



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR - 2 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles D. Lasky
Vice-President Fossil Operations
FirstEnergy Corp.
341 White Pond Drive
A-WAC-A3
Akron, Ohio 44320

Re: FirstEnergy Generation Corp., Oregon, Ohio
Consent Agreement and Final Order – Docket No: **CWA-05-2013-0005**

Dear Mr. Lasky:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed with the Regional Hearing Clerk on April 2, 2013. The CAFO becomes final 30 days after the filing date, unless a petition for hearing is filed under Section 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(iii), and 40 C.F.R. § 22.45(c)(4), or a notice of appeal is filed under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G).

The civil penalty in the amount of \$41,667 is to be paid in the manner prescribed in paragraphs 65 and 66. Please be certain to reference your check and transmittal letter with docket number **CWA-05-2013-0005**. Your payment is due by May 3, 2013. Do not send payment until after the CAFO becomes final. Please also note the due dates for requirements relating to performance and completion of the Supplemental Environmental Project in the CAFO.

Please feel free to contact Ellen Riley at (312) 886-9497 if you have any questions regarding the enclosed document. Please direct any legal questions to Karen L. Peaceman, Associate Regional Counsel, at (312) 353-5751. Thank you for your assistance in resolving this matter.

Sincerely yours,


Sharon Jaffess, Chief
Enforcement and Compliance Branch

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Karen Peaceman
Kasey Barton
Office of Regional Counsel
U.S. EPA Region 5

Douglas Weber
Senior Attorney
FirstEnergy Corp.
A-G015
76 Main Street
Akron, Ohio 44320

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

| | | |
|-------------------------------------|---|--|
| In the Matter of: |) | Docket No. CWA-05-2013-0005 |
| |) | |
| FirstEnergy Generation Corp. |) | Proceeding to Assess a Class II Civil Penalty |
| Oregon, Ohio |) | Under Section 311(b)(6) of the Clean Water |
| |) | Act, 33 U.S.C. § 1321(b)(6) |
| Respondent. |) | |
| _____ |) | |

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is FirstEnergy Generation Corp., a corporation doing business in the State of Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Judicial Review and Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives its right to obtain judicial review of this CAFO under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 311(b)(3) of the CWA, 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.

10. 40 C.F.R. § 110.3 specifies the quantity of oil that may be harmful to the public health or welfare or environment of the United States. The quantity of oil includes discharges of oil that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines.

11. Section 311(j)(1)(C) of the CWA, 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 and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges. The authority to promulgate these regulations has been delegated to EPA.

12. The oil pollution prevention regulations at 40 C.F.R. Part 112 implement the requirements of Section 311(j)(1)(C) of the CWA, and set forth procedures, methods and

requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines. 40 C.F.R.

§ 112.1(a)(1).

13. The oil pollution prevention regulations at 40 C.F.R. Part 112 apply to, among other things, owners and operators of non-transportation-related onshore facilities engaged in storing, processing, transferring, distributing, using or consuming oil and oil products, which due to their location, could reasonably be expected to discharge oil quantities that may be harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines, and that have oil in certain types of tanks or containers with an aggregate aboveground storage capacity greater than 1,320 gallons. 40 C.F.R. § 112.1(b) and (d) (2002).

14. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as waters of the United States. 40 C.F.R. § 112.2 further defines “navigable waters” to include interstate waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

15. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 define “oil” to mean oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

16. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2 define “discharge” to include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

17. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B) and 40 C.F.R. § 112.2, define “owner or operator” in the case of an onshore facility as any person owning or operating such onshore facility.

18. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define “person” to include an individual, firm, corporation, association or partnership.

19. Section 311(a)(10) of the CWA, 33, U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, define “onshore facility” as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

20. Appendix A to 40 C.F.R. Part 112, Memorandum of Understanding between the Secretary of Transportation and EPA, defines “non-transportation-related” facility to include oil storage facilities, including all equipment and appurtenances related thereto, as well as fixed bulk plant storage and terminal oil storage facilities; and industrial, commercial, agricultural or public facilities which use and store oil. Appendix A to Part 112, (1)(F) and (G).

