



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., Lorain, Ohio  
Consent Agreement and Final Order – Docket No: **CWA-05-2013-0006**

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 civil penalty in the amount of \$41,667 is to be paid in the manner prescribed in paragraphs 67 and 68. Please be certain to reference your check and transmittal letter with docket number **CWA-05-2013-0006**. Your payment is due by May 3, 2013. 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,

A handwritten signature in black ink that reads "Sharon Jaffess".

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**

<b>In the Matter of:</b>	)	<b>Docket No. CWA-05-2013-0006</b>
	)	
<b>FirstEnergy Generation Corp.</b>	)	<b>Proceeding to Assess a Class II Civil Penalty</b>
<b>Lorain, Ohio</b>	)	<b>Under Section 311(b)(6) of the Clean Water</b>
	)	<b>Act, 33 U.S.C. § 1321(b)(6)</b>
<b>Respondent.</b>	)	
_____	)	

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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. § 112.5(a) requires the owner or operator to amend the facility SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects the facility's potential for a discharge of oil.

26. 40 C.F.R. § 112.5(b)(2002)<sup>1</sup> required the owner or operator of the facility to perform a complete review and evaluation of the facility SPCC Plan at least once every three years.

27. 40 C.F.R. § 112.7(e)(1)(2002)<sup>2</sup> requires the owner or operator of the facility to restrain drainage from diked areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, and provides that flapper-type drain valves to drain diked areas should not be used.

28. 40 C.F.R. § 112.7(c)(3)(2002)<sup>3</sup> requires the owner or operator of an onshore facility to regularly inspect all aboveground valves, piping and appurtenances.

29. 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.

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<sup>1</sup> This requirement has since been amended to require a complete review and evaluation of the facility SPCC Plan once every five years.

<sup>2</sup> This requirement has been amended and recodified at 40 C.F.R. § 112.8(b)(2011).

<sup>3</sup> This 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.

30. 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**

31. Respondent owned and operated a fossil fuel burning steam electric generation plant located at 200 Oberlin Avenue in Lorain, Ohio (“Edgewater facility” or “facility”). In 2010, Respondent permanently closed the facility.

32. 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.

33. Respondent was the “owner” and “operator” of the Edgewater 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.

34. Respondent began operating the Edgewater facility prior to the year 2002.

35. Respondent stored, handled, and consumed petroleum products such as fuel oils, gasoline, lube oil and transformer oil at the Edgewater facility.

36. The Edgewater facility was located on the shore of Lake Erie, less than one-quarter mile away from the Lake.

37. 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.

38. The oil that Respondent stored, handled and consumed at the Edgewater facility could reasonably have been expected to discharge to Lake Erie.



39. The Edgewater facility had an aggregate above-ground storage capacity of greater than 1,320 gallons of oil in tanks and containers.

40. The Edgewater facility was a “non-transportation-related” facility within the meaning of 40 C.F.R. Part 112, Appendix A.

41. The Edgewater facility was located on land within the United States and was 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.

42. Respondent was 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 shorelines, that has an aggregate above-ground storage capacity of greater than 1,320 gallons of oil in tanks and containers, and was therefore subject to the oil pollution prevention regulations at 40 C.F.R. Part 112.

43. On or about November 1, 2005, Respondent overfilled several tanks in a tank farm at the facility, and oil discharged from the diked area of the tank farm to Lake Erie (“the spill”). An estimated 5,950 gallons of oil discharged from the overfilled tanks.

44. At the time of the spill, Respondent’s employees underestimated the level of the fuel in the tanks.

45. At the time of the spill, Respondent had left a valve open in the diked area of the tank farm, which allowed oil to discharge to Lake Erie.

46. At the time of the spill, Respondent’s SPCC Plan for the Edgewater facility was dated July of 1997 (“1997 SPCC Plan”).

47. At the time of the spill, Respondent had not performed a review and evaluation of the 1997 SPCC Plan.

48. In response to EPA's Information Request issued pursuant to Sections 311 and 308 of the CWA, 33 U.S.C. §§ 1321 and 1318 ("Information Request"), Respondent concluded the root cause of the spill to be an out-of-date SPCC Plan that did not accurately reflect the current conditions of the Edgewater facility. This included drain pipe modifications to the tank farm's containment that had not been included in current diagrams of the facility or in the 1997 SPCC Plan.

49. In response to EPA's Information Request, Respondent provided documentation indicating that, at the time of the spill, the existing containment design for the tank farm was insufficient for current standards and operation.

50. In response to EPA's Information Request, Respondent provided documentation stating that, at the time of the spill, the valve that isolates the tank farm secondary containment drain system had not been used in the past because the current operators thought it was part of the fire fighting system.

