



*August 17, 2015*

Los Angeles Regional Water Quality Control Board  
Attn: Mrs. Ching-Yin To  
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Los Angeles, CA 90013  
losangeles@waterboards.ca.gov, ching-yin.to@waterboards.ca.gov

**VIA EMAIL**

**Re: Tentative Waste Discharge Requirements (WDRS) and National Pollutant Discharge Elimination System (NPDES) Permit for NRG California South LP, Ormond Beach Generating Station, Oxnard, California (NPDES No. CA0001198, CI No. 5619)**

To Whom It May Concern with the Los Angeles Regional Water Quality Control Board:

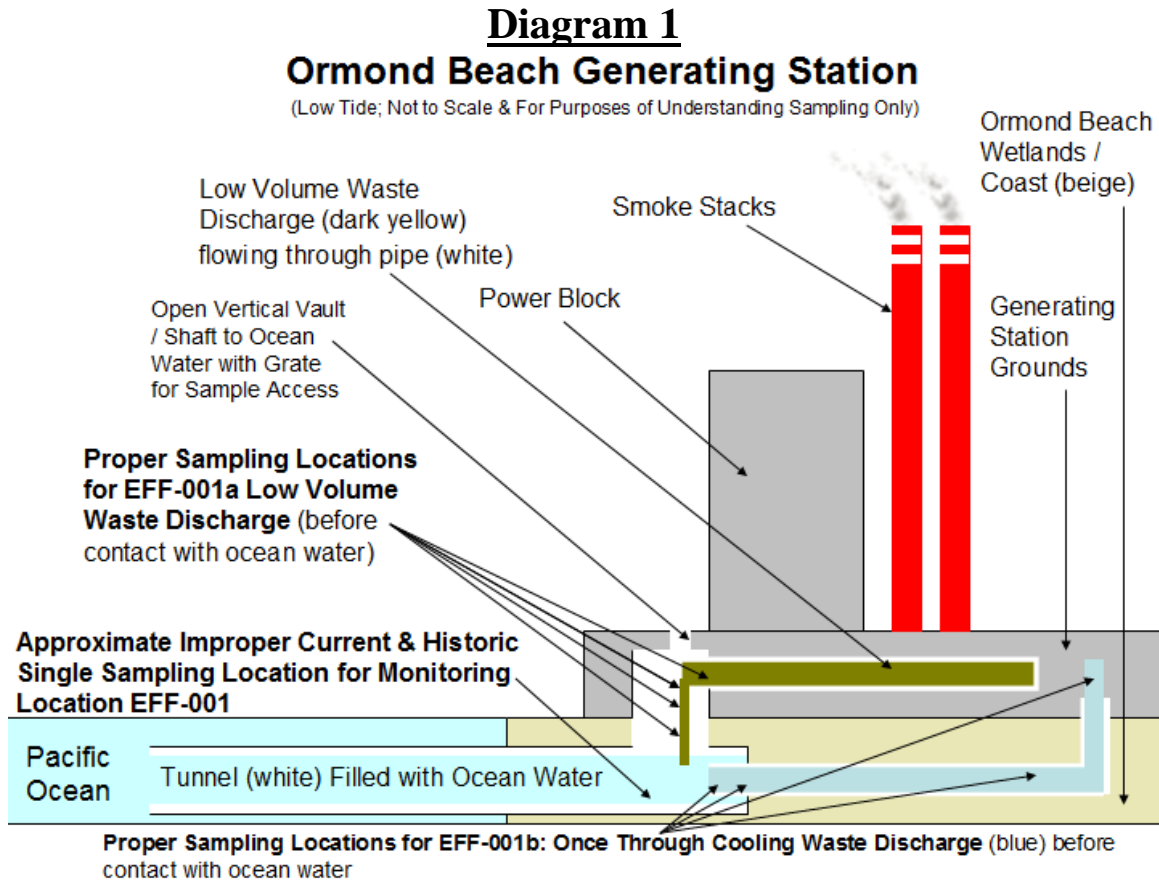
On behalf of the Wishtoyo Foundation and its Ventura Coastkeeper Program, we object to the Los Angeles Regional Water Quality Control Board's ("Regional Board's") adoption of the Tentative Waste Discharge Requirements ("WDRS") and National Pollutant Discharge Elimination System ("NPDES") Permit for NRG California South LP, Ormond Beach Generating Station ("Generating Station"), Oxnard, California (NPDES No. CA0001198, CI No. 5619) ("Ormond Generating Station WDRS/NPDES Permit" or "Permit") unless:

