the Plant, Coleto Creek Power is alleged to have failed to report all instances of deviations on the semi-annual deviation report and to report this failure on the subsequent annual certification report as documented during a record review conducted on May 16, 2006. Specifically, the semi-annual deviation report for the period of April 8, 2005 through October 7, 2005 did not report the deviation for failure to submit complete semiannual and annual deviation reports for the period of April 8, 2004 through April 8, 2005, and the annual certification for April 8, 2005 through April 7, 2006 did not note this as a deviation.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment -$7,500

Base Penalty Subtotal $2,500

Violation Events

Number of Violation Events: 1

mark only one use a small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $10

Statutory Limit Test

Violation Final Penalty Total $2,400

This violation Final Assessed Penalty (adjusted for limits) $2,400

Economic Benefit Worksheet

Respondent Coleto Creek Power, LP
Case ID No. 30091
Reg. Ent. Reference No. RN100226919
Media [Statute] Air Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs	$1,500	20-Apr-2006	07-Jun-2006	0.1	$10	n/a	$10
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	Estimated cost of preparing and submitting a deviation report within six (6) months and to reference the event on the annual compliance certification. Date required is the due date of the deviation report. Final date is the date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $1,500

TOTAL $10

Compliance History

Customer/Respondent/Owner-Operator:	CN602809006	Coleto Creek Power, LP	Classification: AVERAGE	Rating: 1.61
Regulated Entity:	RN100226919	COLETO CREEK POWER STATION	Classification: AVERAGE	Site Rating: 0.22

ID Number(s):			
	AIR OPERATING PERMITS	ACCOUNT NUMBER	GF0002R
	AIR OPERATING PERMITS	PERMIT	25
	WASTEWATER	PERMIT	WQ0002159000
	WASTEWATER	PERMIT	TPDES0070068
	WASTEWATER	PERMIT	TX0070068
	AIR NEW SOURCE PERMITS	PERMIT	3687
	AIR NEW SOURCE PERMITS	PERMIT	3687A
	AIR NEW SOURCE PERMITS	PERMIT	48872
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	GF0002R
	AIR NEW SOURCE PERMITS	AFS NUM	0002
	AIR NEW SOURCE PERMITS	REGISTRATION	48872
	AIR NEW SOURCE PERMITS	REGISTRATION	76619
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX9
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX9M1
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	31911
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD000836999
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	32100
	WASTEWATER LICENSING	LICENSE	WQ0002159000

Location: 45 FM 2987, FANNIN, TX, 77960 Rating Date: 9/1/2005 Repeat Violator: NO

TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: June 20, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 20, 2001 to June 20, 2006

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Scott Barnett Phone: 713-767-3523

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Coleto Creek Power LP
4. if Yes, who was/were the prior owner(s)? AEP Texas Central Company
   Central Power and Light
   AEP Texas North Company
5. When did the change(s) in ownership occur? 7/1/2004

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 01/10/2003 (247248)
2 03/11/2003 (196534)
3 03/12/2002 (196533)
4 02/11/2003 (196531)
5 02/14/2002 (196530)
6 10/09/2003 (311682)
7 11/12/2003 (311683)
8 12/12/2003 (311684)
9 12/01/2003 (311685)
10 07/14/2005 (444335)

