

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103**

In the Matter of

Exelon Generation Company, LLC
1 Industrial Highway
Eddystone, PA 19022-1524

Docket No. CAA-03-2011-0035

CONSENT AGREEMENT

I. Preliminary Statement

1. This Consent Agreement is entered into by the Complainant, the Director of the Air Protection Division, U.S. Environmental Protection Agency ("EPA"), Region III, and Exelon Generation Company, LLC ("Exelon" or "Respondent"), and is filed with the accompanying Final Order pursuant to Section 113 of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. § 7413, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 (the "Consolidated Rules of Practice"). The Consolidated Rules of Practice, at 40 C.F.R. § 22.13, provide in pertinent part that when parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. This Consent Agreement and the accompanying Final Order address the specifically alleged violations by Respondent of Sections 113 and 502 of the Act, 42 U.S.C. §§ 7413 and 7661a, 40 C.F.R. § 52.23, Respondent's Title V permit, and the Pennsylvania State Implementation Plan ("Pennsylvania SIP"), including, but not limited to, 25 Pa. Code §§ 123.41 and 127.444.

II. General Provisions

3. Section 113(a)(3) and (d) of the Act, 42 U.S.C. § 7413(a)(3) and (d), authorizes the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement, rule, plan, order, waiver, or permit promulgated, issued, or approved under Subchapters I, IV, V and VI [also referred to as Titles I, IV, V and VI] of the Act. The authority to issue the accompanying Final Order has been duly delegated to the Regional Judicial Officer, EPA Region III.

4. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction with respect to the issuance, execution and enforcement of this Consent Agreement and the accompanying Final Order.
5. Respondent consents to the issuance of this Consent Agreement and the accompanying Final Order and agrees to comply with the terms and conditions set forth therein.
6. Respondent neither admits nor denies the specific findings of fact and conclusions of law set forth in this Consent Agreement and the accompanying Final Order except as otherwise stated in Paragraph 4.
7. Respondent agrees that this Consent Agreement and the accompanying Final Order shall apply to, and be binding upon, Respondent, its officers, directors, servants, employees, agents, successors and assigns.
8. For the purposes of this proceeding, Respondent hereby expressly waives its right to a hearing with respect to any issue of law or fact set forth in this Consent Agreement and the accompanying Final Order, including the finality and/or validity thereof. Respondent hereby expressly waives its right to contest the factual allegations and legal conclusions set forth in Section III, "Findings of Fact and Conclusions of Law," of this Consent Agreement and any right to appeal the accompanying Final Order.

III. Findings of Fact and Conclusions of Law

9. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law:
10. Exelon owns and operates a facility located at One Industrial Highway, Eddystone, PA 19022 ("Facility"). At the Facility, Exelon produces electric power via the combustion of fuels in boilers to produce steam that drives steam turbines and generates electricity. The Facility has been owned and operated by Exelon at all relevant times to this Consent Agreement. Exelon is a limited liability company registered and licensed in the Commonwealth of Pennsylvania.
11. Exelon is a "person" within the meaning of Sections 113(a) and 502 of the Act, 42 U.S.C. §§ 7413(a) and 7661a, and as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
12. Title V of the Act, 42 U.S.C. §§ 7661-7661f, mandates a federally enforceable operating permit program for certain sources which states may implement.
13. EPA promulgated final approval of the Pennsylvania Title V program on August 29, 1996.

