

2. The Respondent was at all times relevant to this Consent Agreement an owner or operator within the meaning of Section 311(a)(6) of the Act, U.S.C. § 1321(a)(6), of the pole-mounted transformer located 12 Lower Grassy Branch Road and Thomas Lee Drive in Asheville, North Carolina (“the facility”).

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. The Grassy Branch Creek is a navigable water as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, and is therefore subject to the jurisdiction of Section 311 of the Act.

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

7. Respondent admits the jurisdictional statements contained herein.

Allegations

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

8. On September 9, 2002, Respondent discharged approximately 60 gallons of non-PCB mineral oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), from its facility into or upon Grassy Branch Creek in Asheville, North Carolina.

9. Respondent's discharge of oil from its facility, on September 9, 2002, caused a sheen upon or discoloration of, or caused a sludge or emulsion to be deposited beneath, the waters of

Grassy Branch Creek, and, therefore was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, in violation of Section 311(b)(3) of the Act.

Waiver of Rights

10. Respondent waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), to contest the allegations and to appeal any Final Order accompanying the Consent Agreement in this matter pursuant Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i) and 40 C.F.R. § 22.18(b)(2), and consents to the issuance of a Final Order without further adjudication.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

Penalty

12. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of four hundred twenty dollars (\$420.00), which shall constitute a full and final settlement and resolution of all causes of action alleged in this Consent Agreement.

Payment Terms

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

13. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of four hundred twenty dollars (\$420.00) by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

~~If the Respondent needs payment by private delivery service, the payment shall be~~

If paying by EFT, the Respondent shall transfer four hundred and twenty dollars (\$420.00) to:

Mellon Bank
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235

In the case of an international transfer of funds, the Respondent shall use SWIFT address MELNUS3P.

14. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Ms. Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

AND

Mr. Larry L. Lamberth, Chief
South Section
RCRA and OPA Enforcement and Compliance Branch
U.S. Environmental Protection Agency
Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

15. 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

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

17. 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.

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

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water 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 foregoing 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.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date: May 1, 2007

Susan O. Schub

Susan Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreements and the attached Final Orders (CA/FOs), in the Matter of Carolina Power & Light Company DBA Progress Energy Carolinas, Inc., Docket Numbers: CWA-04-2007-5158(b), CWA-04-2007-5159(b), CWA-04-2007-5160(b), and CWA-04-2007-5161(b) on the parties listed below in the manner indicated:

Susan Capel, Associate Regional Counsel
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Mr. Lee Mazzocchi
Progress Energy Carolinas
100 E. Davis St, TPP 16
Raleigh, North Carolina 27601

(Via Certified Mail- Return Receipt Requested)

Mr. David Kemp
Progress Energy Service Co., LLP
410 South Wilmington St.
Raleigh, North Carolina 27601

Via Certified Mail - Return Receipt Requested)

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Via Certified Mail - Return Receipt Requested)

Date

5-2-07



Patricia Bullock
Law Clerk