



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUL 1 6 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dan Kemp, Associate General Counsel
Progress Energy Service Company, LLC
401 South Wilmington Street
Raleigh, North Carolina 27601

SUBJ: Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc.
Docket Number CWA-04-2010-5135(b)

Dear Mr. Kemp:

Enclosed please find a fully executed Consent Agreement and Final Order (CA/FO) issued pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990.

Please note: According to paragraph 20 of this CA/FO, no later than 30 days effective date of this CA/FO, the penalty of \$52,000.00 is due.

Thank you for your assistance in the resolution of this matter. Please feel free to contact me at (404) 562-8976, or contact Nancy McKee at (404) 562-8674, if you have any additional questions or comments.

Sincerely,

A handwritten signature in cursive script that reads "Caroline Y. F. Robinson".

Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

HEARING OFFICE

2010 JUL 15 PM 2:41

EPA REGION 4

IN THE MATTER OF)	CWA SECTION 311 CLASS II
)	CONSENT AGREEMENT AND
Carolina Power & Light Company)	FINAL ORDER
d/b/a Progress Energy Carolinas, Inc.)	UNDER 40 C.F.R. § 22.13(b)
410 Wilmington Street)	
Raleigh, North Carolina 27601)	
)	
Respondent)	Docket No.: CWA-04-2010-5135(b)

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities to the Director, RCRA Division, of EPA, Region 4, pursuant to Clean Water Act delegation 2-52-A ("Complainant").

CONSENT AGREEMENT

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges"

2. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA the Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation related onshore facilities.

3. EPA subsequently promulgated the Spill Prevention Control and Countermeasures (SPCC) regulations pursuant to these delegated statutory authorities and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods, and requirements for each owner and operator of a non-transportation related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined may be harmful to the public health or welfare or the environment of the United States.

4. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either: (1) a violation of applicable water quality standards, (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

5. Respondent, Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., is a corporation organized under the laws of the State of North Carolina. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

6. Respondent is the “owner/operator” of an “onshore facility” within the meaning of Section 311(a)(6) and (10) of the Act, 33 U.S.C. § 1321(a)(6) and (10), and 40 C.F.R. § 112.2, which is a transmission substation located at 5201 Knightdale Eagle Rock Road, Knightdale, Wake County, North Carolina (the facility).

7. Stormwater from the facility drains to an unnamed creek, which is a tributary to Mark’s Creek, which flows to the Neuse River, which flows to the Atlantic Ocean. Mark’s Creek is a navigable water as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1 and therefore is subject to the jurisdiction of Section 311 of the Act.

8. The facility has an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers (transformers), each with a shell capacity of at least 55 gallons. Specifically, the facility’s electrical equipment has a total capacity of 196,800 gallons of 10-C Mineral Oil (transformer oil).

9. Respondent is engaged in using oil or oil products located at the facility.

10. The facility is a non-transportation related facility within the meaning of 40 C.F.R. § 112.1, as described in 40 C.F.R. Part 112, Appendix A.

11. The facility is therefore a non-transportation related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (an “SPCC-regulated facility”).

12. Pursuant to 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility must prepare in writing and implement an SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable sections of 40 C.F.R. Part 112.

13. Solely for purposes of this Consent Agreement and Final Order, Respondent admits the jurisdictional statements contained herein.

Allegations

Complainant alleges, and Respondent neither admits nor denies, that:

14. On April 15, 2007, a discharge of oil occurred when a 500 kilovolt transformer failed as a result of a power surge during severe weather. The transformer had the capacity to hold 18,886 gallons of transformer oil. As a result of the transformer damage, it was estimated that 16,550 gallons of transformer oil was released into secondary containment. However, the secondary containment was not adequate because a buried pipe in the containment structure caused the oil to discharge to a drainage ditch that drained offsite. As a result, oil discharged from the facility through an unnamed creek to Mark's Creek, and traveled at least 1.5 miles from the facility.