40 C.F.R. Part 70, Appendix A. Pennsylvania's Title V program became effective on that date. 61 Fed. Reg. 39597.

14. The Pennsylvania regulations governing the Title V permitting program are located at 25 Pa. Code §§ 127.401-127.464 and 127.501-127.543.
15. The Pennsylvania Department of Environmental Protection ("PADEP") has issued several permits for the emission sources at the Facility, one of which is a Title V permit, #23-00017, issued on October 23, 2008, effective on May 22, 2009 ("Title V Permit"). Section B of the Title V Permit requires the Facility to operate in accordance with its permit.
16. Section 502(a) of the Act, 42 U.S.C. §7661a(a), provides that it is unlawful for any person to violate any requirement of a permit issued under Title V of the Act after the effective date of any permit program approved under Title V of the Clean Air Act.
17. The Title V Permit provides in Section B, "General Title V Requirements," Condition # 007, that the permittee must comply with the terms and conditions of the Title V Permit and that noncompliance with the permit constitutes a violation of the Act and the Pennsylvania Air Pollution Control Act and is grounds for a permit enforcement action.
18. The Pennsylvania SIP, approved by EPA at 40 C.F.R. § 52.2020(b), and the Title V Permit include 25 Pa. Code § 127.444, which provides that "[a] person may not cause or permit the operation of a source subject to this article unless the source and air cleaning devices identified in the application for the plan approval and operating permit and the plan approval issued to the source are operated and maintained in accordance with specifications in the application and conditions in the plan approval and operating permit issued by the Department. A person may not cause or permit the operation of an air contamination source subject to this chapter in a manner inconsistent with good operating practices." See Title V Permit, Section B, "General Title V Requirements," Condition # 007.
19. Pursuant to 40 C.F.R. § 52.23, "[f]ailure to comply with any . . . permit condition . . . issued pursuant to approved or promulgated regulations for the review of new or modified stationary . . . sources, or with any permit limitation or condition . . . , shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Clean Air Act."
20. The Pennsylvania SIP, approved by EPA at 40 C.F.R. § 52.2020(b), includes 25 Pa. Code § 123.41 covering visible emissions which provides that "[a] person may not permit the emission into the outdoor atmosphere of visible air contaminants in such a manner that the opacity of the emission is either of the following:
 1. Equal to or greater than 20% for a period or periods aggregating more than three (3) minutes in any 1 hour.

2. Equal to or greater than 60% at any time.”

21. In Section C, “Site Level Requirements,” Part 1, Condition #005, the Title V Permit incorporates 25 Pa. Code § 123.41 of the federally enforceable Pennsylvania SIP as a restriction for the Facility.
22. On July 7, 2010, EPA representatives following EPA Method 9 procedures documented visible emissions from the Boiler #1 stack at the Facility in violation of Respondent’s Title V Permit and 25 Pa. Code § 123.41 of the Pennsylvania SIP. The readings listed below were taken by an EPA inspector certified for evaluating the opacity of visible emissions. The opacity readings results were as follows:
- | Time Period | # Readings >= 20% | #Readings >= 60% |
|--------------------|-------------------|------------------|
| 12:17pm to 12:47pm | 96 (24 minutes) | 0 |
23. According to the Method 9 opacity readings described above, since July 7, 2010, the Facility is in violation of Sections 113 and 502 of the Act, 42 U.S.C. §§ 7413 and 7661a, the Title V Permit, 40 C.F.R. § 52.23, and the Pennsylvania SIP, including, but not limited to, 25 Pa. Code §§ 123.41 and 127.444, regarding Boiler #1’s visible emissions.
24. The Facility also has continuous opacity monitors (“COMs”) for the boilers at the Facility which monitor compliance with the visible emission limit in the Pennsylvania SIP at 25 Pa. Code § 123.41. Respondent’s COMs data from the fourth quarter of 2009 to the 3rd quarter of 2010 revealed visible emissions from the Facility in violation of Section 502 of the Act, 42 U.S.C. § 7661a, Respondent’s Title V Permit, 40 C.F.R. § 52.23, and 25 Pa. Code §§ 123.41 and 127.444 of the Pennsylvania SIP.
25. Pursuant to Section 113(a), 42 U.S.C. § 7413(a), EPA issued a Notice of Violation to Exelon providing notice of these violations on July 23, 2010. A copy of the Notice of Violation was provided to PADEP.

IV. Settlement Recitation, Settlement Conditions and Civil Penalty

26. Complainant and Respondent enter into this Consent Agreement and the accompanying Final Order in order to settle fully and resolve all alleged violations set forth in Section III (Paragraphs 9 through 25) of this Consent Agreement.
27. In full and final settlement of the allegations in Section III, Findings of Fact and Conclusions of Law, of this Consent Agreement and in consideration of each provision of this Consent Agreement and the accompanying Final Order, Respondent consents to the assessment and payment of a civil penalty in the amount of Ten Thousand Dollars (\$10,000.00) within the

time and manner specified herein. Nothing in this Consent Agreement shall be interpreted to affect the enforcement authority of PADEP with respect to the allegations contained in Section III.

