UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ENVIRONMENTAL APPEALS BOARD

IN THE MATTER OF	)	
	)	
Enel Green Power North America, Inc.	)	Docket No. CAA-HQ-2015-8003
100 Brickstone Sq., Ste 300	)	Docket No. CWA-HQ-2015-8003
Andover, MA 01810	)	Docket No. RCRA-HQ-2015-8003
	)	Docket No. EPCRA-HQ-2015-8003
	)	
Respondent	)	

CONSENT AGREEMENT

I. Preliminary Statement

1. Complainant, the United States Environmental Protection Agency (Complainant or EPA) and Respondent, Enel Green Power North America, Inc., (Respondent or EGPNA), having consented to the terms of this Consent Agreement (Agreement), and before the taking of any testimony and without the adjudication of issues of law or fact herein, agree to comply with the terms of this Agreement and attached proposed Final Order hereby incorporated by reference.

2. In a letter dated September 11, 2009, Respondent notified the EPA of noncompliance with reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA) at two of its facilities. Respondent self-disclosed these violations pursuant to the EPA's policy entitled *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (Audit Policy), 65 Fed. Reg. 19,618 (Apr. 11, 2000).

3. In its letter dated August 24, 2010, Respondent proposed to complete multi-media environmental compliance audits at the seventy-four (74) electric energy producing facilities it then owned and/or operated and, as requested by the EPA, provided a list of facilities to be audited.

4. By letter dated September 18, 2012, Respondent proposed that three additional facilities be added to the audit. The EPA agreed to Respondent's proposal to add these facilities and to submit a final report to the EPA by October 12, 2012. The scope of the audit covered the applicable provisions of the Clean Air Act (CAA), Clean Water Act (CWA), Resource Conservation and Recovery Act, (RCRA), and the Emergency Planning and Community Right-to-Know Act (EPCRA).

5. On September, 27, 2012, following a crash of EGPNA's servers and the addition of three new facilities to the audit, the EPA granted an extension of time to file a final report until November 14, 2012.

6. On November 14, 2012, Respondent submitted a final audit report, voluntarily disclosing to the EPA violations of:

   A. CAA Section 110(a), 42 U.S.C. § 7410(a);

   B. CWA Section 311(j), 33 U.S.C. § 1321(j), and CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342;

   C. RCRA Section 3002, 42 U.S.C. § 6922; and

   D. EPCRA Sections 302, 311 and 312, 42 U.S.C. §§ 11002, 11021 and 11022.

7. Respondent audited a total of seventy-seven (77) facilities, as documented in Respondent's November 14, 2012 final audit report and the March 7, 2013 supplemental audit report.

8. Respondent's final and supplemental audit report together with Respondent's accompanying answers to EPA's questionnaire summarized steps taken to prevent recurrence of any violations that had been disclosed. Respondent's self-disclosed violations are identified in Attachments A and B, hereby incorporated by reference, which are the subject of this Agreement.

II. Jurisdiction

9. The relevant authorities for this agreement are: Section 113(d)(1) of the CAA, 42 U.S.C. §7413(d)(1); Sections 309(g)(1)(A) and 311(b)(6)(B) of the CWA, 33 U.S.C. §§ 1319(g)(1)(A) and 1321(b)(6)(B); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and Section 325(c)(1) and (c)(2) of EPCRA, 42 U.S.C. §11045(c)(1) and (c)(2).

10. The parties agree to the commencement and conclusion of this cause of action by issuance of this Agreement, as prescribed by the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, and more specifically by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

11. Respondent agrees that Complainant has the jurisdiction to bring an administrative action, based upon the facts that Respondent provided, for the violations identified in Attachments A and B and for the assessment of civil penalties pursuant to the CAA, CWA, RCRA and EPCRA.

12. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this Agreement and its right to judicial review of the proposed Final Order accompanying this Agreement. Respondent does not waive any claims or defenses Respondent has to the interpretation of this CAFO or its terms.

13. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than

twelve (12) months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

14. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving violations that are older than twelve (12) months is appropriate for an administrative penalty action. Such determination was made on June 21, 2017

15. For the purposes of this proceeding, Respondent admits that the EPA has jurisdiction over the subject matter that is the basis for this Agreement.

16. Respondent neither admits nor denies the conclusions of law as set forth in this Agreement.

III. Statement of Facts

17. Respondent is a wholesale independent power producer that produces renewable power exclusively and is incorporated under the laws of the State of Delaware. EGPNA's headquarters are located at 100 Brickstone Square, Ste 300, Andover MA 01810.

18. Pursuant to the EPA's Audit Policy, with regard to the disclosures listed in Attachments A and B, Respondent certifies and warrants as true the following facts upon which this agreement is based:

A. The violations were discovered through an audit or through a compliance management system reflecting due diligence;

B. The violations were discovered voluntarily.

C. The violations were promptly disclosed to the EPA in writing;

D. The violations were disclosed prior to commencement of an agency inspection or investigation, notice of citizen suit, filing of a complaint by a third party, reporting of the violations by a "whistleblower" employee, or imminent discovery by a regulatory agency;

E. The violations have been corrected;

F. Appropriate steps have been taken to prevent a recurrence of the violations;

G. The specific violations (or closely related violations), identified in Attachments A and B, have not occurred within three years of the date of disclosure identified in Section

I, Paragraphs 2, 3, and 4 above, at the same facilities that are the subject of this Agreement, and have not occurred within five years of the date of disclosure identified in Section I, Paragraphs 2, 3, and 4 above, as part of a pattern at multiple facilities owned or operated by Respondent. For the purposes of Subparagraph G, a violation is:

i. Any violation of federal, state or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction or plea agreement; or

ii. Any act or omission for which the regulated entity has previously received penalty mitigation from the EPA or a state or local agency.

H. The violations have not resulted in serious actual harm nor presented an imminent and substantial endangerment to human health or the environment and they did not violate the specific terms of any judicial or administrative Final Order or Agreement; and

I. Respondent has cooperated as requested by the EPA.

19. With regard to the disclosures listed in Attachment A, EPA has determined that the Respondent satisfied all of the conditions set forth in the Audit Policy. These violations therefore qualify for a 100 percent reduction of the civil penalty's gravity component, described further in Sections III-IV of this Agreement.

20. With regard to the disclosures listed in Attachment B, EPA has determined that the Respondent did not meet Condition 5 of the Audit Policy requiring correction of violations within sixty (60) days of discovery. Respondent will be assessed a gravity component as further described in Section III-IV of this Agreement

IV. Conclusions of Law

CAA

21. Respondent is a person within the meaning of CAA Section 302(e), 42 U.S.C. § 7602(e).

22. Section 110(a), 42 U.S.C. § 7410(a), of the CAA requires each state to adopt and submit to the Administrator a plan to implement the national primary ambient air quality standards in each air quality region of the state.

23. The State of Nevada adopted and submitted such a State Implementation Plan (SIP) in 1972. The EPA originally approved the Nevada SIP on April 14, 1981, 46 Fed. Reg. 21,766 (April 14, 1981), as amended 77 Fed. Reg. 59,321 (Sept. 27, 2012) (See also 40 CFR § 52.1472).

24. The Nevada Administrative Code (NAC) requires certain facilities to obtain a Class II operating permit and maintain the monitoring, testing and reporting requirements contained therein.

25. Respondent failed to meet permit data maintenance and reporting requirements in violation of NAC 445B.315 and 445B.3453 at two facilities identified in Attachment A.

26. The EPA hereby states and alleges that, based on the information supplied by Respondent, for varying lengths of time between 2009 and 2011, Respondent violated the CAA at two facilities identified in Attachment A by failing to comply with its Class II operating permit.

CWA - NPDES

27. Respondent is a person within the meaning of CWA Section 311(a)(7), 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 122.2, and is the owner or operator, as defined by CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6), and 40 C.F.R. §122.2, of facilities described in Attachment B, hereby incorporated by reference.

