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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING OFFICE

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the Matter of:)	Docket No. CERCLA- 09-2011-0001
)	
LUZ SOLAR PARTNERS LTD., VI and)	
LUZ SOLAR PARTNERS LTD., VII,)	
)	
Respondent(s).)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 and 22.18
)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent, Luz Solar Partners Ltd., VI and Respondent Luz Solar Partners Ltd., VII (hereinafter, "Respondents"), are limited partnerships organized under the laws of the State of California.
2. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 CFR §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondents violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and its implementing regulations.

B. STATUTORY AND REGULATORY FRAMEWORK

3. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 302.6 require any person in charge of a vessel or an offshore or onshore facility immediately notify the National Response Center ("NRC") as soon as he or she has knowledge of a release of a hazardous substance that exceeds the reportable quantity ("RQ") during a 24-hour period.

C. GENERAL ALLEGATIONS

4. Section 109 of CERCLA, 42 U.S.C. § 9609, authorizes EPA to assess civil penalties for any violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
5. The Administrator of EPA delegated enforcement authority under Section 109 of CERCLA, 42 U.S.C. § 9609, to the Regional Administrators with EPA delegation 14-31, dated May 11, 1994. The Regional Administrator, EPA Region IX, in turn, redelegated that authority to the Director of the Superfund Division, Region IX, with delegation R9 1290.16.
6. Respondents each own a solar energy generation system, located at 41100 Highway 395, Boron, California 93516 (the "Facilities").
7. At all times relevant to this CA/FO, Respondents have been a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
8. The Facilities are an "onshore facility" as defined by Sections 101(18) and 101(9) of CERCLA, 42 U.S.C. §§ 9601(18) and 9601(9).
9. At all times relevant to this CA/FO, Respondents have been in charge of the Facilities.
10. Biphenyl is designated as a "hazardous substance" in Sections 101(14) and 102(a) of CERCLA, 42 U.S.C. §§ 9601(14) and 9602(a), and 40 CFR § 302.4, Table 302.4 and Appendix A to Section 302.4. The RQ for biphenyl is 100 pounds.
11. At all times relevant to this CA/FO, Respondents have been the owner of the Facilities.

D. ALLEGED VIOLATIONS

COUNT 1

(Failure to immediately notify the NRC)

12. Paragraphs 1 through 11 above are incorporated herein by this reference as if they were set forth here in their entirety.
13. On February 27, 2007, approximately 2,300 pounds (lbs) of biphenyl leaked or was emitted into the environment from the Facility.
14. The leaking or emitting of biphenyl from the Facility was a "release" as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

15. Respondent Luz Solar Partners Ltd., VI had actual or constructive knowledge that the release exceeded the RQ at approximately 10:50 AM PST on February 27, 2007.
16. Respondent Luz Solar Partners Ltd., VI notified the NRC of the biphenyl release at approximately 11:42 AM PST on February 27, 2007.
17. Respondent's failure to immediately notify the NRC of the February 27, 2007 release from the Facility is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 302.6.

COUNT 2

(Failure to immediately notify the NRC)

18. Paragraphs 1 through 17 above are incorporated herein by this reference as if they were set forth here in their entirety.
19. On July 16, 2007, approximately 70,000 pounds (lbs) of biphenyl leaked or was emitted into the environment from the Facility.
20. The leaking or emitting of biphenyl from the Facility was a "release" as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
21. Respondent Luz Solar Partners Ltd., VII had actual or constructive knowledge that the release exceeded the RQ at approximately 10:00 AM PST on July 16, 2007.
22. Respondent Luz Solar Partners Ltd., VII notified the NRC of the biphenyl release at approximately 10:58 AM PST on July 16, 2007.
23. Respondent's failure to immediately notify the NRC of the July 16, 2007 release from the Facility is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 302.6.

E. CIVIL PENALTY

24. Section 109(a)(1)(A) of CERCLA, 42 U.S.C. § 9609(a)(1)(A), as adjusted by the Debt Collection Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up to THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500) per day for each day a violation of CERCLA Section 103, 42 U.S.C. § 9603, occurs on or after March 14, 2004. For violations that occur after January 12, 2009, a penalty of up to THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) per day for each day is authorized. *See* Table 1 of 40 CFR § 19.4, 73 Fed. Reg. 75340, 75346 (Dec. 11, 2008).

