UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF	)	
	)	**CONSENT AGREEMENT**
	)	**AND FINAL ORDER**
Mt. Tom Generating Company, LLC	)	
Route 5, Smith's Ferry	)	**Docket No. CWA 01-2010-0059**
Holyoke, Massachusetts 01040	)	
	)	
Respondent.	)	
	)	

This Consent Agreement and Final Order ("CAFO") is issued under the authority granted to the U.S. Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," at 40 C.F.R. Part 22 ("Part 22 Rules").

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding against the Respondent pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative Complaint against Respondent, Docket No. CWA-01-2010-0059 (the "Complaint"), on September 30, 2010.
2. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference. Respondent's legal position regarding the Complaint is set forth in its Answer to the Complaint.

3. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the Commonwealth of Massachusetts has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty for CWA violations against Respondent.

4. Section 309(g)(4)(A) of the CWA, 33 U.S.C. 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA has satisfied this requirement by providing public notice of, and reasonable opportunity to comment on, the proposed penalty from October 4, 2010 through November 3, 2010. EPA received no comments on the proposed penalty during the public comment period.

II. CONSENT AGREEMENT

5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.

6. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the facts and violations alleged in the Complaint, consents to the terms of this CAFO.

III. WAIVER OF RIGHTS

7. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint, and consents to the issuance of the Final Order included with this Consent Agreement without further adjudication.

IV. PENALTY

8. Based upon the statutory penalty factors at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has determined that an appropriate civil penalty to settle this action is in the amount of forty thousand eight-hundred and fourteen dollars ($40,814.00).

V. PAYMENT TERMS

9. Respondent shall pay the civil penalty set forth in Paragraph 8 of this CAFO no later than 30 calendar days after this CAFO is final.

10. Respondent shall make payment by depositing in the United States mail a cashier's or certified check, payable to the order of "Treasurer, United States of America" and referencing the title and docket number of the action ("In the Matter of Mt. Tom Generating Company, LLC, CWA-01-2010-0059") to:

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

11. Respondent shall simultaneously submit copies of the penalty payment check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, MA 02109-3912

and

Kathleen E. Woodward
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code OES4-2
Boston, MA 02109-3912

VI. General Provisions

12. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), a failure by Respondent to pay the penalty assessed by this CAFO in full by the payment due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date the penalty was due pursuant to Paragraph 9 of this CAFO. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(d), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which

are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

13. The penalty specified in Paragraph 8 above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

14. The provisions of this CAFO shall be binding upon Respondent and its successors or assigns.

15. Except as described in Paragraph 12 above, each party shall bear its own costs and attorneys fees in this proceeding.

16. Issuance of this CAFO constitutes a full and complete settlement by EPA of all claims for judicial and administrative civil penalties pursuant to Sections 309(d) and (g) of the CWA, 33 U.S.C. §§ 1319(d) and (g), for all past violations of the CWA alleged in the Complaint referenced in Paragraph 1.

17. This CAFO shall not limit the authority of the United States to enforce the underlying substantive legal requirements of this administrative penalty assessment, whether administratively or judicially, pursuant to Sections 309(a), (b), and (c) of the Act, 33 U.S.C. §§ 1319(a), (b), and (c), or Section 504 of the Act, 33 U.S.C. § 1364.

18. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated or permits issued thereunder.

19. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and legally bind Respondent.

STIPULATED AND AGREED:

For RESPONDENT MT. TOM GENERATING COMPANY, LLC

Date: 01-05-11

Terry Munroe
Vice President
Mt. Tom Generating Company, LLC

For U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 01/11/11

Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

FINAL ORDER

20. The forgoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the Consent Agreement which will become final 30 days from the date it is signed by the Regional Judicial Officer.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Jill T. Metcalf

Jill Metcalf
Acting Regional Judicial Officer
U.S. EPA, Region 1

Date: January 18, 2011