28. The regulations at 40 C.F.R. § 122, which implement CWA Section 402, 33 U.S.C. § 1342, set forth procedures, methods, and requirements for obtaining the proper National Pollutant Discharge Elimination System (NPDES) permits.

29. The permit program established under 40 C.F.R. § 122 also applies to owners or operators of any facility discharging domestic sewage.

30. Respondent engaged in discharging plant related cooling water without an NPDES permit at twenty-four facilities listed in Attachment B and at one facility listed in Attachment A. Respondent further engaged in discharging domestic sewage without an NPDES permit at two facilities listed in Attachment A.

31. The facilities described in Attachment B are facilities within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 122.2, meaning any point source or any other facility or activity that is subject to regulation under the NPDES program.

32. Based on the above, and pursuant to CWA Section 402(a)(1) and its implementing regulations, Respondent is subject to the requirements of 40 C.F.R. § 122 at the facilities listed in Attachment B.

33. The EPA hereby states and alleges that, based on the information supplied by Respondent, for varying periods between 1985 and 2012, Respondent violated the CWA at 24 facilities identified in Attachment B and three facilities in Attachment A by failing to apply for NPDES permits at facilities with discharge of pollutants as defined under 40 C.F.R. § 122.21.

CWA – SPCC

34. Respondent is a person within the meaning of CWA Section 311(a)(7), 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2, and is the owner or operator, as defined by CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of the facilities described in Attachment A, hereby incorporated by reference.

35. The regulations at 40 C.F.R. § 112.1 through 112.7, which implement CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), 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 in such quantities that by regulation have been determined may be harmful to the public health or welfare or environment of the United States by owners or operators who are engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, or consuming oil products.

36. 40 C.F.R. § 112.3(a) requires owners and operators of onshore and offshore facilities that have discharged or, due to their location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare a Spill Prevention, Control, and Countermeasure Plan ("SPCC Plan").

37. Respondent is engaged in storing or consuming oil or oil products at the facilities, described in Attachment A, in quantities that "may be harmful" as defined by 40 C.F.R. § 110.3.

38. At certain facilities described in Attachment A are onshore facilities 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, which, due to their location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a film or sheen 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 adjoining shorelines.

39. Based on the above, and pursuant to CWA Section 311(j)(1)(C), 33 U.S.C § 1321(j)(1)(C), and its implementing regulations, Respondent is subject to the requirements of 40 C.F.R § 112.1 through § 112.7 at the facilities listed in Attachment A.

40. The EPA hereby states and alleges that, based on the information supplied by Respondent, for varying lengths of time between 1985 and 2012, Respondent violated the CWA at seventeen facilities identified in Attachment A by failing to prepare or revise an SPCC Plan as required by CWA Section 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C), and the regulations found at 40 C.F.R. §§ 112.1 through 112.7.

RCRA

41. Pursuant to Section 3006(b), 42 U.S.C. § 6926(b), the Administrator of the EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program, when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939(e), or of any state provision authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided by Section 3008 of RCRA, 42 U.S.C. § 6928.

42. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the following states identified in Appendix 1 hereto received authorization from the EPA to carry out their hazardous waste management programs in lieu of the federal program: California; Connecticut; Georgia; Idaho; Kansas; Maine; Massachusetts; Minnesota; Nevada; New York; North Carolina; Oklahoma; Pennsylvania; South Carolina; Vermont; Virginia; Washington; and West Virginia. The authorization citations are included in Appendix 1 for purposes of this Agreement.

43. Although the EPA has granted these states the authority to enforce their own hazardous waste programs, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a) of RCRA 42 U.S.C § 6928(a). Since the states' authorized hazardous waste programs operate in lieu of the federal RCRA program, the state citations are incorporated into the violation citations included in Attachment A.

44. Respondent is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.

45. Respondent is the "owner" and/or "operator" of, or is otherwise liable for, all or a portion of each "facility" listed in Attachment A, as those terms are defined in 40 C.F.R. § 260.10.

