



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

FEB 06 2012

REPLY TO THE ATTENTION OF:

SC-5J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Michael J. Burns  
Sr. Vice President – Operations  
Ever-Green Energy, LLC  
345 St. Peter Street, Suite 1350  
St. Paul, MN 55102

Re: Ever-Green Energy, LLC, St. Paul, Minnesota  
Consent Agreement and Final Order  
Docket No. EPCRA-05-2012-0007

Dear Mr. Burns:

Enclosed please find one fully executed original Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA filed the second original CAFO with the Regional Hearing Clerk on FEB - 6 2012.

Please have your client pay the EPCRA civil penalty in the amount of \$8,257 in the manner prescribed in paragraphs 39 and 40, and reference your check with the EPCRA billing document number 2751244E007 and the docket number EPCRA-05-2012-0007.

The payment is due on MAR - 8 2012.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Leslie Kirby-Miles, Associate Regional Counsel, at (312) 353-9443. Thank you for your assistance in resolving this matter.

Re: Ever-Green Energy, LLC, St. Paul, Minnesota  
Consent Agreement and Final Order  
Docket No.

Sincerely,

A handwritten signature in black ink, appearing to read "Mick Hans", with a stylized flourish at the end.

Mick Hans, Chief  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure

cc: Steve Tomylanovich  
MN SERC Contact (w/enclosure)

RECEIVED  
FEB 06 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

REGIONAL HEARING CLERK  
USEPA  
REGION 5

In the Matter of: )  
) Docket No. EPCRA-05-2012-0007  
)  
)  
Ever-Green Energy, LLC )  
St. Paul, Minnesota ) Proceeding to Assess a Civil Penalty  
) Under Section 325(c)(1) of the Emergency  
) Planning and Community Right-to-Know  
Respondent. ) Act of 1986  
)  
\_\_\_\_\_ )

**Consent Agreement and Final Order**  
**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), and Sections 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. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Ever-Green Energy, LLC, a limited liability company doing business in the State of Minnesota.
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 Hearing**

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

8. Respondent waives 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 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission, community emergency coordinator for the local emergency planning committee, and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier 1 or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDSs.

12. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

13. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

#### **Factual Allegations and Alleged Violations**

14. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was the operator of the Energy Park Utility Company facility located at 1500 Energy Park Drive, St. Paul, Minnesota 55108 (facility).

16. At all times relevant to this CAFO, Respondent was an employer at the facility.

17. The facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

18. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. No. 2 Fuel Oil (CAS # 68476-30-2) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

20. No. 2 Fuel Oil (CAS # 68476-30-2) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

21. During at least one period of time in calendar year 2006, No. 2 Fuel Oil (CAS # 68476-30-2) was present at the facility in an amount equal to or greater than the minimum threshold level.

22. During at least one period of time in calendar year 2007, No. 2 Fuel Oil (CAS # 68476-30-2) was present at the facility in an amount equal to or greater than the minimum threshold level.

23. During at least one period of time in calendar year 2008, No. 2 Fuel Oil (CAS # 68476-30-2) was present at the facility in an amount equal to or greater than the minimum threshold level.

24. OSHA requires Respondent to prepare, or have available, an MSDS for No. 2 Fuel Oil (CAS # 68476-30-2).

25. Respondent was required to submit to the state emergency response commission (SERC), and fire department on or before March 1, 2007, a completed emergency and hazardous chemical inventory form including No. 2 Fuel Oil for calendar year 2006.

26. Respondent was required to submit to the SERC and fire department on or before March 1, 2008, a completed emergency and hazardous chemical inventory form including No. 2 Fuel Oil for calendar year 2007.

27. Respondent was required to submit to the SERC and fire department on or before March 1, 2009, a completed emergency and hazardous chemical inventory form including No. 2 Fuel Oil for calendar year 2008.

28. At all times relevant to this CAFO, the Minnesota Division of Homeland Security and Emergency Management was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

29. At all times relevant to this CAFO, the St. Paul Fire Department was the fire department with jurisdiction over the facility.

30. Respondent submitted to the SERC and fire department a completed emergency and hazardous chemical inventory form including No. 2 Fuel Oil on April 10, 2009, for calendar year 2006.

31. Each day that Respondent failed to submit to the SERC and the fire department a completed emergency and hazardous chemical inventory form including No. 2 Fuel Oil by March 1, 2007, for calendar year 2006 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

32. Respondent submitted to the SERC and fire department a completed emergency and hazardous chemical inventory form including No. 2 Fuel Oil on April 10, 2009, for calendar year 2007.

33. Each day that Respondent failed to submit to the SERC and the fire department a completed emergency and hazardous chemical inventory form including No. 2 Fuel Oil by

March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

34. Respondent submitted to the SERC a completed emergency and hazardous chemical inventory form including No. 2 Fuel Oil on April 10, 2009, for calendar year 2008.

35. Each day that Respondent failed to submit to the SERC a completed emergency and hazardous chemical inventory form including No. 2 Fuel Oil by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

36. Respondent submitted to the fire department a completed emergency and hazardous chemical inventory form including No. 2 Fuel Oil on April 10, 2009, for calendar year 2008.

37. Each day that Respondent failed to submit to the fire department a completed emergency and hazardous chemical inventory form including No. 2 Fuel Oil by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

#### **Civil Penalty**

38. Complainant has determined that an appropriate civil penalty to settle this action is \$8,257. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, Respondent's agreement to perform a supplemental environmental project, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).



