

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

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IN THE MATTER OF:)
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)
AES Hawaii, LLC)
91-086 Kaomi Loop)
Kapolei, HI 96707)
)

Respondent.)

Docket No.

CAA(112r)-09-2021-0035

**CONSENT AGREEMENT
AND FINAL ORDER
40 C.F.R. §§ 22.13 and 22.18**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”).
3. Respondent is AES Hawaii, LLC.
4. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA and EPCRA. Delegation 7-6-A, dated August 4, 1994 (CAA); and Delegation 22-3-A, dated July 20, 2016 (EPCRA). The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority to the Director of the Enforcement and Compliance Assurance Division. Regional Delegation R9-7-6-A, dated February 11, 2013 (CAA); and Regional Delegation R9-22-3A, dated

February 11, 2013 (EPCRA). On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division is therefore delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

5. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Section 312 of EPCRA, 42 U.S.C. § 11022, and its implementing regulations.

6. EPA and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CA/FO. Respondent agrees to comply with the terms of this CA/FO.

B. GENERAL ALLEGATIONS

7. Respondent owns and operates an electrical power generating plant located at 91-086 Kaomi Loop in Kapolei, Hawaii ("Facility").

8. On January 17, 2020, EPA performed an inspection of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304-312 of EPCRA, 42 U.S.C. §§ 11004-12, and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603(a). Based upon the information gathered during this inspection and subsequent investigation, EPA asserts that Respondent violated certain provisions of the CAA and EPCRA.

9. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

10. At all times relevant to this CA/FO, the Facility has been a "stationary source" as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3). The Facility is also a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

11. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413, and Section 302 of EPCRA, 42 U.S.C. § 11002.

CAA Section 112(r)

12. At all times relevant to this CA/FO, Respondent has been the “owner or operator” of the Facility as defined by Sections 111(a)(5) and 112(a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9).

13. A stationary source that has a regulated substance in an amount equal to or in excess of the applicable threshold quantity in a “process” as defined by 40 C.F.R. § 68.3, is subject to the Program 3 risk management plan (“RMP”) requirements. Program 3 imposes the Occupational Safety and Health Administration’s process safety management standard and requires owners or operators to develop a management system to oversee the implementation of the RMP elements.

14. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations, owners, and operators of stationary sources at which a regulated substance is present in more than a threshold quantity (“TQ”) must prepare and implement a RMP to detect and prevent or minimize accidental releases of such substances from the stationary sources in order to protect human health and the environment.

15. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each “regulated substance” at or above which a facility using such a substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). For substances designated as “regulated toxic substances,” the TQs are specified at 40 C.F.R. § 68.130, Table 1.

16. Ammonia (anhydrous) is a “regulated toxic substance” listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds. 42 C.F.R. § 68.130, Table 1.

17. At all times relevant to this CA/FO, Respondent has been the “owner or operator” of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable TQ in a “process” as defined by 40 C.F.R. § 68.3, and is subject to the Program 3 RMP requirements.

18. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

EPCRA Section 312

19. Section 312 of EPCRA, 42 U.S.C. § 11022, requires the owner or operator of a facility to submit an annual emergency and hazardous chemical inventory form (“inventory form”) containing information on hazardous chemicals present at the facility during the preceding calendar year above threshold levels established in 40 C.F.R. § 355, Appendices A and B.

20. The inventory form must be submitted by March 1 of each year to the State Emergency Response Commission (“SERC”), the Local Emergency Planning Committee (“LEPC”), and the fire department with jurisdiction over the facility. 40 C.F.R. §§ 370.44 and 470.45.

21. Ammonia is a “hazardous chemical” as defined in Sections 311(e) and 312(c) of EPCRA, 42 U.S.C. §§ 11021(e) and 11022(c), with a threshold planning quantity of 500 pounds. 40 C.F.R. Part 355, App. A & B. At all times relevant to this CA/FO, Respondent exceeded 500 pounds or more of ammonia (anhydrous) in one or more processes at the Facility and is required to submit a material safety data sheet for anhydrous ammonia. 42 U.S.C. §§ 11021(a) and (e).