- 1.) The Permit is modified with specific provisions detailing the locations and methods of sample collection that guarantee samples are taken from the end of pipe for Monitoring Locations EFF-001a and EFF-001b (See Diagrams 1 & 2) to measure compliance for Discharge Point 001 as required by the Clean Water Act, Permit, and the Monitoring and Reporting Plan ("MRP") for the Generating Station;
- 2.) For samples taken from Monitoring Locations EFF-001a and EFF-001b (See Diagrams 1 & 2), the Permit contains the numeric water quality objectives for metals in Chapter II, Table 1 of the 2012 California Ocean Plan (See Exhibit 3), including those objectives for arsenic, cadmium, copper, lead, nickel, selenium, and zinc, all of which are constituents with effluent limitations in Regional Board Order No. 01-092 (the presently effective WDRS/NPDES Permit) for the Generating Station;
- 3.) The Permit's MRP is modified to require that the monitoring requirements for EFF-001a are equivalent to the monitoring requirements for EFF-001 in the tentative permit, except that it shall also be required that total recoverable arsenic, cadmium, copper, lead, nickel, selenium, and zinc are sampled once per month;

- 4.) The Permit's MRP is modified to require that the monitoring requirements for EFF-001b are equivalent to the monitoring requirements for EFF-001 in the tentative permit, except that it shall also be required that total recoverable arsenic, cadmium, copper, lead, nickel, selenium, and zinc are sampled once per month.

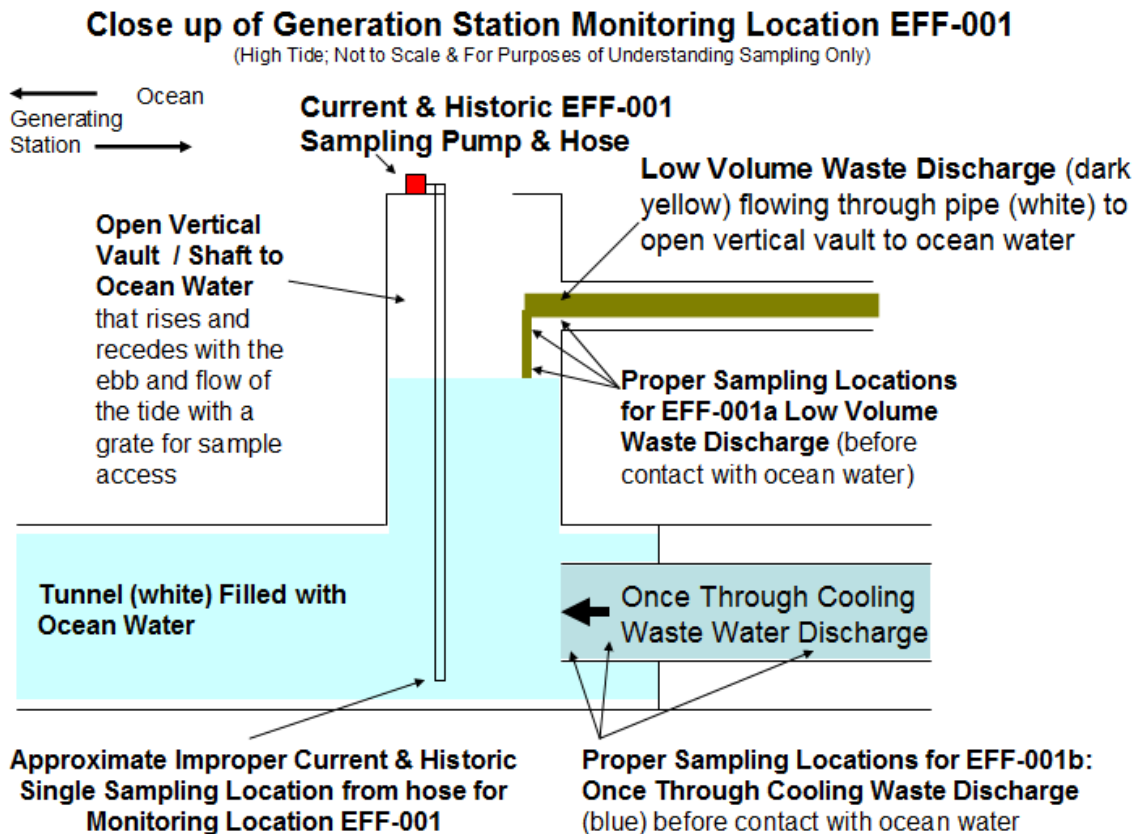
**Locations and Methods of Sample Collection for Discharge Point 001**

