UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of: **EES Coke Battery, LLC** **1400 Zug Island Road** **River Rouge, Michigan,** **Respondent.**	)))))))))	**CWA SECTION 311 CLASS II** **CONSENT AGREEMENT** **AND FINAL ORDER** **Docket No.** **CWA-05-2017-0011**

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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(B)(ii) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency, Region 5.

3. Respondent is EES Coke Battery, LLC, ("Respondent"), a corporation doing business in River Rouge, Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and legal conclusions in this CAFO.

8. Respondent waives its right to request a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, its right to appeal this CAFO, and consents to the issuance of this CAFO without further adjudication or proceeding.

Statutory and Regulatory Background

9. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil…from onshore…facilities, and to contain such discharges ...."

10. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to the EPA his authority under Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), to issue the regulations referenced in the preceding paragraph for non-transportation-related onshore facilities.

11. EPA subsequently promulgated regulations, codified at 40 C.F.R. Part 112, Subparts A, B, C, and D, also known as the Spill Prevention, Control, and Countermeasure

(SPCC) and Facility Response Plan (FRP) regulations, pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq*.

12. The regulation at 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility prepare and implement a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable sections of 40 C.F.R. Part 112.

13. 40 C.F.R. § 112.7(a)(1) requires the owner or operator of a facility subject to 40 C.F.R. Part 112 to include in their Plan a discussion of its facility's conformance with the requirements listed in 40 C.F.R. Part 112.

14. The regulation at 40 C.F.R. § 112.8 requires that the owner or operator of an SPCC-regulated facility meet the specific discharge prevention and containment procedures listed in that section.

15. 40 C.F.R. § 112.20(a)(1) requires the owner or operator of a facility subject to 40 C.F.R. Part 112, Subpart D, that was in operation on or before February 18, 1993, to prepare and submit a facility response plan no later than February 18, 1995, that satisfies the requirements of Section 311(j)(5) of the Act, 33 U.S.C. § 1321(j)(5).

16. Specific regulatory requirements applicable to the Facility are set forth in more detail below.

17. Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and the regulation at 40 C.F.R. § 19.4, authorize EPA to assess a civil penalty for violations of the SPCC and FRP regulations promulgated pursuant to Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), of up to $16,000 in civil penalties may be assessed per day for violations that occurred after December 6, 2013, , up to a maximum of $187,500; and $18,107 in civil penalties per day for violations occurring after November 2, 2015, up to a maximum of $226,338.

Factual Allegations and Alleged Violation

18. Respondent is a corporation with a place of business located at 1400 Zug Island Road, River Rouge, Michigan. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

19. Respondent is the owner and operator, within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of an onshore bulk oil storage facility located on the Respondent's place of business ("the Facility").

20. Operations commenced at the Facility in, or about, 1992.

21. At the Facility, Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products.

22. The Facility has an aggregate above ground oil storage capacity over 1,320 gallons in containers, each with a shell capacity of at least 55 gallons.

23. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference into 40 C.F.R. § 112.2.

24. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

25. The Facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity, and is therefore subject to the SPCC regulations at 40 C.F.R. Part 112, Subparts A and B.

26. The Facility is a non-transportation-related onshore facility which has above-ground storage capacity greater than one million gallons and is located at a distance such that a discharge from the Facility could cause injury to fish, wildlife and sensitive environments, as

defined in 40 C.F.R. § 112.2.

27. Oil from the Facility, in the event of a discharge, could reasonably be expected to flow to the River Rouge and Detroit River.

28. The River Rouge and Detroit River are navigable waters of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

29. Downstream of the Facility, there are parks, the Detroit International Wildlife Refuge, drinking water intakes, and other sensitive environments.

30. The Facility is subject to the FRP regulations at 40 C.F.R. Part 112, Subpart D.

31. The regulation at C.F.R. § 112.20 requires facilities subject to 40 C.F.R. Part 112, Subpart D, to prepare and submit a FRP.

32. The regulation at 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility prepare and implement a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.