28. The settlement amount of Ten Thousand Dollars (\$10,000.00) is based upon Complainant's consideration and application of the statutory penalty factors set forth in Section 113(e) of the Act, 42 U.S.C. § 7413(e) (which include the size of the business, economic impact of the penalty, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, the payment of penalties previously assessed for same violation, the seriousness of violation and such other matters as justice may require), and EPA's Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991), as indexed for inflation in keeping with 40 C.F.R. Part 19 (Adjustment to Civil Monetary Penalties for Inflation). Complainant has determined that Respondent's payment of this civil penalty shall constitute full and final satisfaction of the violations set forth in Section III of this Consent Agreement.
29. Respondent shall pay the civil penalty of Ten Thousand Dollars (\$10,000.00) no later than thirty (30) days after the effective date of this Consent Agreement and accompanying Final Order in order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this Consent Agreement and accompanying Final Order.
30. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
31. Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of this executed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
32. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

33. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
34. Thus, in accordance with the above provisions, to avoid the assessment of interest, late payment penalties, and handling charges on the penalty set forth herein, Respondent must pay the full amount of the civil penalty, in the manner directed, within thirty (30) days of the effective date of this Consent Agreement and accompanying Final Order.
35. Payment of the penalty in Paragraph 27 shall be made by cashier's check, certified check, or electronic wire transfer, Automated Clearing House ("ACH"), or an on line, internet payment as specified below. All payments are payable to Treasurer, United States of America and shall reference the above case caption and docket number.

All checks shall be made payable to Treasurer, United States of America and shall be mailed to the attention of:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000
Contact: Eric Volck (513) 487-2105.

Overnight deliveries shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: (314) 418-1028.

All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental
Protection Agency"

Payments through ACH (also known as REX or remittance express) shall be directed to:

U.S Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking
33 Liberty Street
New York, N.Y. 10045

An on-line, internet payment option, is also available through the United States Department of Treasury. This payment option can be accessed from www.pay.gov. Enter sfo 1.1 in the search field. Open form and complete required fields.

36. All payments made by check also shall reference the above case caption and docket number, CAA-03-2011-0035. At the same time that any payment is made, copies of any corresponding check or written notification confirming any electronic transfer through wire transfer, ACH, or internet payment shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, to Donna L. Mastro, Esq., Senior Assistant Regional Counsel (3RC10), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and to James Hagedorn (3AP20), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029.
37. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to, this Consent Agreement and accompanying Final Order.
38. Each party to this action agrees to pay its own costs and attorney fees.
39. Payment of the penalty specified in Paragraph 27 in the manner set forth in this Consent Agreement and payment of any applicable interest, handling costs and/or late payment charges as set forth above shall constitute full and final satisfaction of all civil claims for penalties for the specific violations alleged in Section III of this Consent Agreement. Compliance with this Consent Agreement and accompanying Final Order shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.
40. Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in referral of this matter to the United States Attorney for

enforcement of this Consent Agreement and the accompanying Final Order in the appropriate United States District Court. Additionally, Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in the assessment of additional interest, penalties and/or late payment penalty charges.

V. Reservation of Rights

41. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged in Section III of this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States' authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

VI. Effective Date

42. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Consent Agreement and Final Order is filed with the Regional Hearing Clerk of EPA Region III.

VII. Entire Agreement

43. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the accompanying Final Order. Nothing in this Consent Agreement or the accompanying Final Order shall be construed to affect or limit in any way the obligation of Respondent to comply with all federal, state and local laws and regulations governing any activity required by this Consent Agreement and the accompanying Final Order.

VIII. Execution

44. The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent, to the terms and conditions of this Consent Agreement and the accompanying Final Order.

For Respondent Exelon Generation Company, LLC:

12/7/2010

Date

Victoria K. Will

Victoria K. Will
Vice President, Regulatory, Environmental &
Safety, Exelon Generation Company, LLC

For Complainant:

12/13/10

Date

Donna L. Mastro

Donna Mastro
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Accordingly, the Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator or his designee, the Regional Judicial Officer, issue the accompanying Final Order and thereby ratify this Consent Agreement and the terms and provisions herein.

12/16/2010
Date

Diana Esher

Diana Esher, Director
Air Protection Division
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103**

In the Matter of

Exelon Generation Company, LLC
1 Industrial Highway
Eddystone, PA 19022-1524

:
:
:
:
:

Docket No. CAA-03-2011-0035

FINAL ORDER

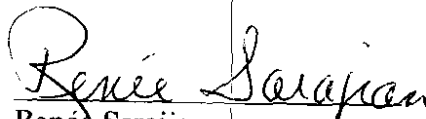
The Preliminary Statement, General Provisions, Findings of Fact and Conclusions of Law, and other sections and terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Section 113 of the Clean Air Act, as amended, 42 U.S.C. § 7413, and 40 C.F.R. Part 22, Exelon Generation Company, LLC is hereby ordered to pay a civil penalty in the amount Ten Thousand Dollars (\$10,000.00). Payment of the aforesaid civil penalty shall be made within thirty (30) days of the effective date of this Final Order.

The effective date of the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S. EPA Region III.

Date:

12/22/10



Renee Sarajian
Regional Judicial Officer
U.S. EPA Region III