



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 12 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

SUBJ: Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc.
Docket No. CWA-04-2010-5136(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)(i) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990.

Please Note: According to Paragraph 12 of this CA/FO, no later than 30 days after the effective date of this CA/FO, the penalty of \$2,442.00 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**

IN THE MATTER OF)) Carolina Power & Light Company) d/b/a Progress Energy Carolinas, Inc.) 410 Wilmington Street) Raleigh, North Carolina 27601)) Respondent) _____))	CWA SECTION 311 CLASS I) CONSENT AGREEMENT AND) FINAL ORDER) UNDER 40 C.F.R. § 22.13(b))) Docket No.: CWA-04-2010-5136(b))
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2010 MAY 12 PM 2:10
MERRILLIS CLERK
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 ("Act"), 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, 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. 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. The 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).

2. The Respondent was at all times relevant to the Consent Agreement the owner or operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of the Brunswick Steam Electric Plant, located in Brunswick County, Southport, 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 fish recovery pond, which is hydraulically connected to Gum Log Branch, a tributary of Nancy's Creek, which flows to the Atlantic Ocean, 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 or an adjoining shoreline and is 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 hazardous substances 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 hazardous substances 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 the environment are defined in 40 C.F.R. § 117.1 to include those discharges that exceed reportable quantities as set forth in 40 C.F.R. § 117.3.

7. 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:

8. On October 5, 2007, approximately 390 gallons or 6.2 reportable quantities of sodium hypochlorite, a hazardous substance as defined in Section 311(a)(14) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 116.4, discharged and approximately 200 gallons or 3.2 reportable quantities entered the fish return system which discharges to the fish recovery pond at the facility.

9. Respondent's October 5, 2007, discharge of sodium hypochlorite from its facility into or upon the fish recovery pond exceeded the respective reportable quantity and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R §§ 117.1 and 117.3, in violation of Section 311(b)(3) of the Act.

Waiver of Rights

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

Penalty

11. The Complainant proposes, and Respondent consents, to the assessment of a civil penalty of Two Thousand, Four Hundred Forty-Two Dollars (\$2,442.00).

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, the Respondent shall pay the amount of Two Thousand, Four Hundred Forty-Two Dollars (\$2,442.00) 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
(314) 418-1028

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

13. 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

14. 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).

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 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.

19. 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
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9539


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

Effective Date

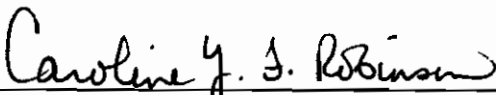
21. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

CONSENTED AND AGREED TO:

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

Date: 4/29/10 _____
Jul 
Michael J. Annacone
Vice President

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/10/10 _____

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

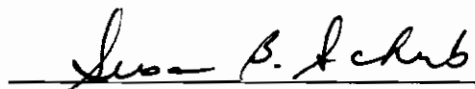
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF)	CWA SECTION 311 CLASS I
)	CONSENT AGREEMENT AND
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-04-2010-5136(b)

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 11th day of May 2010.

BY: 
Susan Schub
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 4

In the Matter of Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc.
Docket Number: CWA-04-2010-5136(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 Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., Docket Number: CWA-04-2010-5136(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:

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

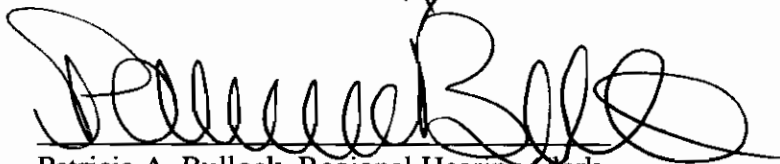
Georgina Fuller, Administrative Assistant
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
404-562-8694

Via EPA's Internal Mail

Nancy McKee, Environmental Scientist
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
404-562-8674

Via EPA's Internal Mail

Dated this 12 day of may, 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