33. On March 23 and 24, 2015, EPA inspected the Facility, and conducted an evaluation of the Facility's Integrated Contingency Plan (ICP), which contained the Facility's SPCC Plan and FRP, last revised in April 2014. At that time, the Facility had not submitted the Facility's ICP to EPA. On November 23, 2015, EPA issued a Notice of Violation to Respondent alleging violations of certain SPCC and FRP regulations (the NOV).

34. The regulation at 40 C.F.R. § 112.5(a) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to amend the facility's SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge. At the time of the inspection, EES had not amended the Facility's ICP within six

months of removing the Facility's phenol plant in June 2010, in violation of 40 C.F.R. § 112.5(a).

35. The regulation at 40 C.F.R. § 112.5(b) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to complete a review and evaluation of the SPCC Plan at least once every five years, and to amend the SPCC Plan and implement any changes identified by that review and evaluation within six months. At the time of the inspection, EES had conducted an inadequate review and evaluation of the Facility's ICP by failing to amend the ICP to reflect changes to the Facility, such as the removal of the phenol plant; by failing to address the lack of adequate secondary containment for the Facility's loading racks; and by failing to amend the Facility's ICP to conform to the Part 112 regulations, such as those dealing with integrity testing, during the completion of the last five year review period, in violation of 40 C.F.R. § 112.5(b).

36. The regulation at 40 C.F.R. § 112.7 requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to provide a cross-reference listing the location of the discussion of a facility's compliance with various requirements if a SPCC Plan does not follow the sequence specified in the regulation. The Facility's ICP directed the reader to locations within the document where information is not present or available, in violation of 40 C.F.R. § 112.7.

37. The regulation at 40 C.F.R. § 112.7(a)(1) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare a SPCC Plan that includes a discussion of the facility's conformance with each of the requirements listed in Part 112. The Facility's ICP did not include all applicable rule requirements, such as those pertaining to mobile or portable containers, oil-filled equipment, loading racks, integrity testing, among other requirements, in violation of 40 C.F.R. § 112.7(a)(1).

38. The regulation at 40 C.F.R. § 112.7(a)(3) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare a SPCC Plan that describes the physical layout of the facility and includes a diagram that identifies the location and contents of all regulated fixed oil storage containers, storage areas where mobile or portable containers are located, transfer stations, and connecting pipes. The Facility's ICP did not fully describe the physical layout of the Facility, nor include a diagram, that identifies the location and contents of all storage areas for mobile or portable containers or transfer areas, in violation of 40 C.F.R § 112.7(a)(3).

39. The regulation at 40 C.F.R. § 112.7(a)(3)(i) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare a SPCC Plan that addresses the type of oil and storage capacity of each fixed container; the type of oil and storage capacity for each mobile or portable container or an estimate of their potential number, the types of oil, and anticipated storage capacities. The Facility's ICP did not address the type of oil and storage capacity for each mobile or portable container at the Facility, or an estimate of their potential number, the types of oil, and anticipated storage capacities, in violation of 40 C.F.R § 112.7(a)(3)(i).

40. The regulation at 40 C.F.R. § 112.7(a)(3)(iii) requires the SPCC Plan to address discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge. The Facility's ICP did not address the discharge or drainage controls, equipment, and procedures for the control of a discharge, in violation of 40 C.F.R § 112.7(a)(3)(iii).

41. The regulation at 40 C.F.R § 112.7(a)(3)(iv) requires that the SPCC Plan address countermeasures for discharge discovery, response and cleanup available from both the facility and its contractors. The Facility's ICP did not address countermeasures for discharge discovery, response, and cleanup, in violation of 40 C.F.R. § 112.7(a)(3)(iv) and 40 C.F.R. § 112.7(a)(1).

42. The regulation at 40 C.F.R. § 112.7(b) provides that where experience indicates a reasonable potential for equipment failure, the SPCC Plan must include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure. The Facility's ICP did not include an adequate prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the Facility as a result of each type of major equipment failure, nor the presence and use of underground sewers at the site, in violation of 40 C.F.R. § 112.7(b).