21. 40 C.F.R. § 112.3 requires the owner or operator of an onshore facility to have prepared a Spill Prevention, Control and Countermeasure Plan (“SPCC Plan” or “Plan”), in writing, and in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112, and to maintain the Plan in accordance with 40 C.F.R. Part 112.

22. 40 C.F.R. § 112.7 requires the owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare a Plan in accordance with good engineering practices.

23. 40 C.F.R. § 112.7(a) requires the owner or operator of a facility subject to 40 C.F.R. Part 112 to include a discussion in the Plan of the facility’s conformance with the requirements in 40 C.F.R. Part 112 and to comply with all applicable requirements listed in 40 C.F.R. Part 112.

24. 40 C.F.R. § 112.7(c) requires that the facility SPCC Plan provide appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching navigable waters.

25. 40 C.F.R. § 112.7(c)(3)(2002)¹ requires the owner or operator of an onshore facility to regularly inspect all aboveground valves, piping and appurtenances.

26. 40 C.F.R. § 112.7(f) requires the owner or operator of a facility to train oil-handling personnel in, among other things, the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; general facility operations; and the contents of the facility's SPCC Plan.

27. EPA may assess a class II civil penalty of up to \$16,000 per violation for each day of violation that occurred after January 12, 2009, up to a maximum of \$177,500, under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

28. Respondent owns and operates a fossil fuel burning steam electric generation plant located at 4701 Bay Shore Road in Oregon, Ohio ("Bay Shore facility" or "facility").

29. Respondent is a corporation organized under the laws of Ohio and is therefore a "person" within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 122.2.

30. Respondent is the "owner" and "operator" of the Bay Shore facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) and 40 C.F.R. § 122.2.

31. Respondent began operating the Bay Shore facility prior to the year 2002.

¹This requirement has been amended and recodified at 40 C.F.R. § 112.8(d)(4)(2011) since the time of the violations identified in this CAFO.

32. Respondent stores, handles, and consumes petroleum products such as fuel oils, gasoline, lube oil and transformer oil at the Bay Shore facility.

33. The Bay Shore facility is located on the south shore of Lake Erie, less than one-quarter mile away from the Lake.

34. Lake Erie is one of the Great Lakes of the United States, is utilized by interstate travelers for recreational or other purposes, and is a navigable in fact water, and is therefore a “navigable water” of the United States within the meaning of Section 507(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2.

35. The oil that Respondent stores, handles and consumes at the Bay Shore facility could reasonably be expected to discharge to Lake Erie.

36. The Bay Shore facility has an aggregate above-ground storage capacity of greater than 1,320 gallons of oil in tanks and containers.

37. The Bay Shore facility is a “non-transportation-related” facility within the meaning of 40 C.F.R. Part 112, Appendix A.

38. The Bay Shore facility is located on land within the United States and is therefore an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2.

39. Respondent is the owner and operator of a non-transportation-related onshore facility engaged in storing, processing, transferring, using or distributing oil and oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon waters of the United States or adjoining shores, that has an aggregate above-ground storage capacity of greater than 1,320 gallons of oil in tanks and containers, and is therefore subject to the oil pollution prevention regulations at 40 C.F.R. Part 112.

40. The Crane Fuel Tank, which was used to store fuel oil and had a capacity of 1,000 gallons and secondary containment of 1,082 gallons, was formerly located at the facility in an outdoor area.

41. On or about February 27, 2007, a drain valve on the Crane Fuel Tank fractured and a release of oil occurred (“the spill”).

42. At the time of the spill, Respondent’s SPCC Plan for the Bay Shore facility was dated November of 2006 (“2006 SPCC Plan”).

43. At the time of the spill, snow and ice had accumulated in the Crane Fuel Tank’s secondary containment area, and an unknown quantity of oil flowed out of the secondary containment area. Respondent reported that an estimated five gallons of oil reached Lake Erie.

44. Respondent’s 2006 SPCC Plan stated that all of the diesel fuel tanks at the facility were provided with containment structures capable of holding the entire volume of the tank plus accumulated rainwater.

45. Respondent’s 2006 SPCC Plan provided that personnel were to be properly instructed in the operation and maintenance of equipment to prevent oil discharges.