15. In response to this discharge, an EPA On-Scene Coordinator (OSC) conducted an SPCC inspection at the facility on April 16, 2007. As a result of the inspection, the following SPCC deficiencies were noted:

a. Respondent failed to prepare a written SPCC Plan ("Plan") for the facility as required by 40 C.F.R. § 112.3(a) in accordance with the guidelines for Plan preparation at 40 C.F.R. § 112.7:

i. The Plan did not discuss the types of oil and capacity of each container as required by 40 C.F.R. § 112.7(a)(3)(i);

ii. The Plan did not include an adequate prediction of the direction, rate of flow, and total quantity of oil that could be discharged for each type of equipment failure as required by 40 C.F.R. § 112.7(b);

iii. The Plan did not include an adequate discussion on secondary containment systems and/or drainage controls as required by 40 C.F.R. § 112.7(a)(iii). The Plan did not specify what types of containment and/or drainage controls exist at the facility.

b. Respondent failed to implement the SPCC Plan as required by 40 C.F.R. § 112.3 in accordance with the guidelines for Plan implementation at 40 C.F.R. § 112.7 and/or § 112.8:

i. The facility had no records to verify that inspections had been conducted as required by 40 C.F.R. § 112.7(e);

ii. The facility's oil filled operational equipment (ex. transformers) did not have containment and/or diversionary structures or equipment capable of containing oil nor was it constructed so that any discharge from a primary containment system (ex. transformers) would not escape before cleanup occurs as required by 40 C.F.R. § 112.7(c).

iii. The facility's undiked area drainage controls as required by 40 C.F.R. § 112.8(b)(3) were inadequate.

16. EPA therefore alleges that Respondent violated 40 C.F.R. § 112.3 by failing to prepare and implement an SPCC plan in accordance with the guidelines for Plan preparation and implementation at 40 C.F.R. § 112.7 and 40 C.F.R. § 112.8.

Waiver of Rights

17. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and to appeal any Final

Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

Terms of Agreement

18. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of Fifty-Two Thousand Dollars (\$52,000.00).

19. By signing this Consent Agreement, Respondent certifies that all violations alleged in this Consent Agreement have been corrected.

Payment Terms

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

20. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of Fifty-Two Thousand Dollars (\$52,000.00) by means of a cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearhouse (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, bearing the notation "OSLTF-311" and the facility name and docket number for this matter shall be referenced on the face of the check. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197

If the Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. Environmental Protection Agency, Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

If paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, the Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
U.S. EPA
808 17th Street N.W.
Washington, D.C. 20074

21. Respondent shall submit a copy of the payment to the following addressees:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

And to:

Doug C. McCurry, Chief
North Section, RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

22. Penalties paid pursuant to this Consent Agreement and Final Order (CA/FO) are not deductible for federal purposes under 26 U.S.C. § 162(f).

23. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount, and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

24. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), to withdraw from this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

25. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

26. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. §1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

27. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into and execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the attached Final Order.

28. The following attorney represents EPA in this matter and is authorized to receive service for EPA in the proceeding:

Bonnie Sawyer
Associate Regional Counsel
EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9539

29. The following attorney represents Respondent in this matter and is authorized to receive service for Respondent in the proceeding:

Dan Kemp
Associate General Counsel
Progress Energy Service Company, LLC
410 South Wilmington Street
Raleigh, North Carolina 27601
(919) 546-5802

Effective Date

30. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc.

Date: 4/13/2010

Caren Anders
Caren Anders
Vice President

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/16/2010

G. Alan Farmer
G. Alan Farmer
Director
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

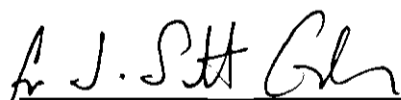
IN THE MATTER OF)	CWA SECTION 311 CLASS I
)	CONSENT AGREEMENT AND
Carolina Power and Light Corporation)	FINAL ORDER
d/b/a Progress Energy Carolinas, Inc.)	UNDER 40 C.F.R. § 22.13(b)
410 Wilmington Street)	
Raleigh, North Carolina 27601)	
)	
Respondent)	Docket No.: CWA-04-2010-5135(b)
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FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6) and the delegated authority of the undersigned, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits, codified at 40 C.F.R. Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., the Respondent is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2010-5135(b).

Date: 7/14/10



A. Stanley Meiburg
Acting Regional Administrator

In the Matter of Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc.
Docket No.: CWA-04-2010-5135(b)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the matter of Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., Docket No. CWA-04-2010-5135(b), on the parties listed below in the manner indicated:

Dan Kemp
Associate General Counsel
Progress Energy Service Company, LLC
410 S. Wilmington Street
Raleigh, North Carolina 27601

Via Certified Mail - Return Receipt Requested

Bonnie Sawyer, Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9539

Via EPA's Internal Mail

Quantindra Smith, Environmental Protection Specialist
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8564

Via EPA's Internal Mail

Dated this 16 day of July, 2010



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511