43. The regulation at 40 C.F.R. § 112.7(c)(1) requires that appropriate containment, diversionary structures, or equipment be provided to prevent a discharge as described in § 112.1(b). The Facility's ICP did not describe in sufficient detail the secondary containment available for the Facility's tanks, mobile/portable containers, oil-filled operational equipment, oil-filled manufacturing equipment, or transfer areas. Also, containment calculations provided by EES showed that the Light Oil Loading/Unloading and Tar Railcar Loading racks at the Facility did not have sufficient sized containment. These are violations of 40 C.F.R. § 112.7(c)(1) and 40 C.F.R. § 112.7(a)(1).

44. The regulation at 40 C.F.R. § 112.7(e) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to conduct inspections and tests required by the Part according to written procedures, that records of inspections or tests are signed by a supervisor or inspector, and that records of these inspections and tests are maintained for a period of three years. The Facility's ICP did not discuss its conformance with this part of the regulation. Also, during the inspection, records pertaining to 40 C.F.R. § 112.7(h)(3) and 40 C.F.R. § 112.8(c)(6) were not being maintained at the Facility, in violation of 40 C.F.R. § 112.7(e) and 40 C.F.R. § 112.7(a)(1).

45. The regulation at 40 C.F.R. § 112.7(f)(1) requires owners or operators to train oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules and regulations; general facility operations; and the contents of the facility SPCC Plan. The Facility's ICP did not state that training for oil-handling personnel covers each of the items listed in the regulation, in violation of 40 C.F.R. § 112.7(f)(1) and 40 C.F.R. § 112.7(a)(1).

46. The regulation at 40 C.F.R. § 112.8(c)(4) requires that the owner or operator of an onshore facility protect any completely buried metallic storage tank installed on or after January 10, 1974, from corrosion and regularly perform leak tests. The Facility's SPCC Plan did not address these requirements concerning its underground storage tank, in violation of 40 C.F.R. § 112.8(c)(4) and 40 C.F.R. § 112.8(a).

47. The regulation at 40 C.F.R. § 112.7(f)(2) requires owners or operators to train oil-handling personnel in the operation and maintenance of equipment to designate a person at each facility who is accountable for discharge prevention and who reports to facility management. The Facility's ICP did not identify a person who was accountable for discharge prevention, in violation of 40 C.F.R. § 112.7(f)(2) and 40 C.F.R. § 112.7(a)(1).

48. The regulation at 40 C.F.R. § 112.7(f)(3) requires owners or operators to schedule and conduct discharge prevention briefings for their oil-handling personnel at least once a year. Such briefings must highlight and describe failures, malfunctioning components, and any recently developed precautionary measures. The Facility's ICP and training records did not state that discharge prevention briefings highlight and describe failures, malfunctioning components, and any recently developed precautionary measures, in violation of 40 C.F.R. § 112.7(f)(3) and 40 C.F.R. § 112.7(a)(1).

49. The regulation at 40 C.F.R. § 112.7(h)(1) requires owners or operators of facilities with tank car and tank truck loading/unloading racks use a quick drainage system for racks where rack drainage does not flow into a catchment basin or treatment facility designed to handle discharges, and that any containment system be designed to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility. The Facility's ICP did not address items related to this portion of the regulation. Also, containment calculations provided by EES show that the Facility's Light Oil Loading/Unloading and Tar Railcar Loading racks did not have sufficient sized containment to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the Facility. These are violations of 40 C.F.R. § 112.7(h)(1) and 40 C.F.R. § 112.7(a)(1).

50. The regulation at 40 C.F.R. § 112.7(h)(3) requires owners or operators of facilities with tank car and tank truck loading/unloading racks inspect the lowermost drain and all outlets of such vehicles prior to filling and departure of any tank car or tank truck, that, and if necessary, tightened, adjusted, or replaced to prevent liquid discharge while in transit. The Facility's ICP did not describe how the Facility conducts such inspections, in violation of 40 C.F.R. § 112.7(h)(3) and 40 C.F.R. § 112.7(a)(1).