46. In response to an EPA information request issued pursuant to Sections 311 and 308 of the CWA, 33 U.S.C. §§ 1321 and 1318 (“Information Request”), Respondent provided documentation indicating that the spill resulted from accumulation of snow and ice in the secondary containment for the Crane Fuel Tank.

47. In response to EPA’s Information Request, Respondent provided records showing that Respondent inspected the Crane Fuel Tank on February 20, 2007. The inspection records indicate that the Crane Fuel Tank, including all valves and piping, was inspected for leaks, that the integrity of the containment area was inspected, and that all debris was removed

from inside the containment area. Respondent did not note the snow and ice accumulation in the containment area during the inspection.

48. Respondent revised the SPCC Plan for the facility in 2012.

49. On June 5, 2012, EPA and Respondent executed a Tolling Agreement, which tolled the five-year statute of limitations for the alleged violations in this CAFO from November 1, 2010 through March 31, 2013.

Count 1

50. Complainant incorporates paragraphs 1 through 49 of this CAFO as if set forth in this paragraph.

51. On or about February 27, 2007, Respondent discharged oil or hazardous substances into or upon navigable waters of the United States in such quantities as may be harmful, in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Count 2

52. Complainant incorporates paragraphs 1 through 49 of this CAFO as if set forth in this paragraph.

53. Respondent failed to maintain and implement its 2006 SPCC Plan, in violation of 40 C.F.R. § 112.3.

Count 3

54. Complainant incorporates paragraphs 1 through 49 of this CAFO as if set forth in this paragraph.

55. Respondent failed to include a discussion in the 2006 SPCC Plan of the facility's conformance with all requirements of 40 C.F.R. Part 112, and failed to comply with all applicable requirements listed in 40 C.F.R. Part 112, in violation of 40 C.F.R. § 112.7(a).

Count 4

56. Complainant incorporates paragraphs 1 through 49 of this CAFO as if set forth in this paragraph.

57. Respondent's 2006 SPCC Plan failed to provide appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching navigable waters, in violation of 40 C.F.R. § 112.7(c).

Count 5

58. Complainant incorporates paragraphs 1 through 49 of this CAFO as if set forth in this paragraph.

59. Respondent failed to prepare the 2006 SPCC Plan in accordance with good engineering practices, in violation of 40 C.F.R. § 112.7.

Count 6

60. Complainant incorporates paragraphs 1 through 49 of this CAFO as if set forth in this paragraph.

61. Respondent failed to regularly inspect all aboveground valves, piping and appurtenances on the Crane Ash Tank, in violation of 40 C.F.R. § 112.8(c)(3)(2002).

Count 7

62. Complainant incorporates paragraphs 1 through 49 of this CAFO as if set forth in this paragraph.

63. Respondent failed to adequately train oil-handling personnel in, among other things, the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; general facility operations; and the contents of the facility's 2006 SPCC Plan, in violation of 40 C.F.R. § 112.7(f).

Civil Penalty

64. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, and Respondent's agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$41,667.

65. Within 30 days after the effective date of this CAFO, Respondent must pay a \$41,667 civil penalty by an electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

The comment or description field of the electronic funds transfer must state Respondent's name and the docket number of this CAFO.

66. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Ellen Riley (SC-5J)
Enforcement Officer
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Karen Peaceman (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

67. This civil penalty is not deductible for federal tax purposes.

68. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 79, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

69. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 33 U.S.C. § 1321(b)(6)(H).

Supplemental Environment Project

70. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment by: donating and transferring fee title to 59.99 acres of land located near Lake Erie in North Kingsville, Ohio to CVG, LLC, a wholly owned subsidiary of the Western Reserve Land Conservancy (WRLC), for permanent conservation and preservation of the property; and by donating \$40,000 to WRLC to facilitate the conservation and preservation

of wetlands and habitat on property located near Lake Erie in North Kingsville, Ohio. This property, which is depicted on the map included as Appendix A to this CAFO, contains high quality wetlands and bedrock streams, and provides important habitat for numerous species, including migratory birds, as well as threatened and endangered species. WRLC has agreed to use the \$40,000 to maintain, conserve and preserve the property.