Our first of two significant concerns with the Tentative Permit is that as written, it will not ensure samples are taken from the necessary locations that will allow the Regional Board and the public to determine the Generating Station's compliance with the WDRS/NPDES Permit for Discharge Point 001, and thus the impact of the Generating Station's discharges to the Pacific Ocean and its marine life. This is because historically, and as would continue if the Tentative Permit were adopted as written, EFF-001 samples have not been taken at the end of pipe for discharges of low volume wastes and discharges of once through cooling water waste, but instead a.) taken with an extended hose/tube attached to a pump after mixing with, and dilution from, unpolluted ocean water in the tunnel to the Generating Station where rivers of ocean water with swift currents rise and recede with the ebb and flow of the tide, and b.) taken with the hose in a location very close to the bottom of this stream of ocean water where it is likely the contaminants from low volume wastes and once through cooling waste discharges may often not mix with unpolluted ocean water because of mixing in the upper portion of the ocean water column where the mixed water with wastes is subsequently swept away by ocean currents. Furthermore, under the Tentative Permit and currently effective permit, samples of low volume waste are not taken at EFF-001a as displayed in Diagrams 1 and 2 when discharges of low volume waste occur in isolation of discharges of once through cooling waste at EFF-001b.



The Tentative Permit thus must ensure samples of discharges from the Generating Station are taken before, and not after, the Generating Station's discharges come into contact and or mix with ocean water in the sub-surface tunnel from the Generating Station to the Ocean that contains a continual stream of ocean flows that rise and recede with the ebb and flow of the tide. The water quality objectives in Table 1 of the 2012 California Ocean Plan already are elevated to factor in dilution. Allowing the Generating Station to gage compliance with the WDRS/NPDES Permit effluent limitation for Discharge Point 001 at Monitoring Location EFF-001 after any mixing with ocean water occurs and or in locations in the water column where there waste stream is potentially or likely not present is contrary to the Clean Water Act, WDRS/NPDES Permit, and the MRP because it allows for additional unauthorized dilution to determine compliance with Ocean Plan water quality objectives and or the inability to obtain a sample that contains any of the Generating Station's discharges of low volume waste and or once through cooling discharges. (See Diagrams 1 & 2). The MRP must thus contain specific QA/QC that ensures proper field sampling protocols are implemented that provides for a.) a sample that is representative of the highest concentrations of metals and other pollutants in low volume wastes discharged at EFF-001a, and b.) a separate sample that is representative of the highest concentrations of metals and other pollutants in once through cooling waste discharges at EFF-001b.

## Diagram 2



## **Inclusion of Effluent Limits for Metals that Mirror the Water Quality Objectives in the 2012 California Ocean Plan**

Our second significant concern with the Tentative Permit is that without effluent limits applicable to EFF-001a and EFF-001b (See Diagrams 1 & 2) provided in Table 1 of the 2012 Ocean Plan for arsenic, cadmium, copper, lead, nickel, selenium, and zinc, the Permit will not be protective of marine life because the Permit does not contain a mechanism to ensure these toxic metals will not be discharged over the Ocean Plan's Table 1 limits/water quality objectives.