51. The regulation at 40 C.F.R. § 112.7(i) requires owners or operators of facilities with field-constructed aboveground containers conduct a brittle fracture evaluation of such containers after a tank repair, alteration, reconstruction or change in service that might affect the risk of a discharge or after a discharge/failure due to brittle fracture or other catastrophe. The Facility's ICP did not address this portion of the regulation, in violation of 40 C.F.R. § 112.7(i) and 40 C.F.R. § 112.7(a)(1).

52. The regulation at 40 C.F.R. § 112.7(k) requires the owner or operators of facilities with oil-filled operational equipment provide secondary containment for this equipment pursuant to § 112.7(c), or undertake the alternate requirements of paragraph § 112.7(k)(2), if qualified. The Facility's ICP did not address the Facility's conformance with either method of compliance for its oil-filled operational equipment, in violation of 40 C.F.R. § 112.7(k) and 40 C.F.R. § 112.7(a)(1).

53. The regulation at 40 C.F.R. § 112.8(a) requires owners or operators of facilities subject to 40 C.F.R. Part 112 to meet the general requirements for the Plan listed under 40 C.F.R. § 112.7, including the requirement that SPCC Plans document a facility's conformance with each applicable portion of the SPCC regulations.

54. The regulation at 40 C.F.R. § 112.8(c)(1) requires the owner or operator of an onshore facility to not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature. The Facility's ICP did not address this part of the regulation, in violation of 40 C.F.R. § 112.8(c)(2) and 40 C.F.R. § 112.8(a).

55. The regulation at 40 C.F.R. § 112.8(c)(2) requires the owner or operator of an onshore facility to construct all bulk storage tank installations so that a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard for precipitation are provided, and that diked areas are sufficiently impervious to contain discharged oil. The Facility's ICP did not state that secondary containment for all oil containing bulk storage tanks in use at the Facility are sufficiently impervious to contain discharged oil, in violation of 40 C.F.R. § 112.8(c)(2) and 40 C.F.R. § 112.8(a).

56. The regulation at 40 C.F.R. § 112.8(c)(6) requires, among other things, that the owner or operator of an onshore facility test each aboveground container for integrity on a regular schedule, and whenever material repairs are made. The SPCC Plan must include: the appropriate qualifications for personnel performing tests and inspections; the frequency and type of testing and inspections, which take into account container size, configuration, and design; as well as the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. EES did not test each aboveground container at the Facility for integrity on a regular schedule. The Facility's ICP did not address all of the required information related to integrity testing, nor provide a schedule for the inspection of each tank at the Facility. These are violations of 40 C.F.R. § 112.8(c)(6) and 40 C.F.R. § 112.8(a).

57. The regulation at 40 C.F.R. § 112.8(c)(8) requires that the owner or operator of an onshore facility provide each container with one of several options for monitoring liquid levels, and regularly test liquid level sensing devices to ensure proper operation. The Facility's ICP did not provide information on how liquid level sensors are tested, in violation of 40 C.F.R § 112.8(c)(8) and 40 C.F.R. § 112.8(a).

58. The regulation at 40 C.F.R. § 112.8(c)(11) requires the owner or operator of an onshore facility with mobile or portable oil storage containers to position or locate those containers to prevent a discharge, and have sufficient secondary containment. The Facility's ICP did not address this portion of the regulation, in violation of 40 C.F.R § 112.8(c)(11) and 40 C.F.R. § 112.8(a).

59. The regulation at 40 C.F.R. § 112.8(d)(1-5) requires the owner or operator of an onshore facility conducting transfer operations, pumping, and piping to undertake several tasks related to buried piping, terminal connections, pipe supports, aboveground valves, piping, and

appurtenances; and warning vehicles of aboveground piping. The Facility's ICP did not address this portion of the regulation, in violation of 40 C.F.R § 112.8(d)(1-5) and 40 C.F.R. § 112.8(a).

60. The regulation at 40 C.F.R. § 112.20(a)(1) requires the owner or operators of facilities subject to 40 C.F.R. Part 112, Subpart D, that were in operation on or before February 18, 1993 prepare and submit a FRP no later than February 18, 1995 that is in compliance with 40 C.F.R. Part 112. According to EES, the Facility began operations in November of 1992, with EES taking ownership in 2008. At the time of the inspection, no records could be located indicating that EES had submitted its ICP to EPA, nor could EES later produce records that it had submitted its ICP to EPA, in violation of 40 C.F.R. § 112.20(a)(1).