71. Within 120 days after the effective date of this CAFO, Respondent must:
 - a. Donate and transfer fee title of 59.99 acres of land, identified as part of parcels 28-036-00-002-00 and/or 28-036-00-004-00, and depicted on the map in Appendix A, near Lake Erie in North Kingsville, Ohio to WRLC for conservation, maintenance and preservation of the property; and
 - b. Donate \$40,000 to WRLC to facilitate the conservation and preservation of wetlands and habitat on property located near Lake Erie in North Kingsville, Ohio, identified as parcels 28-036-00-002-00 and 28-036-00-004-00 and depicted on the map in Appendix A.

72. The 59.99 acres of property, part of parcels 28-036-00-002-00 and/or 28-036-00-004-00, to be donated and transferred by Respondent to WRLC has been valued at approximately \$132,938.

73. Respondent certifies as follows:

I certify that FirstEnergy Generation Corp. is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that FirstEnergy Generation Corp. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that FirstEnergy Generation Corp. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative

agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

74. Respondent must submit a SEP completion report to EPA no later than 180 days after the effective date of this CAFO. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Copy of the fully executed deed donating and transferring fee title of the 59.99 acres of land, part of parcels 28-036-00-002-00 and/or 28-036-00-004-00, to WRLC;
- c. Copy of the certified check or money order to WRLC;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from each SEP (quantify the benefits and pollution reductions, if feasible).

75. Respondent must submit all notices and reports required by this CAFO by first-class mail to Ms. Ellen Riley, Enforcement Officer, at the address provided in paragraph 66, above.

76. In each report or document that Respondent submits as provided by this CAFO, it must certify that the report or document is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

77. Following receipt of the SEP completion report described in paragraph 74, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;

- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 79, below.

78. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 79, below.

79. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 71, Respondent must pay a penalty of \$132,938.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it donated no less than \$40,000 to WRLC and that the value of the property at the time of transfer was at least 90 percent of the amount set forth in paragraph 72, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent did not submit timely the SEP completion report or any other report required by paragraphs 84 and 85, Respondent must pay penalties in the following amounts for each day after such report was due until it submits the report:

| <u>Penalty per violation per day</u> | <u>Period of violation</u> |
|--------------------------------------|---|
| \$500 | 1 st through 14 th day |
| \$1000 | 15 th through 30 th day |
| \$1500 | 31 st day and beyond |

80. EPA’s determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

81. Respondent must pay any stipulated penalties within 15 days of receiving EPA’s written demand for the penalties. Respondent will use the method of payment specified in paragraph 66, above, and will pay interest and nonpayment penalties on any overdue amounts.

82. Any public statement that Respondent makes referring to the SEP must include the following language: “FirstEnergy Generation Corp. undertook this project under the settlement of the United States Environmental Protection Agency’s enforcement action against FirstEnergy Generation Corp. for violations of Section 311 of the Clean Water Act and its implementing oil pollution prevention regulations at 40 C.F.R. Part 112.”

83. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

84. Within 30 days after the effective date of this CAFO, Respondent will submit to EPA at the address listed in paragraph 66, above, the current SPCC Plan for the Bay Shore facility.

85. Within 365 days after the effective date of this CAFO, Respondent will submit to EPA at the address listed in paragraph 66, above, a certification that Respondent implemented a training course for Respondent’s personnel and/or contractors who are involved in oil-handling activities, as required by 40 C.F.R. § 112.7(f). The training course must cover facility

equipment, bulk storage containers, facility transfer areas, facility-specific procedures, response and reporting measures, and the contents of the facility's SPCC Plan. The certification must contain the date such training was held, a list of attendees including each person's position title, and a detailed description of the contents of the SPCC-related training.

86. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

87. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

88. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state and local laws. Compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

89. Respondent certifies that it is complying fully with Section 311 of the CWA and the oil pollution prevention regulations at 40 C.F.R. Part 112.

90. This CAFO constitutes a "prior violation(s)" as that term is used in EPA's Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act to determine Respondent's "history of prior violations" under Section 311(b)(8) of the CWA 33 U.S.C. § 1321(b)(8).