46. At all times relevant to this Agreement and in the course of conducting normal business operations, Respondent was a "generator" as defined in 40 C.F.R. § 260.10, who generated "solid waste," within the meaning of 40 C.F.R. § 261.2, "hazardous waste" within the meaning of 40 C.F.R. § 261.3, and "universal waste" within the meaning of 40 C.F.R. Part 273.

47. Pursuant to 40 C.F.R. § 273.9, a "small quantity handler of universal waste" is a universal waste handler who accumulates 5,000 kg or less of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.

48. At all times relevant to this Agreement, Respondent was a generator and small quantity handler who stored universal waste in the form of spent fluorescent lamps and batteries at certain facilities listed in Attachment A.

49. The regulations at 40 C.F.R. Part 273 set forth the standards for universal waste management. Pursuant to 40 C.F.R. § 273.13(d)(1), a small quantity handler of universal waste "must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps," and "such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions." Similarly, for the handling of waste batteries, a small quantity handler "must contain any battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container," and "the container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions" as specified in 40 C.F.R. § 273.13(a)(1).

50. A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified in 40 C.F.R. § 273.14. Pursuant to 40 C.F.R. § 273.14(e), each lamp or container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)." According to 40 C.F.R. § 273.14(a), each universal waste battery or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."

51. As specified in 40 C.F.R. § 273.15(a), a facility may accumulate universal waste for no longer than one year from the date the universal waste was generated. Pursuant to 40 C.F.R. § 273.15, a facility is required to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. As set forth in 40 C.F.R. §§ 273.15(c)(1)-(6), this demonstration can be accomplished by a variety of means, including, among others: placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received; marking or labeling each individual universal waste item with the date it became a waste or was received; or maintaining an inventory system.

52. Pursuant to 40 C.F.R. § 273.16, a small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste of proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

53. The EPA hereby states and alleges that, based on the information supplied by Respondent, for varying lengths of time between 1985 and 2012, Respondent violated RCRA at eighteen facilities identified in Attachment A by failing to properly store, label, or inventory spent fluorescent lamps and tubes, used lead-acid batteries, and by failing to train employees in proper identification and management of universal waste, in violation of Section 3002 of RCRC, 42 U.S.C. § 6922, and the regulations found at 40 C.F.R. §§ 273.13, 273.14, 273.15, and 273.16.

54. At all times relevant to this Agreement and in the course of conducting normal business operations, Respondent was a "used oil generator" as defined in 40 C.F.R. § 279.1.

55. Pursuant to 40 C.F.R. § 279.1, a "used oil generator" means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation. Used oil generators must maintain oil containers in good condition, properly label used oil and appropriately respond to releases according to the requirements of 40 C.F.R. §§ 279.22 and 279.24.

56. The EPA hereby states and alleges that, based on the information supplied by Respondent, for varying lengths of time between 1985 and 2012, Respondent violated RCRA at fifty-five facilities identified in Attachment A by failing to properly store and label used oil, in violation of Section 3002 of RCRA, 42 U.S.C. § 6922, and the regulations found at 40 C.F.R. §§ 279.22 and 279.24.

EPCRA

57. Respondent is a person as defined in EPCRA Section 329(7), 42 U.S.C. § 11049(7), and is the owner or operator of the facilities as defined in EPCRA Section 329(4), 42 U.S.C. § 11049(4), which are listed in Attachment A and are hereby incorporated by reference.

58. Section 302(c) of EPCRA, 42 U.S.C. § 11002(c), and the regulations found at 40 C.F.R. Part 355, require the owner or operator of a facility at which an extremely hazardous substance is present, at or above stated designated threshold quantities, to notify the State Emergency Response Commission (SERC) that the facility is subject to the requirements of EPCRA.

59. Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), and the implementing regulations found at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678 ("OSH Act"), and regulations promulgated under the OSH Act, to submit the MSDS, or in the alternative, a list of such hazardous chemicals to the appropriate Local Emergency Planning Committee ("LEPC"), the SERC, and to the fire department with jurisdiction over the facility within three months of first becoming subject to EPCRA Section 311 requirements.

60. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the implementing regulations found at 40 C.F.R. Part 370, require the owner or operator of a facility which is required to prepare or have available an MSDS for a hazardous chemical under the OSH Act and regulations promulgated under the OSH Act, to prepare and submit an emergency and hazardous chemical inventory form containing the information required by the regulations at 40 C.F.R. Part 370 to the appropriate LEPC, SERC, and to the fire department with jurisdiction over the facility by March 1, 1998 (or March 1 of the first year after the facility first becomes subject to EPCRA § 312 requirements) and annually

thereafter. The inventory form contains "Tier I" or "Tier II" information, pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. Part 370.

61. The facilities at issue in this Agreement are "facilities" as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66, and subject to Sections 311 and 312 of EPCRA and regulations promulgated thereunder.

62. Sulfuric acid is a "hazardous chemical," as defined in Sections 311(e) and 329(5) of EPCRA, 42 U.S.C. §§ 11021(e) and 11049(5), and 40 C.F.R. § 370.66. Sulfuric acid is also listed, in the appendices to 40 C.F.R. Part 355, as an "extremely hazardous substance" ("EHS"), as defined in 40 C.F.R. § 370.66.

63. As set forth in 40 C.F.R. § 370.10(a)(2), the reporting threshold amount for hazardous chemicals present at a facility at any one time during the preceding calendar year is ten thousand (10,000) pounds. As set forth in 40 C.F.R. § 370.10(a)(1), for extremely hazardous substances (EHS) present at the facility, the reporting threshold is five hundred (500) pounds or the threshold planning quantity (TPQ) as defined in 40 C.F.R. Part 355, whichever is lower. The TPQ for sulfuric acid is one thousand (1,000) pounds. Here, where the reporting threshold is lower than the TPQ, the reporting threshold for sulfuric acid is five hundred (500) pounds.

64. The information supplied by Respondent indicates that, for varying lengths of times from 2007 through 2008, sulfuric acid in excess of the threshold amounts was present at the facilities identified in Attachment A.

65. The EPA hereby states and alleges that, based on the information supplied by Respondent, between 2007 and 2008, Respondent violated EPCRA Section 302(c), 42 U.S.C. § 11002(c), and the regulations found at 40 C.F.R. § 355 when it failed to notify the SERC and the LEPC that it was subject to the requirements of EPCRA for three facilities identified in Attachment A; violated EPCRA Section 311(a), 42 U.S.C. § 11021(a), and the regulations found at 40 C.F.R. Part 370, when it failed to submit an MSDS for a hazardous chemical(s) and an extremely hazardous chemical(s) for three facilities identified in Attachment A, to the LEPC, SERC, and/or fire department with jurisdiction over these facilities; and violated EPCRA Section 312(a) 42 U.S.C. § 11022(a), and the regulations found at 40 C.F.R. Part 370 at three facilities identified in Attachment A, by failing to prepare and submit emergency and chemical inventory forms for the LEPC, the SERC and/or the fire department with jurisdiction over each facility for Reporting Years 2007 and 2008.

V. Civil Penalty

66. EPA agrees, based upon the facts and information submitted by Respondent and upon Respondent's certification herein to the veracity of this information, that Respondent has satisfied all of the conditions set forth in the Audit Policy for the violations described in Attachment A and thereby qualifies for 100% reduction of the gravity component of the civil penalty that otherwise would apply to these violations.

Violations listed in Attachment B do not qualify for 100% gravity component reduction. The gravity component of the civil penalty for the violations listed in Attachment B that do not qualify for the Audit Policy is $22,373.

67. Under the Audit Policy, EPA has discretion to assess a penalty equivalent to the economic benefit Respondent gained as a result of its noncompliance. Based on information provided by Respondent and use of the Economic Benefit (BEN) computer model, for the violations described in Attachments A and B, EPA has determined that Respondent obtained an economic benefit of $54,624 as a result of its noncompliance in this matter. Of this amount, $663 is attributable to CAA violations, $51,390 is attributable to CWA violations, $1,664 is attributable to EPCRA violations, and $907 is attributable to RCRA violations. Pursuant to the Audit Policy, EPA will assess a penalty equivalent to the economic benefit for the violations listed in Attachments A and B.