The WDRS/NPDES Permit must include effluent limits for arsenic, cadmium, copper, lead, nickel, selenium, and zinc that mirror the water quality objectives in Table 1 of the 2012 California Ocean Plan (See Exhibit 3) at Monitoring Locations EFF-001a and EFF-001b (See Diagrams 1 & 2), because:

1.) The Regional Board has no basis to exclude these contaminants using a reasonable potential analysis because the samples the Regional Board used to conduct its reasonable potential analysis for the Tentative Permit have never been taken from Monitoring Location EFF-001 in a manner that would provide the Regional Board with accurate or reliable data from which to conduct a reasonable potential analysis or in the manner required by the Clean Water Act and the Permit. This is because EFF-001 samples were not taken at the end of pipe for discharges of low volume wastes and once through cooling water waste, but instead were taken with an extended hose/tube attached to a pump a.) in a location after mixing with, and dilution from, unpolluted ocean water in the tunnel to the Generating Station where rivers of ocean water with swift currents rise and recede with the ebb and flow of the tide, and b.) in a location very close to the bottom of this stream of ocean water where it is likely the contaminants from low volume wastes and or once through cooling waste discharges never mixed with unpolluted ocean water because of mixing of waste streams and ocean water in the upper portion of the ocean water column that were subsequently swept away before reaching depths where samples representative of the waste streams could be collected through the hose. Furthermore, as displayed in Diagrams 1 and 2, samples of low volume waste were not taken at EFF-001a when discharges of low volume waste occurred in isolation of discharges of once through cooling waste at EFF-001b.

2.) The Regional Board has no basis to exclude these contaminants using a reasonable potential analysis because the samples the Regional Board used to conduct its reasonable potential analysis for the Tentative Permit have never been taken from Monitoring Location EFF-001 in the manner required by Regional Board Order No. 01-092 because contrary to the General Monitoring Provisions and Table E-1 in Permit Attachment E, the Generating Station did not locate effluent sampling locations where representative samples of that effluent stream can be obtained and did not locate EFF-001 at a location where a representative sample of the commingled wastewater can be obtained after treatment but prior to discharge to the Pacific Ocean. Locating sampling locations and taking samples as required by the Permit could have been, and should be able to be, accomplished by the Generating Station a.) drilling and using a sampling porthole to the conveyances discharging once through cooling wastes before the once through cooling wastes are discharged into the tunnel filled with ocean water; b.) drilling and using a sampling

porthole to the conveyances discharging low volume waste and storm water before the low volume waste and stormwater flows are discharged into the vault / shaft that leads to the tunnel filled with ocean water; c.) using a sampling pole or apparatus from the grate/opening to the vertical shaft / vault (See Diagram 1 and 2) to sample the low volume waste and stormwater discharges from EFF-001a before contact with ocean water. Furthermore, discharges of low volume waste should have been taken at EFF-001a as displayed in Diagrams 1 and 2 when discharges of low volume waste occurred outside of when discharges of low volume waste occurred in isolation of discharges of once through cooling waste at EFF-001b.

3.) these metals are contaminants of concern in the Generating Station's low volume waste and stormwater discharges from Locations EFF-001a and or EFF-001b (See Diagrams 1 & 2) (See Diagrams 1 & 2), which at certain times of the year, can discharge in high quantities and in the absence of once through cooling water waste discharges.

In-plant waste stream data reported to Wishtoyo and its Ventura Coastkeeper Program for stormwater discharges (see Exhibit 2: GenOn Consent Decree Action Plans and Stormwater Discharge Data submitted to Wishtoyo and its Ventura Coastkeeper Program), indicates that presence of high and toxic levels of arsenic, cadmium, copper, lead, nickel, selenium, and zinc in the Generating Station's low volume waste stream that exceed the 2012 California Ocean Plan's water quality objectives (See Exhibit 2 data documenting Generating Station sampled and reported concentrations of copper and zinc in stormwater after treatment ). Although the Consent Decree stormwater discharge data reports the concentrations of metals discharged after treatment into the Generating Station's reverse osmosis treatment system where stormwater is recycled, to our knowledge and belief, the residual metals left over as a concentrated waste stream contain metals of even higher concentrations after reverse osmosis treatment and are discharged through the low volume waste discharge point displayed at EFF-001a in Diagrams 1 and 2).

Wishtoyo is informed and believes that, aside from these stormwater flows, other significant sources of metals would cause or contribute to concentrations of metals in the Generating Station's low volume waste stream that would exceed the water quality objectives in the 2012 Ocean Plan.