91. The terms of this CAFO bind Respondent, its successors and assigns.

92. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

93. Each party agrees to bear its own costs and attorneys fees in this action.

94. This CAFO constitutes the entire agreement between the parties.

95. Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO in accordance with Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. § 22.45(b).

FirstEnergy Generation Corp., Respondent

12/18/12
Date

Charles D. Lasky
Charles D. Lasky
Vice President
FirstEnergy Generation Corp.

United States Environmental Protection Agency, Complainant

1/8/13
Date

Richard C. Karl
Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency, Region 5


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PROTECTION AGENCY

Consent Agreement and Final Order
In the Matter of: FirstEnergy Generation Corp.
Docket No. CWA-05-2013-0005

Final Order

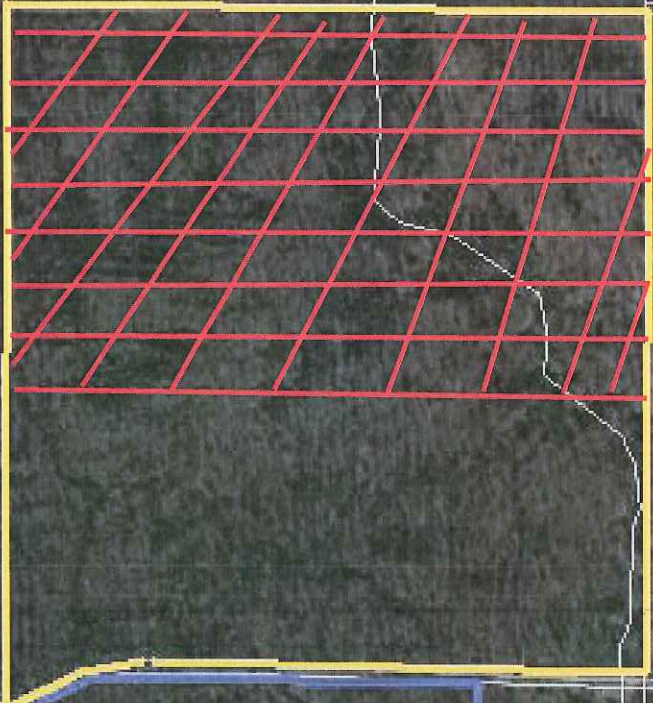
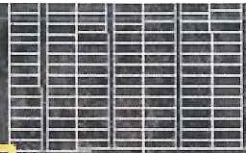
More than forty days have elapsed since the issuance of the public notice and opportunity to comment on the proposed Consent Agreement. EPA has received two comments, indicating that the proposed SEP does not meet certain requirements under EPA's 1998 SEP Policy. EPA has considered these comments, and finds that the proposed Consent Agreement meets the relevant legal and policy requirements under the CWA, 40 C.F.R. Part 22 and the 1998 SEP Policy. Therefore, this Consent Agreement and Final Order, as agreed to by the parties, shall become final and effective 30 days after filing with the Regional Hearing Clerk, unless a petition for hearing is filed under Section 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(iii), and 40 C.F.R. § 22.45(c)(4), or a notice of appeal is filed under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G). If no petition or notice is filed, this Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3-28-2013
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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U.S. ENVIRONMENTAL
PROTECTION AGENCY



E. Middle Rd.



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|----------------|--------------------|
| Parcel: | 280360000200 |
| Owner: | CEICO COMPANY THE, |

| | |
|----------------|--------------------|
| Parcel: | 280360000400 |
| Owner: | CEICO COMPANY THE, |

In the Matter of: FirstEnergy Corp.

Docket No. CWA-05-2013-0005

Certificate of Service


I, Ellen Riley, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed a second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Charles Lasky
Vice-President Fossil Operations
FirstEnergy Corp.
341 White Pond Drive
A-WAC-A3
Akron, Ohio 44320

Mr. Douglas Weber
Senior Attorney
FirstEnergy Corp.
A-G015
76 South Main Street
Akron, Ohio 44308



On the 2nd day of April, 2013



Ellen M. Riley
U.S. Environmental Protection Agency
Region 5