39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,257 civil penalty for the EPCRA violations by sending a cashier's or certified check by U.S. Post, payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The check must note the following: In the Matter of: Ever-Green Energy, LLC, the docket number of this CAFO, and the billing document number 2751244E007.

40. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number, and the billing document must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Ruth McNamara, (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Leslie A. Kirby-Miles, (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

42. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 55 below, U.S. EPA may bring an action to collect any unpaid portion of the

penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

43. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

#### **Supplemental Environmental Project**

44. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by sealing two existing groundwater wells at Respondent's facility. Such well closure will benefit the environment, the public and the local emergency responders by reducing the likelihood of, and scope of response to a chemical spill or other chemical emergency at the facility and surrounding area, by reducing the potential for contamination of aquifers which are used to supply potable water to the City of St. Paul municipal water system.

45. At its facility, Respondent must complete the SEP as follows:

- Respondent must seal and close two wells,  
Well 1 - #161422 and Well 3 - #122210.
- Respondent will contract for such work by February 28, 2012.
- Respondent will seal wells by May 31, 2012.

46. Respondent must spend at least \$61,170 to perform the well closures.

47. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action. Additionally, Respondent certifies that it 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. Respondent certifies that, to the best of its 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 of this settlement (unless the project was barred from funding as statutorily ineligible). For the 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 yet expired.

48. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

49. Respondent must maintain copies of the underlying data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

50. Respondent must submit a SEP completion report to U.S. EPA by June 30, 2012. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- 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 the SEP (quantify the benefits and pollution reductions, if feasible).

51. Respondent must submit all notices and reports required by this CAFO by first class mail to Ruth McNamara of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 40, above.

52. In each report that Respondent submits as provided by this CAFO, it must certify that the report 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.

53. Following receipt of the SEP completion report described in paragraph 50 above, U.S. 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 U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. it has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 55, below.

54. If U.S. 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 U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 55, below.

55. 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, Respondent must pay a penalty of \$45,000.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 46, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 46, Respondent must pay a penalty of the difference between the amount Respondent actually spent on the SEP and \$55,053 (90% of \$61,170).
- d. If Respondent did not timely submit the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$ 200	1st through 14th day
\$ 300	15th through 30th day
\$ 400	31st day and beyond

56. U.S. 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.

57. Respondent must pay any stipulated penalties within 30 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 39 and 40 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

58. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of Section 312 of EPCRA, 42 U.S.C. § 11022." A 'public statement' for the purposes of this paragraph is any formal statement regarding the SEP made by Respondent to individuals or entities not affiliated with the facility or with the implementation of the SEP.

#### **General Provisions**

59. This CAFO only resolves Respondent's liability for federal civil penalties for the alleged violations and alleged facts in the CAFO.

60. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

61. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

62. This CAFO does not affect Respondent's responsibility to comply with EPCRA and CERCLA and other applicable federal, state, and local laws and regulations.

63. This CAFO is a “final order” for purposes of U.S. EPA’s EPCRA/CERCLA Enforcement Response Policy.

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

65. 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.

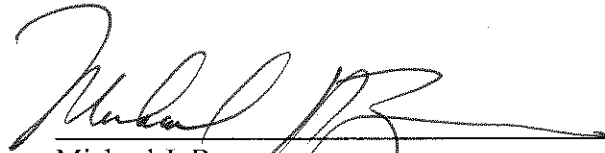
66. Each party agrees to bear its own costs and attorney’s fees in this action.

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

**SIGNATORIES**

**Ever-Green Energy, LLC**

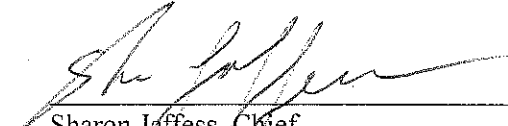
December 20, 2011  
Date

  
Michael J. Burns  
Sr. Vice-President - Operations  
Ever-Green Energy, LLC

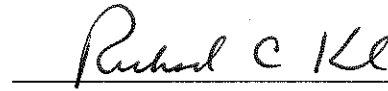


U.S. Environmental Protection Agency, Complainant

1/19/12  
Date

  
Sharon Jaffess, Chief  
Enforcement and Compliance Assurance Branch  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

2-1-12  
Date

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

RECEIVED  
FEB 06 2012


In the Matter of: Ever-Green Energy, LLC, St. Paul, Minnesota  
Docket No. EPCRA-05-2012-0007

REGIONAL HEARING CLERK  
USEPA  
REGION 5

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2-2-12  
Date

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

RECEIVED

FEB 06 2012

In the Matter of: Ever-Green Energy, LLC, St. Paul, Minnesota  
Docket No. EPCRA-05-2012-0007

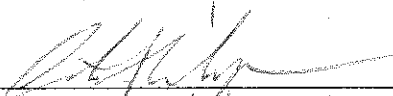
REGIONAL HEARING CLERK  
USEPA  
REGION 5

Certificate of Service

I, Ruth McNamara 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 the 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:

Michael J. Burns  
Sr. Vice President – Operations  
Ever-Green Energy, LLC  
345 St. Peter Street, Suite 1350  
St. Paul, MN 55102

on the 6<sup>th</sup> day of February, 2011

  
\_\_\_\_\_  
Ruth McNamara  
U.S. Environmental Protection Agency  
Region 5