C. ALLEGED VIOLATIONS

COUNT I

(Failure to provide estimated maximum daily amount of anhydrous ammonia)

22. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

23. 40 C.F.R. § 370.42(s)(6) requires owners or operators to provide an estimate (in ranges) of the maximum amount of the hazardous chemical present at its facility on any single day during the preceding calendar year.

24. Based on EPA’s inspection and information gathered during EPA’s investigation, Respondent reported different estimates as its maximum amount of anhydrous ammonia present at its Facility. The quantity of anhydrous ammonia reported in the EPCRA § 312 Tier II inventory forms submitted to the State of Hawaii for 2016, 2017, and 2018 differed from the 2019 RMP submittal to EPA.

25. By failing to report the correct maximum amount of the anhydrous ammonia present at the Facility, Respondent violated EPCRA § 312, Tier II Inventory, 40 C.F.R. § 370.42(s)(6).

COUNT II

(Failure to comply with process safety information for maximum intended inventory)

26. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

27. 40 C.F.R. § 68.65(c)(1)(iii) specifies that process safety information (“PSI”) pertaining to the equipment in a process shall include the maximum intended inventory.

28. Based on EPA’s inspection and information gathered during EPA’s investigation, the quantity of anhydrous ammonia reported in Respondent’s on-site PSI differs from its 2019 RMP submittal to EPA.

29. By failing to comply with the PSI requirements for maximum intended inventory, Respondent violated 40 C.F.R. § 68.65(c)(1)(iii).

COUNT III

(Failure to comply with process safety information for consequences of deviation)

30. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

31. 40 C.F.R. § 68.65(c)(1)(v) specifies that PSI pertaining to the equipment in a process shall include the consequences of deviation.

32. Based on EPA's inspection and information gathered during EPA's investigation, Respondent did not include consequences of deviation in its process hazard analysis ("PHA").

33. By failing to comply with the PSI requirements for consequences of deviation, Respondent violated 40 C.F.R. § 68.65(c)(1)(v).

COUNT IV

(Failure to comply with process safety information for labeling)

34. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

35. 40 C.F.R. § 68.65(d)(2) requires owners or operators to document that process equipment complies with recognized and generally accepted good engineering practices ("RAGAGEP"). Industry organizations and manufacturers establish standards, requirements, and recommendations comprising RAGAGEP for given industries.

36. The Compressed Gas Association ("CGA") G-2.1-1999, Section 6.6.1 states that "each container or group of containers shall be marked on at least two sides with the words 'ANHYDROUS AMMONIA' or 'CAUTION AMMONIA', in sharply contrasting colors not less than 3.9 inches (100 mm) high."

37. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to mark the ammonia storage tank with the words "ANHYDROUS AMMONIA" or "CAUTION AMMONIA" using appropriately sized lettering.

38. By failing to comply with the PSI requirements for labeling, Respondent violated 40 C.F.R. § 68.65(d)(2).

COUNT V

(Failure to comply with process safety information for physical barricades)

39. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

40. 40 C.F.R. § 68.65(d)(2) requires owners or operators to document that process equipment complies with RAGAGEP. Industry organizations and manufacturers establish standards, requirements, and recommendations comprising RAGAGEP for given industries.

41. CGA G2.1-1999, Section 6.7.1, a RAGAGEP, states, “containers and appurtenances shall be located or protected by suitable barriers as to avoid damage by trucks or other vehicles.”

42. National Fire Protection Association 55-2013, Section 4.11.1.1, a RAGAGEP, states, “guard posts or other means shall be provided to protect the following areas where subject to vehicular damage [including] (1) storage tanks with connected piping, valves and fittings.”

43. Based on EPA’s inspection and information gathered during EPA’s investigation, at the time of the inspection, Respondent did not have physical barricades present to prevent vehicles from impacting the ammonia vaporizers and storage tank, contrary to RAGAGEPs.