25. Based on the facts alleged herein and upon all the factors that EPA considers pursuant to the Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act ("EPCRA/CERCLA ERP") including the nature, extent, and gravity of the violations; Respondents' ability to pay, its prior history of violations, its degree of culpability, and any economic benefit; and such other matters as justice may require, EPA proposes that Respondents be assessed a civil penalty of **EIGHTEEN THOUSAND AND FIVE HUNDRED DOLLARS (\$18,500)** for the violations alleged herein.

F. ADMISSIONS AND WAIVERS

26. For purposes of this proceeding, Respondents admit and agree that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondents pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 CFR §§ 22.4 and 22.39. Further, for the purposes of this proceeding, Respondents admit to the general allegations of facts and law set forth in Sections B and C of this CA/FO. Respondents consent to and agree not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO or to enforce its terms. Further, Respondents will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
27. Respondents neither admit nor deny any allegations of fact or law set forth in Section D of this CA/FO. Respondents hereby waive any rights Respondents may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondents hereby waive any rights Respondents may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

28. This CA/FO shall apply to and be binding upon Respondents and their agents, successors, and assigns and upon all persons acting under or for Respondents until such time as the civil penalty required under Section E has been paid in accordance with Section I, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute a release and full settlement of the civil penalty claims for the violations alleged herein.

29. No change in ownership or corporate, partnership, or legal status relating to the Facilities will in any way alter Respondents' obligations and responsibilities under this CA/FO.
30. Until termination of this CA/FO, Respondents shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facilities and shall notify EPA within seven (7) days prior to such transfer.
31. The undersigned representative of Respondents hereby certifies that he or she is fully authorized by Respondents to enter into this CA/FO and to execute and legally bind Respondents to it.

H. CERTIFICATION OF COMPLIANCE

32. Upon signing this CA/FO, Respondents certify to EPA that, to the best of their knowledge, Respondents have fully complied with the requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that formed the basis for the violation alleged in Section D above.
33. The signatory for Respondents certifies under penalty of law that this certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

I. PAYMENT OF CIVIL PENALTY

34. Respondents hereby consent to the assessment of and agrees to pay a civil penalty of **EIGHTEEN THOUSAND AND FIVE HUNDRED DOLLARS (\$18,500)** in settlement of the civil penalty claims for the violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), set forth in Section D of this CA/FO.
35. Respondents shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.
36. All payments shall indicate the name of the Facilities, Respondents' names and address, and the EPA docket number of this action. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States." The check shall be accompanied by a cover letter stating that payment is being made pursuant to this CA/FO and sent as follows:

Regular Mail
US Environmental Protection Agency
U.S. EPA Fines & Penalties

Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

UPS, FedEx, or Overnight Mail
U.S. Bank
Government Lockbox 979076
U.S. EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers: Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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"

ACH (also known as REX or remittance express): Automated Clearinghouse (ACH) for receiving US currency

5700 Rivertech Ct.
Riverdale, MD 20737
Contact – John Schmid (202-874-7026)
ABA = 051036706
CTX Transaction Code 22 – checking
Account 31006, Environmental Protection Agency

On Line Payment: This payment option can be accessed at:

<https://www.pay.gov/paygov>

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondents' names, the case title, and docket number, to:

Luz Solar Partners Ltd., VI and
Luz Solar Partners Ltd., VII
Consent Agreement and Final Order

Travis Cain
Emergency Prevention & Preparedness Section (SFD-9-3)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

and

Bryan Goodwin
Regional Hearing Clerk (ORC-1)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

37. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the effective date of this CA/FO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the effective date of this CA/FO at the current rate published by the United States Treasury as described at 40 CFR §13.11(a). Additionally, administrative costs for collecting the overdue debt will be assessed monthly and a monthly penalty charge will be assessed at a rate of 6% per annum on any principal amount not paid within ninety (90) calendar days of the due date. See 40 CFR §13.11(b) and (c). Furthermore, Respondent will be liable for stipulated penalties as set forth below for any payment not received by its due date.
38. The civil penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

J. DELAY IN PERFORMANCE/STIPULATED PENALTIES

39. In the event Respondents fail to meet any requirement set forth in this CA/FO, Respondents shall pay stipulated penalties as set forth below. Compliance by Respondents shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.
40. In addition to the interest and per annum penalties described in Paragraph 37, in the event that Respondents fail to pay the full amount of the penalty within the time specified in Section I, Respondents agree to pay EPA a stipulated penalty in the amount of up to FIVE THOUSAND DOLLARS (\$5,000) for each day the default continues.
41. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day until performance is complete. Respondents shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA

for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Paragraph 36 of this CA/FO.

42. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 CFR §13.11. EPA reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this Agreement or with CERCLA and its implementing regulations.
43. The payment of stipulated penalties specified in this Section shall not be deducted by Respondents or any other person or entity for federal, state, or local taxation purposes.
44. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

K. RESERVATION RIGHTS

45. EPA expressly reserves all rights and defenses that it may have.
46. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondents perform legally required tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.
47. This CA/FO shall not be construed as a covenant not to sue, a release, waiver or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under CERCLA, EPCRA, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.
48. This CA/FO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, tribal, state, or local law. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondents of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state, or local permit.
49. The entry of this CA/FO and Respondents' consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted, except as they relate to Respondents' liability for federal civil penalties for the specific alleged violations and facts as set forth in Section D of this

CA/FO. Full payment of the penalty shall resolve Respondents' liability for the violations and facts alleged herein.

L. OTHER CLAIMS

50. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

M. MISCELLANEOUS

51. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondents.

52. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

53. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

N. EFFECTIVE DATE

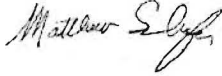
54. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

IT IS SO AGREED.

Luz Solar Partners Ltd., VI, a California limited partnership

By: FPL Energy SEGS III-VII GP, LLC
its Managing Partner

July 27, 2011



Date

Matthew Schafer
Title: Vice President

Luz Solar Partners Ltd., VII, a California limited partnership

By: FPL Energy SEGS III-VII GP, LLC
its Managing Partner

July 27, 2011



Date

Matthew Schafer
Title: Vice President

9-6-2011



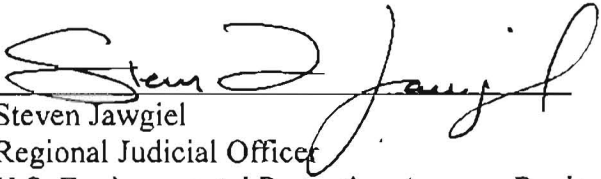
Date

Jane Diamond, Director
Superfund Division
U.S. Environmental Protection Agency, Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. CERCLA-09-2011- ~~000~~1) be entered, and that Respondent pay a civil penalty in the amount of **EIGHTEEN THOUSAND AND FIVE HUNDRED DOLLARS (\$18,500)**.

09/11/11
Date


Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Expedited Settlement Agreement against **Luz Solar Partners, (Docket #: CERCLA-09-2011-0001)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

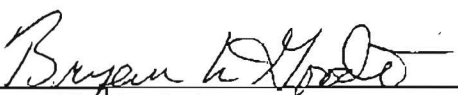
A copy was mailed via CERTIFIED MAIL to:

Matthew Schafer
Vice President
Luz Solar Partners
700 Universe Boulevard
Juno Beach, FL 33408-2657

CERTIFIED MAIL NUMBER: 7008-1830-0002-6279-4021

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Michael Hingerty, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

Date 9/12/11



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL NO.: 7008 1830 0002 6279 4021
RETURN RECEIPT REQUESTED
In Reply Refer to: Luz Solar Partners

SEP 12 2011

Matthew Schafer, Vice President
Luz Solar Partners, Ltd., VI and Luz Solar Partners, Ltd., VII
700 Universe Boulevard
Juno Beach, Florida 33408-2657

Re: In the Matter of Luz Solar Partners, Ltd., VI and Luz Solar Partners, Ltd., VII

Dear Mr. Schafer:

Please find enclosed the fully executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX (EPA), and Luz Solar Partners Ltd., VI and Luz Solar Partners Ltd., VII ("Luz Solar").

This CA/FO simultaneously commences and concludes the above-referenced proceeding concerning the outstanding Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) compliance matters between Luz Solar and EPA as alleged in the CA/FO.

Luz Solar's prompt payment of the civil penalty assessed and completion of all tasks required by this CA/FO will close this case. If you have any questions regarding the CERCLA requirements and regulations governing operations at Luz Solar, or which concern the proceedings terminated by the enclosed documents, please contact Erica Maharg at (415) 972-3943.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Diamond".

For Jane Diamond
Director
Superfund Division

Enclosures