Stormwater that falls on the Generating Station's highly galvanized power block, that because of coastal weathering contains high concentrations of dissolved zinc, flows to the floor drains and out EFF-001a or EFF-001b as a low volume waste. In addition, without evidence to demonstrate otherwise, it is reasonably likely that significant concentrations of metals in toxic concentrations from the Generating Station's Reverse Osmosis waste, the Seal Water, Condensate Overboard, Condensate Tank Drain, Condensate Demineralizer Regeneration, wastewaters from wet scrubber air pollution control systems, ion exchange water treatment system, water treatment evaporator blowdown, laboratory and sampling streams, auxiliary boiler blowdown, floor drains, cooling tower basin cleaning wastes, and recirculating house service water systems will discharge as low volume wastes from EFF-001a. These processes all involve significant contact with old and weathered Generating Station infrastructure containing Table 1 Ocean Plan Metals or direct discharge of Table 1 Ocean Plan Metals into the low volume waste stream.

Furthermore, these low volume waste streams can discharge, and have discharged at different times of the year in significant volumes absent the discharge of once through cooling wastes, thus warranting separate monitoring and the inclusion of effluent limits that apply to these discharges at the end of their pipes before mixing with ocean water. For instance, according to information obtained by Wishtoyo and its Ventura Coastkeeper Program during settlement communications with the Generating Station: in March of 2010 there were 8 discharges of low volume wastes into the Pacific Ocean from the Generating Station totaling 1.82 million gallons; in October 2010 there were 11 discharges of low volume wastes into the Pacific Ocean the Generating Station totaling 1.31 million gallons; in April 2012 there were 7 discharges of low volume wastes into the Pacific Ocean the Generating Station totaling 1.16 million gallons; and in October 2012 there were 5 discharges of low volume wastes into the Pacific Ocean the Generating Station totaling 1.09 million gallons. These volumes of low volume waste streams are now are higher as they contain metals in the Generating Station's storm water discharges left over after Reverse Osmosis Treatment generated from a 5 year 24 hour event (3.68 inches) at the 35 acre Generating Station. This significant increase in magnitude of the Generating Station's discharges of its low volume waste stream attributed to stormwater containing metals at concentrations above the 2012 California Ocean Plan's water quality objectives, warrants sampling from, and effluent limits for, discharges of the Generating Station's low volume wastes before contact with ocean water in the Generating Station tunnel.

Without effluent limits applicable to EFF-001a and EFF-001b (See Diagrams 1 & 2) provided in Table 1 of the 2012 Ocean Plan for arsenic, cadmium, copper, lead, nickel, selenium, and zinc, the Permit will be ineffective because no mechanism will exist to ensure these toxic metals in concentrations that exceed the Ocean Plan's Table 1 limits/water quality objectives.

**Basis and Support for Arsenic, Cadmium, Copper, Lead, Nickel, Selenium, and Zinc Metals Effluent Limits and for Sampling Requests at EFF-001a and EFF-001b in Diagrams 1 and 2**

On April 3, 2013, and Wishtoyo Foundation and Wishtoyo's Ventura Coastkeeper Program ("VCK") entered into a Consent Decree with GenOn West, LP, a wholly owned subsidiary of NRG Energy, Inc., in Civil Case No.: CV 12- 9060 SJO(RZx) ("Consent Decree") to protect the Ormond Beach Wetlands, Mugu Lagoon, and or the Mugu Lagoon Area of Special Biological Significance from the Generating Station's stormwater discharges. (See Exhibit 1)

Upon execution of the Consent Decree On April 3, 2013 Wishtoyo, its Ventura Coastkeeper Program, and GenOn West, LP also entered into an amended confidentiality agreement, which in relevant part provides:

Notwithstanding the Confidentiality Agreement, Federal Rule of Evidence section 408, or any applicable state or federal laws providing for the confidentiality of information and communications exchanged between GenOn and VCK during the course of confidential settlement communications for the CWA Lawsuit, after the State Water Resources Control Board or the Los Angeles Regional Water Quality Control Board makes a draft renewed or amended Individual Permit or equivalent publicly available for comment, makes a tentative renewed or amended Individual Permit or equivalent publicly available for comment, or notices a public hearing on the renewal or amendment of the Individual Permit, VCK may publicly disclose, draw, and explain

information regarding discharges from Ormond Beach Generating Station regulated by the Individual Permit learned and obtained from GenOn in the course of confidential settlement negotiations for the CWA Lawsuit. However, VCK may not publicly provide actual copies of any written materials (including drawings, documents, photographs, or written communications) drafted or created by GenOn and that GenOn provided to VCK in the course of confidential settlement negotiations regarding the CWA Lawsuit.