44. By failing to comply with the PSI requirements for physical barricades, Respondent violated 40 C.F.R. § 68.65(d)(2).

COUNT VI

(Failure to comply with process hazard analysis for engineering and administrative controls)

45. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

46. 40 C.F.R. § 68.67(c)(3) requires owners or operators to perform a PHA, which must address the engineering and administrative controls applicable to the hazards and their interrelationships, such as appropriate application of detection methodologies to provide early warning of releases.

47. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to address engineering and administrative controls applicable to the hazards and their interrelationships and only addressed response actions in its 2019 PHA.

48. By failing to comply with the PHA requirements for engineering and administrative controls, Respondent violated 40 C.F.R. § 68.67(c)(3).

COUNT VII

(Failure to update and revalidate the process hazard analysis)

49. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

50. 40 C.F.R. § 68.67(f) requires owners or operators to update and revalidate the PHA every five (5) years after the completion of the initial PHA.

51. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to timely update and revalidate the PHA. After the December 2013 PHA update, the next update was due December 2018, but was instead completed in October 2019, ten months past the five-year update requirement.

52. By failing to comply with the PHA requirements for updating and revalidation, Respondent violated 40 C.F.R. § 68.73(f).

COUNT VIII

(Failure to comply with operating procedures for normal shutdown and emergency shutdown)

53. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

54. 40 C.F.R. §§ 68.69(a)(1)(iv) and (vi) requires owners or operators to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the PSI and shall address certain elements, including steps for each operating phase, such as normal shutdown and emergency shutdown.

55. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to include normal shutdown and emergency shutdown procedures in its operating procedures.

56. By failing to comply with the operating procedures requirements for shutdown of a process, Respondent violated 40 C.F.R. §§ 68.69(a)(1)(iv) and (vi).

COUNT IX

(Failure to comply with operating procedures for safety and health conditions)

57. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

58. 40 C.F.R. § 68.69(a)(3)(ii) requires owners or operators to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the PSI. These operating procedures shall address certain health and safety elements, including engineering controls, administrative controls, and personal protective equipment necessary to prevent exposure.

59. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to include adequate information related to personal protective equipment in its

operating procedures because Section 1.6 of the standard operating procedures only states, “Know the location of the nearest emergency eye wash/shower station.”

60. By failing to comply with the operating procedures requirements for health and safety conditions, Respondent violated 40 C.F.R. § 68.69(a)(3)(ii).

COUNT X

(Failure to comply with annual certification of operating procedures)

61. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

62. 40 C.F.R. § 68.69(c) requires owners and operators to review the operating procedures as often as necessary to assure that they reflect current operating practice (including changes in process chemicals, technology, and equipment and changes to stationary sources) and certify annually that these operating procedures are current and accurate.

63. Based on EPA’s inspection and information gathered during EPA’s investigation, Respondent failed to provide annual certifications for its operating procedures for 2017, 2018, and 2019.

64. By failing to comply with the operating procedures annual certification requirement, Respondent violated 40 C.F.R. § 68.69(c).

COUNT XI

(Failure to comply with training requirements)

65. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

66. 40 C.F.R. § 68.71(a)(1) requires owners or operators to ensure that each employee who is involved in operating a process or will be involved in operating a newly assigned process is trained with an initial overview of the process and the operating procedures, as specified in 40 C.F.R. §

68.69. The initial training shall include emphasis on the specific safety and health hazards, emergency operations (including shutdown), and safe work practices applicable to the employee's job tasks.

67. 40 C.F.R. § 68.71(b) requires owners or operators to provide refresher training at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

68. 40 C.F.R. § 68.71(c) requires owners or operators to ascertain that each employee involved in operating a process has received and understood the training. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

69. 40 C.F.R. § 68.73(c) requires owners or operators to train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

70. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to provide its employees with training on an overview of the process with an emphasis the specific safety, health hazards, safe work practices, emergency operations (including shutdown), and on operating procedures associated with the anhydrous ammonia storage and transfer system.

71. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to provide documentation to verify that the "Balance of Plant" contractors

understood the training, and only provided sign-in sheets for “Lock Out Tag Out,” fall protection, and process safe management/risk management plan training.

