

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

February 26, 2008

Niagara Generation LLC
5300 Frontier Avenue
Niagara Falls, NY 14304
Attn: Peter Quirk, Plant Manager

John Hanlon
Niagara Generation LLC
c/o PurEnergy
1732 West Genessee Street
Syracuse, New York 13204

RE: In the Matter of Niagara Generation LLC
Docket No. CAA-02-2007-1224

Dear Sirs,

Enclosed please find a fully executed copy of the Consent Agreement and Final Order ("CAFO") in this matter which was executed by the Regional Administrator on February 15, 2008.

Under the terms of paragraph 8 of the CAFO, payment must be made on or before 30 days from the date of Regional Administrator's signature, which is the date of signature of the Final Order.

If you have any questions regarding this matter, please contact me at (212) 637-3177.

Sincerely yours,

Carol Y. Berns
Assistant Regional Counsel
Office of Regional Counsel

Enclosure

cc: Karen Maples, Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG II

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7000 FEB 25 PM 3:24)
In the Matter of:)

Docket No. CAA-02-2007-1224

REGIONAL HEARING)
CLERK)

NIAGARA GENERATION, LLC.)
5300 Frontier Avenue)
Niagara Falls, New York,)

CONSENT AGREEMENT AND
FINAL ORDER

) Under Section 113(d) of the Clean Air Act,
) 42 U.S.C. § 7413(d)

) Respondent.)
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I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency ("EPA"), Region 2, and Respondent, Niagara Generation, LLC by their undersigned representatives, hereby consent and agree as follows:

1. EPA initiated this proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), by issuing an Administrative Complaint, Docket No. CAA-02-2007-1224 (the "Complaint"), against Respondent on September 28, 2007 based on findings made by EPA as a result of an inspection conducted at the Facility (as hereinafter defined) on or about December 4, 2006.
2. Respondent is the owner and/or operator of a facility located at 5300 Frontier Avenue, Niagara Falls, New York (the "Facility").
3. The Complaint charged Respondent with one count for violations of Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder at 40 C.F.R. Part 68, for failure to fully comply with the requirements for a risk management plan at the Facility.
4. Respondent hereby certifies that it is now in compliance with all relevant requirements of Section 112(r) of the Clean Air Act with respect to its Facility.
5. Respondent admits the jurisdictional allegations set forth in the Complaint.
6. Pursuant to Section 113(d) of the Clean Air Act, and taking into consideration the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is fifteen thousand dollars (\$15,000.00).

7. Respondent consents to the issuance of this Consent Agreement and Final Order hereinafter recited and consents for the purposes of settlement to the assessment of the civil penalty cited in the foregoing paragraph.
8. Respondent agrees to pay fifteen thousand dollars (\$15,000.00) as a civil penalty for the count alleged in the Complaint and set forth in paragraph 3, above, by cashier's or certified check payable to the "Treasurer, United States of America." The check shall be identified with a notation of the name and docket number of this case (set forth in the caption on the first page of this document) and shall be sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

A copy of each check and the transmittal letter shall be sent to each of the following:

Carol Y. Berns
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007.

Respondent agrees to make such payment on or before thirty (30) calendar days after the date of signature of the Final Order at the end of this document (hereinafter referred to as the "due date").

- a) Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for appropriate enforcement, including collection of the amount set forth in this Paragraph, plus allowable interest and such other penalties as provided for in this Consent Agreement.
- b) Further, if payment is not received on or before the due date, Respondent agrees to the assessment of interest, at the annual rate established by the

Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, Respondent agrees to pay a late payment handling charge of \$15 for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.

- c) Respondent also agrees to pay a quarterly non-payment fee for each calendar quarter during which such nonpayment persists, pursuant to Section 113(d)(5) of the Clean Air Act, 42 U.S.C. § 7413(d)(5). This quarterly non-payment penalty will be imposed for each calendar quarter during which such non-payment persists. The quarterly nonpayment penalty is 10% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter.

- 9. The penalty specified in Paragraph 8, above, shall represent a civil penalty assessed by EPA and shall not be deductible for purposes of State or Federal taxes.

II. GENERAL PROVISIONS

- 10. Respondent neither admits nor denies the factual allegations contained in paragraphs 1,2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 18, 19, 21, 23, 27, and 28 of the Complaint. Respondent waives any right to contest the allegations contained in the Complaint and/or to appeal the Final Order accompanying this Consent Agreement.
- 11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with the Regional Administrator or Deputy Regional Administrator of EPA Region II, and further waives the right to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or Deputy Regional Administrator, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
- 12. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, State, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit. Nothing in this Consent Agreement and Final Order is intended to nor shall it be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

13. Each party to this action shall bear its own costs and attorney fees.
14. Full and complete satisfaction of the requirements of this Consent Agreement and Final Order shall resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint.
15. The person signing below on behalf of Respondent hereby certifies that he or she is fully authorized by Respondent to execute this Consent Agreement on behalf of Respondent and to legally bind Respondent to this Consent Agreement in accordance with all of the terms and conditions contained herein.
16. The Director of the Emergency and Remedial Response Division of EPA Region 2 has been delegated the authority to sign the Consent Agreement in this action, and the Regional Administrator of EPA Region 2 has been delegated the authority to sign the Final Order in this action.
17. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

In the Matter of Niagara Generation LLC., Docket No. CAA-02-2007-1224

For Respondent
Niagara Generation, LLC.

Scott Gardner
Signature

Date: 1-29-08

Scott Gardner
Name (Printed or Typed)

Manager, USRG Niagara Biomass, LLC, sole member of Niagara Generation, LLC
Title (Printed or Typed)

In the Matter of Niagara Generation LLC., Docket No. CAA-02-2007-1224

For Complainant
U.S. Environmental Protection Agency:



George Pavlou, Director
Emergency and Remedial Response
Division, Region 2

Date: 2/5/08

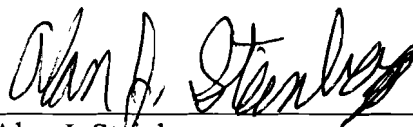
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FINAL ORDER

The Regional Administrator of the U.S. EPA, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by and between the parties is hereby approved, incorporated herein, and issued, as a Final Order.

2-15-08

DATE



Alan J. Steinberg
Regional Administrator
U.S. EPA, Region 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

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In the Matter of:)	Docket No. CAA-02-2007-1224
)	
)	<u>CONSENT AGREEMENT AND</u>
)	<u>FINAL ORDER</u>
NIAGARA GENERATION LLC.)	
5300 Frontier Avenue)	
Niagara Falls, New York,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
-----x)	

CERTIFICATION OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, has been sent this day in the following manner to the addressees listed below:

Original and One Copy by hand delivery to:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by certified mail to:

Niagara Generation LLC
5300 Frontier Avenue
Niagara Falls, NY 14304
Attn: Peter Quirk, Plant Manager

John Hanlon
Niagara Generation LLC
c/o PurEnergy
1732 West Genesee Street
Syracuse, New York 13204

Date: February 26, 2008

Name: Carol Berns

Title: Assistant Regional Counsel

Address: Office of Regional Counsel
USEPA Region 2
290 Broadway
New York, NY 10007-1866