In was during the course of confidential settlement communications with the Generating Station that Wishtoyo and its Ventura Coastkeeper Program learned about the Generating Station's discharges of low volume waste and once through cool wastes, and methods of collecting samples at Monitoring Location EFF-001 under Regional Board Order No. 01-092 (currently effective Permit). The amended confidentiality agreement has allowed Wishtoyo and its Ventura Coastkeeper Program to now disclose this information that, to the best of our knowledge, provides basic and general level descriptions of the Generating Station's: discharges of low volume wastes and once through cool wastes, and methods of collecting samples at Monitoring Location EFF-001.

### **About Wishtoyo Foundation and its Ventura Coastkeeper Program**

Founded in 1997, Wishtoyo is a 501(c)(3) nonprofit grassroots organization with over 700 members consisting of Ventura County's diverse residents and Chumash Native Americans. Wishtoyo's mission is to preserve and protect Chumash culture, the culture of all of Ventura County's diverse communities, and the environment that our current and future generations depend upon. In 2000, Wishtoyo founded its Ventura Coastkeeper Program ("VCK"). VCK's mission is to protect, preserve, and restore the ecological integrity and water quality of Ventura County's inland and coastal waterbodies through outreach and education, restoration projects, advocacy, litigation, and community organizing and empowerment.

### **Conclusion**

Thank you for considering our requests, which are critical to ensuring protection of the Pacific Ocean and its marine life and the Generating Station's compliance with WDRS/NPDES Permit, the Ocean Plan, Clean Water Act.

Sincerely,



Jason Weiner, M.E.M.  
Water Initiative Director, General Counsel  
Wishtoyo Foundation and its Ventura Coastkeeper Program

## **Exhibit 1**

**Consent Decree between Wishtoyo Foundation /Wishtoyo's  
Ventura Coastkeeper Program ("VCK") and GenOn West,  
LP, a wholly owned subsidiary of NRG Energy, Inc., in Civil  
Case No.: CV 12- 9060 SJO(RZx)**



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VENTURA COASTKEEPER  
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Attorneys for Plaintiffs  
VENTURA COASTKEEPER,  
a program of the WISHTOYO FOUNDATION, and  
WISHTOYO FOUNDATION

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

VENTURA COASTKEEPER, a program of  
THE WISHTOYO FOUNDATION, and  
THE WISHTOYO FOUNDATION, a non-  
profit corporation,

Plaintiffs,

v.

GENON ENERGY, INC.; GENON ASSET  
MANAGEMENT, LLC; GENON ENERGY  
MANAGEMENT, LLC; GENON POWER  
GENERATION ASSETS, LLC; GENON  
WEST, LP; GENON AMERICAS, INC.;  
GENON CALIFORNIA NORTH, LLC;  
GENON ENERGY SERVICES, LLC;  
GENON WEST GP, LLC,

Defendants.

Civil Case No.: CV 12- 9060 SJO(RZx)

**CONSENT DECREE**

**(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 *et seq.*)**



1 activities at the Facility that are regulated by the California General Industrial Stormwater  
2 Permit: GenOn Energy, Inc.; GenOn Asset Management, LLC; GenOn Energy  
3 Management, LLC; GenOn Power Generation Assets, LLC; GenOn Americas, Inc.;  
4 GenOn California North, LLC; GenOn Energy Services, LLC; and GenOn West GP,  
5 LLC. As such the listed entities in this paragraph do not discharge and have never  
6 discharged stormwater associated with industrial activity at the Facility;

7 **WHEREAS**, based on the representation of the entities listed in the paragraph  
8 above, Coastkeeper dismisses GenOn Energy, Inc.; GenOn Asset Management, LLC;  
9 GenOn Energy Management, LLC; GenOn Power Generation Assets, LLC; GenOn  
10 Americas, Inc.; GenOn California North, LLC; GenOn Energy Services, LLC; and  
11 GenOn West GP, LLC with prejudice for claims alleged in the Complaint and first  
12 amended Complaint through the Effective Date;