72. Based on EPA’s inspection and information gathered during EPA’s investigation, Respondent failed to include operating procedures in its refresher training.

73. Based on EPA’s inspection and information gathered during EPA’s investigation, Respondent failed to ensure its maintenance personnel were trained in the maintenance practices because the maintenance training documentation involved in maintaining the anhydrous ammonia storage and transfer system only included initial and refresher hazardous waste and emergency response operator training. There was no further documentation indicating that maintenance personnel were trained in the on-going integrity of the system or its hazards.

74. By failing to comply with the training requirements, Respondent violated 40 C.F.R. §§ 68.71 and 68.73(c).

COUNT XII

(Failure to comply with mechanical integrity requirements)

75. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

76. 40 C.F.R. § 68.73(e) requires owners or operators to correct deficiencies in equipment that are outside acceptable limits, as defined by the PSI in 40 C.F.R. § 68.65, before further use, or in a safe and timely manner when necessary means are taken to assure safe operation.

77. Based on EPA’s inspection and information gathered during EPA’s investigation, Respondent failed to fix corroded piping and equipment that remained in service. The API 570 piping inspection results from November 2019 found the morphology of the coating failure and the severity of the external corrosion across the entire piping system warranted a complete replacement of the piping system next to the ammonia tank. Review of monthly visual inspection

forms for 2019 indicated that facility personnel noted in September that the bottom of the oil trap was corroded and in October that the pipe fittings on the ammonia piping before entering the ground also was corroded.

78. By failing to comply with the mechanical integrity requirements, Respondent violated 40 C.F.R. § 68.73(e).

COUNT XIII

(Failure to comply with compliance audit requirements)

79. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

80. 40 C.F.R. § 68.79(d) requires owners or operators to promptly determine and document an appropriate response to each of the findings of its compliance audit, and to document that deficiencies have been corrected.

81. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to resolve recommendations listed on its compliance audit from the March 2015 audit, which remained unresolved and were ultimately repeated in its March 2018 audit.

82. By failing to comply with the compliance audit requirements, Respondent violated 40 C.F.R. § 68.79(d).

COUNT XIV

(Failure to comply with incident investigation requirements)

83. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

84. 40 C.F.R. § 68.81(d)(2) requires owners or operators to investigate each incident and prepare a report at the conclusion of the investigation which should include at a minimum the date of the incident and the date the incident investigation began.

85. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to produce a report indicating when the incident investigation began after the Facility experienced a release of ammonia from a faulty relief valve on December 18, 2019.

86. By failing to comply with the incident investigation requirements, Respondent violated 40 C.F.R. § 68.81(d)(2).

COUNT XV

(Failure to comply with emergency response program requirements)

87. Paragraphs 1 through 21, above, are incorporated herein by this reference as if they were set forth here in their entirety.

88. 40 C.F.R. § 68.95(a)(2) requires owners or operators to develop and implement an emergency response program for the purpose of protecting public health and the environment. The program must include procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.

89. Industry organizations and manufacturers establish standards, requirements, and recommendations comprising RAGAGEP for given industries.

90. To maintain fire water pumps, the National Fire Protection Association 25 requires annual testing of fire water pumps including a pump curve test.

91. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to maintain emergency response equipment by completing annual pump curve tests for the electric fire water pump in 2017 and the diesel fire water pump in 2018, even though Respondent is required to complete fire water pump curve tests annually as part of Respondent's emergency response program.

92. By failing to comply with the emergency response program implementation requirements, Respondent violated 40 C.F.R. § 68.95(a)(2).

D. CIVIL ADMINISTRATIVE PENALTY

93. EPA proposes that Respondent be assessed, and Respondent agrees to pay **ONE-HUNDRED NINETY-NINE THOUSAND AND SEVEN HUNDRED AND TWENTY-FIVE DOLLARS (\$199,725.00)**, as the civil administrative penalty for the violations alleged herein.