51. In response to EPA's Information Request, Respondent provided documentation stating that, among other things, plant operators did not understand the spill containment system, the effects of an overfilled tank, the danger signs of a tank at capacity, and the effect of a change in outside temperature on a full tank.

52. Respondent's 1997 SPCC Plan provided that the tank farm oil storage tanks were equipped with an automatic shut-off/high level alarm to prevent overfilling. At the time of the spill, the alarm was in a location where it could not be seen by Respondent's employees.

53. Respondent's 1997 SPCC Plan provided that the valve in the diked area of the tank farm was a manual, post indicating, open-and-close type of valve.

54. At the time of the spill, the valve that was left open in the diked area of the tank farm allowed liquids to enter a non-functioning oil/water separator.

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

56. Respondent updated its 1997 SPCC Plan on September 18, 2006, January 21, 2008, April 17, 2008, and October 30, 2009.

57. 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**

58. Complainant incorporates paragraphs 1 through 57 of this CAFO as if set forth in this paragraph.

59. On or about November 1, 2005, 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**

60. Complainant incorporates paragraphs 1 through 57 of this CAFO as if set forth in this paragraph.

61. Respondent failed to maintain and implement its 1997 SPCC Plan, in violation of 40 C.F.R. § 112.3.

**Count 3**

62. Complainant incorporates paragraphs 1 through 57 of this CAFO as if set forth in this paragraph.

63. Respondent failed to include a discussion in the 1997 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**

64. Complainant incorporates paragraphs 1 through 57 of this CAFO as if set forth in this paragraph.

65. Respondent's 1997 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**

66. Complainant incorporates paragraphs 1 through 57 of this CAFO as if set forth in this paragraph.

67. Respondent failed to prepare the 1997 SPCC Plan in accordance with good engineering practices, in violation of 40 C.F.R. § 112.7.

**Count 6**

68. Complainant incorporates paragraphs 1 through 57 of this CAFO as if set forth in this paragraph.

69. Respondent failed to regularly inspect all aboveground valves, piping and appurtenances of the tank farm and the diked area of the tank farm, in violation of 40 C.F.R. § 112.8(c)(3)(2002).

**Count 7**

70. Complainant incorporates paragraphs 1 through 57 of this CAFO as if set forth in this paragraph.

71. Respondent failed to amend the facility SPCC Plan when there was a change in the facility design, construction, operation, or maintenance that materially affected the facility's potential for a discharge, in violation of 40 C.F.R. § 112.5(a).

**Count 8**

72. Complainant incorporates paragraphs 1 through 57 of this CAFO as if set forth in this paragraph.

73. Respondent failed to perform a complete review of and evaluation of the facility SPCC Plan at least once every three years, in violation of 40 C.F.R. § 112.5(b)(2002).

**Count 9**

74. Complainant incorporates paragraphs 1 through 57 of this CAFO as if set forth in this paragraph.

75. Respondent failed to restrain drainage from diked areas by valves to prevent a discharge into the drainage system, in violation of 40 C.F.R. § 112.7(e)(1)(2002).

**Count 10**

76. Complainant incorporates paragraphs 1 through 57 of this CAFO as if set forth in this paragraph.

77. 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 1997 SPCC Plan, in violation of 40 C.F.R. § 112.7(f).

### Civil Penalty

78. 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 \$41,666.

79. Within 30 days after the effective date of this CAFO, Respondent must pay a \$41,666 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.

80. 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

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

82. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 93, 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.

83. 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**

84. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment by donating and transferring fee title to 56.49 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), depicted on the map included as Appendix A to this CAFO, to ensure the permanent protection, maintenance, and preservation of the property.

This property contains high quality wetlands and bedrock streams, and provides important habitat for numerous species, including migratory birds, as well as threatened and endangered species.

85. Respondent must complete the SEP as follows: within 120 days after the effective date of this CAFO, Respondent must donate and transfer fee title of 56.49 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.

86. The 56.49 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 \$125,182.

87. 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.



88. 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 56.49 acres of land, part of parcels 28-036-00-002-00 and/or 28-036-00-004-00, to WRLC;
- c. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- d. Description of the environmental and public health benefits resulting from each SEP (quantify the benefits and pollution reductions, if feasible).

89. 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 80, above.

90. 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.

91. Following receipt of the SEP completion report described in paragraph 88, 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 93, below.

92. 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 93, below.

93. 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 85, Respondent must pay a penalty of \$125,182.
- 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 the value of the property at the time of transfer was at least 90 percent of the amount set forth in paragraph 86, 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 this CAFO, 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 <sup>st</sup> through 14 <sup>th</sup> day
\$1000	15 <sup>th</sup> through 30 <sup>th</sup> day
\$1500	31 <sup>st</sup> day and beyond

94. 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.

95. 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 79, above, and will pay interest and nonpayment penalties on any overdue amounts.