61. As alleged in the preceding paragraphs, and pursuant to Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, within the relevant time period, Respondent is liable for civil penalties of up to $16,000 per day, up to a maximum of $187,500, for violations occurring after December 6, 2013; and $18,107 in civil penalties per day for violations occurring after November 2, 2015, up to a maximum of $226,338.

Civil Penalty

62. Based on an analysis of the factors set forth in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), and in the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, taking into account the facts of this case and information submitted by Respondent, including steps that Respondent has taken to achieve compliance and agreed to undertake in a corresponding Administrative Order on Consent to resolve the alleged violations, Complainant has determined that an appropriate civil penalty to settle this action is $165,000. Respondent agrees to pay this amount as a civil penalty.

63. Within 30 days after the effective date of this CAFO, Respondent shall pay the $165,000 by cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311" and the docket number of this case. If the Respondent sends payment by check, the payment shall be addressed to:

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

If paying by EFT Respondent shall transfer $165,000 to:

Federal Reserve Bank of NY
ABA 021030004
Account 68010727
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the EFT message shall read "D 68010727 Environmental Protection Agency."

64. This civil penalty is not deductible for federal tax purposes.

65. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following persons:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Joseph Ulfig, P.E. (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert H. Smith
Associate Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

66. Failure by Respondent to timely pay this civil penalty may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

67. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: smith.roberth@epa.gov (for Complainant), and fracasst@pepperlaw.com (Counsel for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

68. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO and the NOV.

69. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law not alleged in this CAFO or in the NOV.

70. This CAFO does not affect Respondent's responsibility to comply with the SPCC and FRP Rules of 40 C.F.R. Part 112, and other applicable federal, state and local laws.

71. Respondent has agreed in a corresponding Administrative Order on Consent to take steps to resolve the alleged violations of the regulations cited above.

72. Respondent certifies that it has addressed the violations alleged in the NOV (except to the extent it is currently addressing those violations by implementing the schedule of work in Administrative Order on Consent CWA-1321-5-17-001), has revised the facility's SPCC Plan, has prepared and submitted an FRP for the Facility to EPA, and is working towards compliance with Section 311 of the Act, 33 U.S.C. § 1321, and it's implementing regulations, by implementing the schedule of work in Administrative Order on Consent CWA-1321-5-17-001.

73. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and the August 1998 CWA Penalty Policy.

74. The CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

75. The CAFO does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

76. If Respondent fails to comply with this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of the EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and/or seek an additional penalty for non-compliance with the CAFO.

77. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

78. EPA has provided a 30 day opportunity for public notice and comment on this proposed CAFO pursuant to Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b).

79. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw this CAFO within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the CAFO on the basis of material evidence not considered.

80. The undersigned representative of each Party to this CAFO certifies that he or she is duly authorized by the Party he or she represents to enter into the terms and bind that Party to them.

81. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

In the Matter of: EES Coke Battery, L.L.C.

EES Coke Battery, L.L.C., Respondent

Date: May 11, 2017

David Smith
Vice-President
EES Coke Battery, L.L.C.

U.S. Environmental Protection Agency, Complainant

Date: 6/5/2017

for Margaret M. Guerriero
Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: EES Coke Battery, LLC

Docket No. CWA-05-2017-0011

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date: _____

_____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

In the matter of: EES Coke Battery, LLC
Docket Number: CWA-05-2017-0011

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true and correct copy of the forgoing ***Consent Agreement and Final Order***, in the Matter of EES Coke Battery, LLC, on the parties listed below in the manner indicated:

Copy by E-mail to
Attorney for Respondent: Todd Fracassi
fracasst@pepperlaw.com

Copy by E-mail to
Attorney for Complainant: Robert H. Smith
smith.roberth@epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: _____

_____
LaDawn Whitehead, Regional Hearing Clerk
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-3713