94. The proposed penalty was calculated in accordance with the “Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68” dated June 2012, and 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” dated September 30, 1999, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. ADMISSIONS AND WAIVER OF RIGHTS

95. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section G of this CA/FO; (iv) waives any right to contest the allegations contained in Section C of the CA/FO; and (v) waives the right to appeal the proposed final order contained in this CA/FO.

96. EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

F. PARTIES BOUND

97. This CA/FO shall apply to and be binding upon Respondent, and its successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I) have been paid, and any delays in performance and/or stipulated penalties have been resolved.

98. No change in ownership or legal status relating to the Facility will in way alter Respondent's obligations and responsibilities under this CA/FO.

99. Until all the requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

100. The undersigned representative hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

101. Respondent consents to the assessment of and agrees to pay civil administrative penalties of **ONE-HUNDRED NINETY-NINE THOUSAND AND SEVEN HUNDRED AND TWENTY-FIVE DOLLARS (\$199,725.00)** in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and Section 304 of EPCRA, 42 U.S.C. § 11004, alleged in Section C above.

102. Respondent shall pay the civil penalty within sixty (60) days of the Effective Date of this CA/FO, as established in Section K of this CA/FO.

103. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the appropriate EPA docket number of this action. Payment shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

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

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077

St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

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
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White (301-887-6548)
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 31006
CTX Format

Online Payment:

This payment option can be accessed from the information below:

www.pav.gov

Enter "sfol.1" in the search field

Open form and complete required fields

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 via email, indicating Respondent's name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
Armsey.Steven@epa.gov

And

Don Nixon
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
Nixon.Donald@epa.gov

104. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to pay the penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

105. The penalties specified in this CA/FO shall represent civil administrative penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

106. In the event that Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter. Compliance by Respondent 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.

107. 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. Respondent 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 Section G of the CA/FO.

108. 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 C.F.R. § 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 CA/FO or with the CAA and its implementing regulations.

109. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

110. 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.

I. RESERVATION OF RIGHTS

111. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require

that Respondent perform 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 Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory, or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA, or any other statutory, regulatory, or common law enforcement authority in the United States.

112. Compliance by Respondent with the terms of this CAFO shall not relieve Respondent of its obligations to comply with the CAA, or any other applicable local, state, tribal, or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, tribal, 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.

113. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

114. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

J. MISCELLANEOUS

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

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

117. Each party to this action shall bear its own costs and attorneys' fees.

118. Respondent consents to entry of this CA/FO without further notice.


K. EFFECTIVE DATE

119. In accordance with 40 C.F.R. §§ 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 the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

Respondent AES Hawaii, LLC

DATE: 04/26/2021

BY: 

Steve Barnoski
Plant Manager

United States Environmental Protection Agency, Region 9

DATE: _____

AMY MILLER- Digitally signed by AMY
BOWEN MILLER-BOWEN
Date: 2021.05.06
13:03:23 -07'00'
BY: _____
Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance
Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. Sections 22.13 and 22.18 (Docket No. CAA (112r)-09-2021-0035) be entered and that Respondent pay a civil penalty ONE-HUNDRED NINETY-NINE THOUSAND AND SEVEN HUNDRED AND TWENTY-FIVE DOLLARS (\$199,725.00) due within sixty (60) days from the Effective Date of this CA/FO, in accordance with all terms and conditions of this CA/FO.

**STEVEN
JAWGIEL**

Digitally signed by
STEVEN JAWGIEL
Date: 2021.05.07
12:48:36 -07'00'

Date

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

This is to certify that the original of the fully executed Consent Agreement and Final Order in the matter of AES Hawaii, LLC (CAA-09-2021-0035) was filed with the Regional Hearing Clerk and that a true and correct copy of the same was sent to the following parties:

FOR RESPONDENT: Steven Barnoski
 Plant Manager
 AES Hawaii, LLC
 Steven.Barnoski@aes.com

 Michael Scanlon
 Barnes & Thornburg LLP
 Michael.Scanlon@btlaw.com

FOR COMPLAINANT: Ylan Nguyen
 Assistant Regional Counsel
 U.S. EPA, Region IX
 Nguyen.Ylan@epa.gov

Steven Armsey
Regional Hearing Clerk