68. The civil penalty agreed upon by the Parties is $76,997.

VI. Terms of Settlement

69. As further defined in Section VI below, Respondent agrees to pay a civil penalty in the sum of **SEVENTY-SIX THOUSAND NINE HUNDRED NINETY-SEVEN DOLLARS** ($76,997) for the violations alleged herein within thirty (30) calendar days of issuance of the Final Order (*i.e.*, the effective date of this Consent Agreement and attached Final Order) by the Environmental Appeals Board ("EAB"). *See* 40 C.F.R. § 22.31(c).

70. For payment of the civil penalties related to the CAA, CWA (Non-SPCC) and EPCRA violations, Respondent shall pay the amount of **FIFTY-THREE THOUSAND FIFTY-ONE DOLLARS** ($53,051) using one of the following instructions:

A. Via U.S Postal Service regular mail of a certified or cashier's check, made payable to the "United States Treasury," sent to the following address:

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

The check shall indicate that it is for "In re: In the Matter Enel Green Power, North America, Inc. (Docket No HQ-2015-8003)."

B. Via overnight delivery of a certified or cashier's check, made payable to the "United States Treasury," sent to the following address:

United States Environmental Protection Agency
Fines and Penalties

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check shall indicate that it is for "In the Matter of Enel Green Power, North America, Inc. (Docket No HQ-2015-8003)."

The U.S. Bank customer service contact for both regular mail and overnight delivery is Natalie Pearson, who may be reached at 314-418-4087.

C. Via electronic funds transfer (EFT) to the following account:

Federal Reserve Bank of New York
Account Number: 68010727
ABA Number: 021030004
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message shall read "Environmental Protection Agency Enel Green Power, North America, Inc. (Docket No. HQ-2015-8003)."

The Federal Reserve customer service contact may be reached at 212-720-5000.

D. Via automatic clearinghouse (ACH), also known as Remittance Express (REX), to the following account:

US Treasury/Cashlink ACH Receiver
ABA No. 05136706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of the United States Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737

The Finance Center customer service contact may be reached at 301-887-6548.

E. Via on-line payment (from bank account, credit card, debit card):

Website: www.pay.gov
Enter "SFO 1.1" in the search field.
Open the form and complete the required fields (marked with an asterisk).
Under "Type of Payment," choose "Civil Penalty."

Under "Invoice#" type "Enel Green Power, North America, Inc. (Docket No. HQ-2015-8003) " into the "Court # or Bill #" subfield.
Leave the other subfields blank. Under "Installments?" choose "No."
Under "Region," type "HQ."

Payment by check or wire transfer shall bear the case docket number "Enel Green Power North America, Docket No. HQ-2015-8003."

71. For payment of the civil penalty related to the CWA SPCC violations, Respondent shall, within thirty (30) days of the issuance of the Final Order, forward a cashier's or certified check, in the amount of **TWENTY-THREE THOUSAND NINE HUNDRED FORTY-SIX DOLLARS** ($23,946.00) made payable to the "Environmental Protection Agency," and bearing the notation "OSLTF-311" to:

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

The check shall indicate that it is for "In the Matter of Enel Green Power North America, Inc. (Docket No. HQ-2015-8003)."

Alternatively, Respondent shall pay **TWENTY-THREE THOUSAND NINE HUNDRED FORTY-SIX** ($23,946.00) Dollars via wire transfer with a notation of "In the Matter of Enel Green Power North America, Inc. (Docket No. HQ-2015-8003)" to the Federal Reserve Bank of New York using the following instructions:

Federal Reserve Bank of New York
ABA Number: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the wire transfer shall read "Environmental Protection Agency."