13 **WHEREAS**, on August 22, 2012, Coastkeeper issued a sixty (60) day notice letter  
14 (“Notice Letter”) to Defendant, the United States Environmental Protection Agency  
15 (“EPA”), EPA Region IX, the State Water Resources Control Board (“State Board”) and  
16 the Regional Water Quality Control Board (“Regional Board”), stating its intent to file  
17 suit for violations of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, *et seq.*  
18 (“Clean Water Act” or “CWA”). The Notice Letter alleged violations of the Clean Water  
19 Act for Defendant’s discharges of pollutants into receiving waters in violation of  
20 National Pollution Discharge Elimination System (“NPDES”) General Permit No.  
21 CAS000001 [State Board] Water Quality Order No. 92-12-DWQ, as amended by Order  
22 No. 97-03-DWQ (“Storm Water Permit”);

23 **WHEREAS**, on October 22, 2012, Coastkeeper filed a complaint against  
24 Defendant in the United States District Court, Central District of California (Case No.  
25 2:12-cv-9060-SJO- (RZx)) entitled *Ventura Coastkeeper, et al. v. GenOn Energy, Inc., et*  
26 *al.* (“Complaint”);

27 **WHEREAS**, on October 23, 2012, Coastkeeper issued a sixty (60) day

1 Supplemental Notice Letter (“Supplemental Notice Letter”) to Defendant, EPA, the State  
2 Water Board and the Regional Board, stating its intent to file suit for additional  
3 violations of the Clean Water Act. The Supplemental Notice Letter alleged violations of  
4 the Clean Water Act for Defendant’s discharges of pollutants into receiving waters in  
5 violation of the Storm Water Permit.

6 **WHEREAS**, on January 29, 2013, Coastkeeper filed a first amended Complaint  
7 (“First Amended Complaint”) in this action;

8 **WHEREAS**, Plaintiffs and Defendant (collectively referred to herein as the  
9 “Settling Parties” or “Parties”) agree that it is in the Parties’ mutual interest to enter into  
10 a Consent Decree setting forth terms and conditions appropriate to resolving the  
11 allegations set forth in the Complaint and First Amended Complaint without further  
12 proceedings;

13 **WHEREAS**, Defendant denies all allegations of the Complaint and First  
14 Amended Complaint;

15 **WHEREAS**, Defendant does not admit that the Consent Decree Standards are the  
16 proper Standards to be applied to the Facility’s storm water discharges. However, in the  
17 spirit of cooperation to settle this matter and to resolve the allegations set forth in the  
18 Complaint and First Amended Complaint without further proceedings, Defendant has  
19 compromised, and has agreed to enter into this Consent Decree and to comply with the  
20 provisions of this Consent Decree;

21 **WHEREAS**, the Settling Parties agree that the Consent Decree is an actual  
22 agreement that is the product of good faith, arms-length negotiations;

23 **WHEREAS**, it is the express purpose of the Parties entering into this Consent  
24 Decree to protect and enhance the water quality of the Ormond Beach Wetlands, Mugu  
25 Lagoon, and the Pacific Ocean, to further the objectives set forth in the Clean Water Act,  
26 and to resolve those issues alleged by the Plaintiffs in their Complaint and First Amended  
27 Complaint;



1 last day for the United States Department of Justice and the United States Environmental  
2 Protection Agency (collectively “Federal Agencies”) to comment on the Consent Decree,  
3 i.e., the 45th day following the Federal Agencies’ receipt of the Consent Decree, or the  
4 date on which the Federal Agencies provide notice that they require no further review and  
5 the Court enters the final Consent Decree, whichever occurs earlier.

6 8. This Consent Decree shall terminate on its own terms on August 1, 2018,  
7 provided, however, that if Defendant implements one of the stormwater management  
8 options described below in clauses (a) or (b) in paragraph 10 the Consent Decree shall  
9 terminate on August 1, 2016, unless there is an ongoing, unresolved dispute regarding  
10 Defendant’s compliance with this Consent Decree. If there is an ongoing and unresolved  
11 dispute about Defendant’s compliance with the Consent Decree, the Consent Decree shall  
12 extend until the dispute is resolved.