11	08/05/2005	(444336)
12	09/12/2005	(444337)
13	05/18/2006	(463242)
14	07/02/2001	(77453)
15	05/17/2002	(77454)
16	05/18/2006	(463243)
17	06/06/2002	(77455)
18	11/18/2005	(436149)
19	04/13/2006	(462425)
20	07/16/2003	(34077)
21	06/26/2003	(113011)
22	07/16/2003	(34079)
23	08/19/2005	(405535)
24	05/30/2006	(480515)
25	06/21/2001	(39313)
26	07/07/2004	(358685)
27	08/11/2004	(358686)
28	09/13/2004	(358687)
29	10/15/2004	(358688)
30	05/08/2003	(34455)
31	11/04/2004	(358689)
32	03/03/2004	(260010)
33	02/08/2006	(474848)
34	01/20/2006	(451402)
35	10/08/2005	(432109)
36	04/11/2005	(423516)
37	05/16/2005	(423517)
38	06/13/2005	(423518)
39	01/24/2003	(196573)
40	07/14/2004	(278634)
41	01/28/2002	(196572)
42	03/08/2006	(474849)
43	12/12/2002	(196569)
44	03/14/2005	(373877)
45	12/19/2001	(196568)
46	06/06/2006	(467359)
47	04/06/2006	(474850)
48	07/09/2005	(399101)
49	11/18/2002	(196565)
50	11/13/2001	(196564)
51	10/10/2005	(474851)
52	10/15/2002	(196561)
53	10/19/2001	(196560)
54	07/29/2005	(396475)
55	09/16/2002	(196558)
56	11/10/2005	(474852)
57	09/17/2001	(196557)
58	08/06/2003	(196555)
59	05/14/2004	(250573)
60	08/19/2002	(196554)
61	10/25/2005	(433220)
62	02/16/2005	(385499)
63	08/15/2001	(196553)
64	12/15/2005	(474853)
65	03/11/2005	(385500)
66	12/13/2004	(385501)

67 07/16/2003 (196551)
68 07/31/2002 (196550)
69 12/13/2004 (385502)
70 01/26/2004 (311669)
71 07/20/2001 (196549)
72 05/07/2005 (379639)
73 01/17/2006 (474854)
74 06/18/2003 (196547)
75 03/12/2004 (311671)
76 06/17/2002 (196546)
77 04/16/2004 (311672)
78 06/21/2001 (196545)
79 06/14/2006 (467194)
80 05/10/2004 (311674)
81 05/10/2003 (196543)
82 05/16/2002 (196542)
83 06/10/2004 (311676)
84 04/16/2003 (196539)
85 05/14/2002 (247249)
86 04/17/2002 (196538)
87 09/11/2003 (311680)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 12/31/2005 (474854)
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Date: 03/03/2004 (260010)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 101, SubChapter F 101.211(a)
Description: Failure to provide at least ten days prior notice to a scheduled maintenance, startup, or shutdown activity which is expected to cause an excess opacity event.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter A 111.111(a)(1)(G)
30 TAC Chapter 116, SubChapter B 116.115(c)
Rqmt Prov: PERMIT IA
Description: Failure to obtain regulatory authority for, or satisfy all demonstration criteria to exempt from opacity limitations, emissions resulting from the B-1 Unit during a Scheduled Shutdown on October 24, 2003.

Date: 08/19/2005 (405535)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(A)
Rqmt Prov: OP IA
Description: Failure to submit all instances of deviations.

Date: 12/31/2001 (196572)
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2006 (474848)
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Date: 11/30/2002 (196569)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 05/14/2002 (247249)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 01/10/2003 (247248)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

F. Environmental audits.

Notice of Intent Date: 12/06/2004 (347180)

No DOV Associated

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
COLETO CREEK POWER, LP	§	
RN100226919	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-0887-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Coleto Creek Power, LP ("Coleto Creek Power") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Coleto Creek Power appear before the Commission and together stipulate that:

1. Coleto Creek Power owns and operates an electricity generation plant at 45 Farm-to-Market Road 2987 in Fannin, Goliad County, Texas (the "Plant").

2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. The Commission and Coleto Creek Power agree that the Commission has jurisdiction to enter this Agreed Order, and that Coleto Creek Power is subject to the Commission's jurisdiction.