96. 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."

97. 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**

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

99. 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.

100. 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.

101. 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.

102. 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).

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

104. 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.

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

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

107. 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-05-2013-0006**

**Final Order**

More than forty days have elapsed since the issuance of the public notice and opportunity to comment on this Consent Agreement and Final Order, and EPA has received no comments. Therefore, 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.

3-28-2013

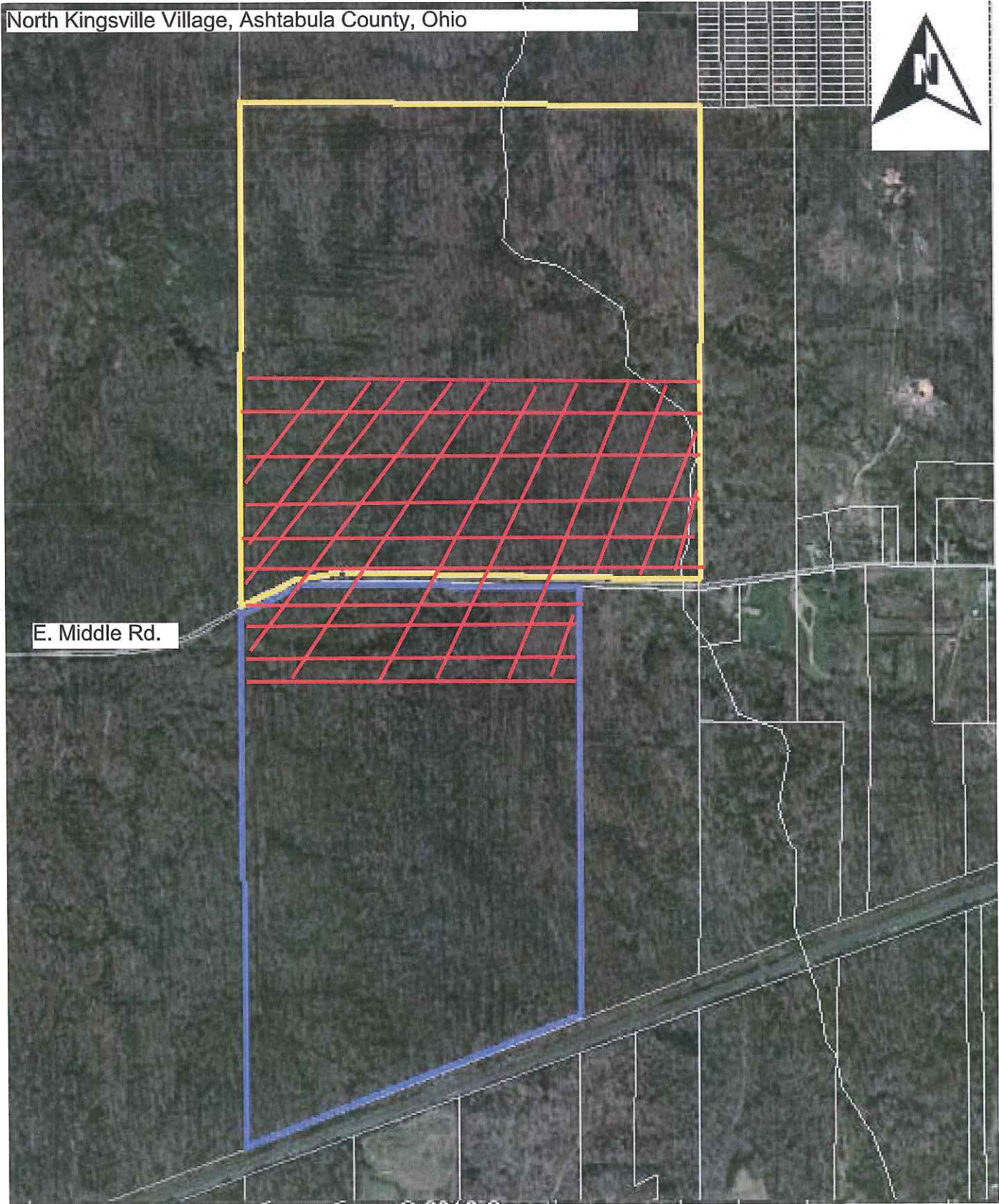
Date



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

**RECEIVED**  
APR - 2 2013  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
DEC 8 2012  
OFFICE OF REGIONAL  
COURT



E. Middle Rd.

<b>Parcel:</b>	280360000200
<b>Owner:</b>	CEICO COMPANY THE,

<b>Parcel:</b>	280360000400
<b>Owner:</b>	CEICO COMPANY THE,

**In the Matter of: FirstEnergy Corp.**

**Docket No. CWA-05-2013-0006**

**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