



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

DEC 24 2009

Garry S. Rice
Associate General Counsel
General Counsel Group
Duke Energy Corporation
526 South Church St.
Charlotte, North Carolina 28202

Re: Executed Consent Agreement and Final Order, Docket
No. CWA-04-2010-5128(b)

Dear Mr. Rice:

Please find enclosed a copy of the fully executed Consent Agreement and Final Order (CAFO) for Duke Energy Carolinas, LLC. The CAFO was effective upon filing and payment of the civil penalty of \$6,240.00 is due within thirty (30) days of the effective date of the CAFO.

Please do not hesitate to contact me at (404) 562-9539 with any questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bonnie Sawyer".

Bonnie Sawyer
Associate Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)

Duke Energy Carolinas, LLC)
526 Church Street)
Charlotte, North Carolina 28202-1803)

Respondent)

CWA SECTION 311 CLASS I)
CONSENT AGREEMENT AND)
FINAL ORDER)
UNDER 40 C.F.R. § 22.13(b))

Docket No. CWA-04-2010-5128(b))

HEARING ROOM

2009 DEC 24 AM 7:16

EPA REGION 4

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)(i) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6)(B)(i), 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 through the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division ("Complainant").

CONSENT AGREEMENT

Stipulations

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

1. Respondent, Duke Energy Carolinas, LLC, is a limited liability company organized under the laws of North Carolina and is registered to do business in the State of South Carolina. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

2. The Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 of a transformer (“the facility”) located at 172 Lopper Street in Pickens, South Carolina.

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

4. Town Creek is a navigable water subject to the jurisdiction of Section 311 of the CWA as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

5. 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.

6. For purposes of Section 311(b)(3) and (b)(4) of the CWA, 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. Solely for the purposes of this Consent Agreement and Final Order, Respondent admits to EPA’s jurisdiction over the matters set out above.

Allegations

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

8. On or about March 1, 2009, Respondent discharged approximately 6.4 barrels of oil as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its facility into or upon Town Creek and/or its adjoining shorelines.

9. Respondent's March 1, 2009, discharge of oil from its facility caused a sheen upon or discoloration of the surface of Town Creek and/or its adjoining shoreline, 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 CWA.

Waiver of Rights

10. Solely for the purpose of this Consent Agreement, Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

Penalty

11. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of Six Thousand, Two Hundred Forty Dollars (\$6,240.00).

Payment Terms

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

12. No later than 30 days after the effective date of the Final Order, Respondent shall pay the amount of \$6,240.00 by means of a corporate cashier's or certified check, by electronic funds

transfer (EFT), or on-line. If paying by check, Respondent shall submit a corporate 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 sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

If the Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx or UPS, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
314-418-1028

If the Respondent sends payment by wire transfer, the wire transfer should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

Respondent may also elect the On Line Payment Option, available through the Department of Treasury. This payment option can be accessed at www.pay.gov. Enter sfo 1.1 in the search field and then open the form and complete required fields.

13. 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 a wire transfer or on-line payment, a copy of the wire transfer or on-line confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA- Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

and to:

Doug McCurry, Chief
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA- Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

General Provisions

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

15. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 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. Except as

otherwise set forth herein, compliance with this Consent Agreement shall resolve the allegations of violations contained herein.

16. The undersigned representative of Respondent hereby certifies that he or 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.

17. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Bonnie Sawyer
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA - Region 4
Sam Nunn Atlanta Federal Center,
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
404-562-9539
sawyer.bonnie@epa.gov

18. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is to receive service for the Respondent in this proceeding:

Garry S. Rice
Associate General Counsel
General Counsel Group
Duke Energy Corporation
526 South Church St.
Charlotte, North Carolina 28202

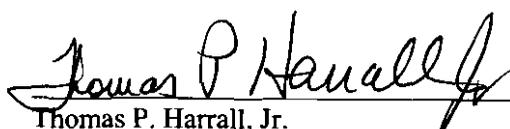
Effective Date

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

CONSENTED AND AGREED TO:

DUKE ENERGY CAROLINAS, LLC

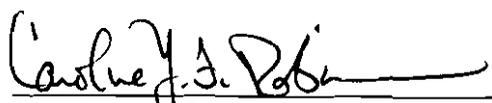
Date: 12/09/2009



Thomas P. Harrall, Jr.
Vice President, Carolinas Field Operations

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 12/17/09



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

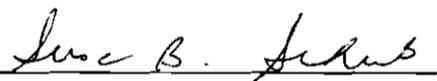
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF)	CWA SECTION 311 CLASS I
)	CONSENT AGREEMENT AND
Duke Energy Carolinas, LLC)	FINAL ORDER
526 Church Street)	UNDER 40 C.F.R. § 22.13(b)
Charlotte, North Carolina 28202-1803)	
)	
Respondent)	Docket No. CWA-04-2010-5128(b)
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FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 22nd day of December, 2009.

BY: 
Susan Schub
Regional Judicial Officer

In the Matter of Duke Energy Carolinas, LLC
Docket Number: CWA-04-2010-5128(b)

CERTIFICATE OF SERVICE

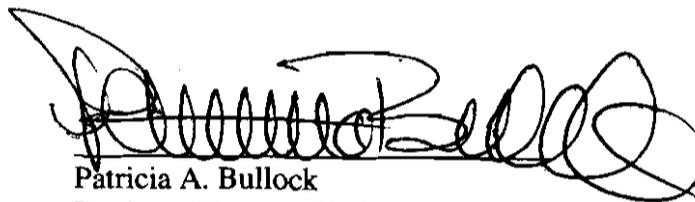
I hereby certify that on this day I filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Duke Energy Carolinas, LLC, Docket Number: CWA-04-2010-5128(b), and that on this day I served a true and correct copy of the CA/FO on the parties listed below in the manner indicated:

~~Via Overnight Delivery Service~~ ^{P.B.} Certified/Return Receipt

Garry S. Rice
Associate General Counsel
General Counsel Group
Duke Energy Corporation
526 South Church St.
Charlotte, North Carolina 28202

Via EPA's Internal Mail

Bonnie Sawyer
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303



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