4. Coleto Creek Power received notice of the violations alleged in Section II ("Allegations") on or about June 19, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Coleto Creek Power of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Thousand Four Hundred Dollars ($2,400) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Coleto Creek Power has paid Nine Hundred Sixty Dollars ($960) of the administrative penalty and Four Hundred Eighty Dollars ($480) is deferred contingent upon Coleto Creek Power's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Coleto Creek Power fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require

Coleto Creek Power to pay all or part of the deferred penalty. Nine Hundred Sixty Dollars ($960) shall be conditionally offset by Coleto Creek Power's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and Coleto Creek Power have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that Coleto Creek Power submitted a corrected semi-annual deviation report for the period of April 8, 2005 through October 7, 2005 on May 19, 2006 and a corrected annual compliance certification for the period of April 8, 2005 through April 7, 2006 on June 7, 2006 to the TCEQ Corpus Christi Regional Office.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Coleto Creek Power has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, Coleto Creek Power is alleged to have failed to report all instances of deviations on the semi-annual deviation report and to report this failure on the subsequent annual certification report, in violation of 30 TEX. ADMIN. CODE §§ 122.145(2)(A) and 122.146(5)(D), Federal Operating Permit No. O-00025, Compliance Certification Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on May 16, 2006. Specifically, the semi-annual deviation report for the period of April 8, 2005 through October 7, 2005 did not report the deviation for failure to submit complete semiannual and annual deviation reports for the period of April 8, 2004 through April 8, 2005, and the annual certification for April 8, 2005 through April 7, 2006 did not note this as a deviation.

III. DENIALS

Coleto Creek Power generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Coleto Creek Power pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Coleto Creek Power's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Coleto Creek Power, LP, Docket No. 2006-0887-AIR-E" to:

   Financial Administration Division, Revenues Section
   Attention: Cashier's Office, MC 214
   Texas Commission on Environmental Quality
   P.O. Box 13088
   Austin, Texas 78711-3088

2. Coleto Creek Power shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Nine Hundred Sixty Dollars ($960) of the assessed administrative penalty shall be offset with the condition that Coleto Creek Power implement the SEP defined in Attachment A, incorporated herein by reference. Coleto Creek Power's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. The provisions of this Agreed Order shall apply to and be binding upon Coleto Creek Power. Coleto Creek Power is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.

4. If Coleto Creek Power fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Coleto Creek Power's failure to comply is not a violation of this Agreed Order. Coleto Creek Power shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Coleto Creek Power shall notify the Executive Director within seven days after Coleto Creek Power becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Coleto Creek Power shall be made in writing to the Executive Director. Extensions are not effective until Coleto Creek Power receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Coleto Creek Power in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Coleto Creek Power, or three days after the date on which the Commission mails notice of the Order to Coleto Creek Power, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 12/20/06
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Kenny L Draper 9/22/06
Signature Date

KENNY L. DRAPER Operations Supervisor
Name (Printed or typed) Title
Authorized Representative of
Coleto Creek Power, LP

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2006-0887-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Coleto Creek Power, LP**
Payable Penalty Amount:	**One Thousand Nine Hundred Twenty Dollars ($1,920)**
SEP Amount:	**Nine Hundred Sixty Dollars ($960)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Guadalupe-Blanco River Trust-Myrtle Foester-Whitmire Unit of the Aransas National Wildlife Refuge**
Location of SEP:	**Victoria County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will improve and maintain the wetland habitat of the Myrtle Foester-Whitmire Unit ("Unit") of the Aransas National Wildlife Refuge for waterfowl and shorebirds. This cooperative program will provide a more reliable supply of water and improve the efficiency of the delivery of freshwater to and within the unit. The area has been known to hold 18% of the wintering waterfowl on the Texas Gulf Coast. Nearly every waterfowl species using the Central Flyway will benefit from this project by providing high value wintering habitat.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing high value wintering habitat.

C. Minimum Expenditure

Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Guadalupe-Blanco River Trust
Todd H. Votteler, Ph.D.
933 East Court Street
Seguin, Texas 78155

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

Attachment A
Docket Number: 2006-0887-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Coleto Creek Power, LP**
Payable Penalty Amount:	**One Thousand Nine Hundred Twenty Dollars ($1,920)**
SEP Amount:	**Nine Hundred Sixty Dollars ($960)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Guadalupe-Blanco River Trust-Myrtle Foester-Whitmire Unit of the Aransas National Wildlife Refuge**
Location of SEP:	**Victoria County**

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A. Project

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The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.