72. Respondent shall forward evidence of the checks, wire transfers, and/or internet-based payments to the EPA, within five (5) days of payment, to the attention of:

Peter W. Moore, Esq.
Water Enforcement Division (2243-A)
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
William Jefferson Clinton Building, Room 3150B

Washington, DC 20460 and

Clerk, Environmental Appeals Board
U.S. Environmental Protection Agency
MC 1103B
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

73. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date that the EAB issues the Final Order, if the penalty is not paid by the date required. 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 charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

74. Respondent's obligations under this Agreement shall end when it has paid the civil penalties as required by this Agreement and the Final Order, and complied with its obligations under this section of this Agreement.

75. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to the Final Order. Any attempt by Respondent to deduct any such payments shall constitute a violation of the Agreement.

VII. Severability

76. As part of this Agreement, and in satisfaction of the requirements of the Audit Policy, Respondent has certified to certain facts. The parties agree that if, and to the extent that, the EPA determines that any information or certification provided by Respondent is materially false or inaccurate, the portion of this Agreement pertaining to the affected facilities, including mitigation of the proposed penalty, may be voided or this entire Agreement may be declared null and void at the EPA's election, and the EPA may proceed with an enforcement action.

77. The parties agree that Respondent reserves all of its rights should this Agreement be voided in whole or in part. The parties further agree that Respondent's obligations under this Agreement will cease should this Agreement be rejected by the Environmental Appeals Board (EAB); provided, however, that in the event that the EAB expresses any objections to, or its intent to reject, this Agreement, the parties agree that they shall exercise their mutual best efforts to address and resolve the EAB's objections.

VIII. State and Public Notice

78. The parties acknowledge that the settlement portions of this Agreement which pertain to the CWA violations are, pursuant to CWA Section 311(b)(6)(C)(i), 33 U.S.C. § 3121(b)(6)(C)(i), subject to public notice and comment requirements. Furthermore, the parties acknowledge and agree that the EPA will also provide public notice of the CAA, RCRA and EPCRA portions of this Agreement. Should the EPA receive comments regarding the issuance of the proposed Final Order assessing the civil penalty agreed to in Section V, the EPA shall forward such comments to Respondent within ten (10) days of the receipt of the public comments.

79. This Agreement serves as the Notice of Violation to the Respondent as required by Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). The EPA has notified the State of Nevada that it proposes to resolve potential violations of the CAA Section 110 and the Nevada SIP in a settlement with Respondent, as required by Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1).

80. Respondent has been afforded the opportunity to confer with EPA as provided for by Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4).

81. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. 6928(a)(2), EPA has notified the States of California, Connecticut, Georgia, Idaho, Kansas, Massachusetts, Maine, Minnesota, Oklahoma, New York, North Carolina, Pennsylvania, South Carolina, Vermont, Virginia, Washington, and West Virginia that it proposes to resolve potential violations of RCRA Section 3002, 42 U.S.C. § 6922.

IX. Reservation of Rights and Settlement

82. In accordance with 40 CFR § 22.18(c), this Agreement and Final Order, when issued by the EAB, and upon full payment by Respondent of all civil penalties in accordance with Section VI, shall only resolve Respondent's liability for Federal civil penalties for the violations alleged in this Agreement.

83. Nothing in this Agreement and the Final Order shall be construed to limit the authority of EPA and/or the United States to undertake any action against Respondent, in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. Furthermore, full payment of the penalty shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

XI. Other Matters

84. Each party shall bear its own costs and attorney fees in this matter.

85. The provisions of this Agreement and the Final Order, when issued by the EAB, shall apply to and be binding on the Complainant and Respondent, as well as Respondent's officers (acting in their official capacity), agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement, including the obligation to pay the civil penalty referred to in Section V.

86. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA, CWA, RCRA, and EPCRA, or other federal, state or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit.

87. The undersigned representative of each party to this Agreement certifies that each is duly authorized by the party whom it represents to enter into these terms and bind that party to it.

FOR Complainant:

Rosemarie Kelley

Rosemarie Kelley, Acting Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

10/27/17
Date

FOR Respondent:

10/18/2017

Rafael Gonzalez
President and Chief Executive Officer,
Enel Green Power, North America, Inc.
100 Brickstone Sq., Ste 300
Andover, MA 01810

Date