13 **III. COMMITMENTS OF THE PARTIES**

14 **A. Initial Pollution Control Measures for Stormwater at the Facility**  
15 **Associated with Industrial Operations Discharged to the Beach, Inland or**  
16 **Coastal Waterways, or Inland or Coastal Wetlands (“Stormwater**  
17 **Discharges”)<sup>1</sup>**

18 9. The stormwater pollution control measures required by this Consent Decree  
19 and the Storm Water Permit shall be designed and operated to manage stormwater  
20 generated from a 5-year, 24 hour rainfall event recorded by the National Oceanic and  
21 Atmospheric Administration (“NOAA”) Oxnard Airport Rainfall gauge (“Design  
22 Standard”).<sup>2</sup> For the purpose of this Consent Decree, properly documented Stormwater  
23 Discharges, in connection with rainfall events in which precipitation exceeds the Design  
24 Standard, are not subject to the requirements of this Consent Decree.

25 \_\_\_\_\_  
26 <sup>1</sup> Stormwater Discharges do not include stormwater that, consistent with the Facility’s practice as of August 22, 2012, falls on  
27 the Facility’s power block, flows to the floor drains, and is discharged to the Pacific Ocean as authorized and regulated under  
28 the Facility’s Individual Permit. This Consent Decree, and the Consent Decree Standards in Table 1 of this Consent Decree,  
do not apply to such discharges of stormwater to the Pacific Ocean under the Individual Permit.

<sup>2</sup> The 5-year, 24 hour rainfall event recorded by the NOAA Oxnard Airport Rainfall gage is 3.68 inches.

1           10. Defendant has revised its Storm Water Pollution Prevention Plan  
2 (“SWPPP”), which is required by the Storm Water Permit. The revised SWPPP is  
3 attached hereto as Exhibit 1. Defendant shall implement the SWPPP, including the Best  
4 Management Practices (“BMPs”) specified therein, as may be amended from time to  
5 time, including as required under paragraphs 14 and 15 of this Consent Decree. This  
6 Consent Decree requires Defendant, by October 1, 2013, to implement BMPs designed to  
7 achieve the Consent Decree Standards listed in Table 1. If, by November 1, 2013,  
8 Defendant either (a) retains on-site and/or discharges stormwater to the City of Oxnard  
9 sanitary sewer system such that there are no Stormwater Discharges except for during the  
10 portions of storms that exceed the Design Standard; or (b) installs an enhanced metal-  
11 removing media system<sup>3</sup> designed to achieve the Consent Decree Standards listed in  
12 Table 1 for Stormwater Discharges caused by storms within the Design Standard, then  
13 the Consent Decree shall terminate on August 1, 2016, as provided in Paragraph 8 above.  
14 For Stormwater Discharges during storms within the Design Standard, if the BMPs set  
15 forth in this paragraph do not effectively prevent discharges or reduce contamination in  
16 stormwater discharged from the Facility in a manner sufficient to achieve the Consent  
17 Decree Standards listed in Table 1 below, Defendant shall develop and implement  
18 additional BMPs pursuant to Paragraph 14 of this Consent Decree to meet the Consent  
19 Decree Standards in Table 1 of this Consent Decree.

20           11. Defendant will continue to use the existing onsite precipitation gage at the  
21 Facility, and will establish adequate procedures for accurately determining total rainfall at  
22 the Facility over 24 hours and adequate procedures for accurately logging the  
23 commencement and termination of a 24-hour precipitation event.

24           12. Defendant shall not discharge stormwater or non-storm water that is not  
25 otherwise authorized by the Storm Water Permit or the Facility’s NPDES permit no.

26 \_\_\_\_\_  
27 <sup>3</sup> Such “metal-removing system” shall achieve treatment equivalent to that which would be achieved by a Stormwater  
Systems treatment system, but Defendant reserves the right to choose a vendor for such system.

1 CA0001198 (“Individual Permit”).

2 **B. Reduction of Pollutants in Discharges**

3 13. Consent Decree Standards and Contaminant Reduction. Beginning with the  
 4 2013-2014 Wet Season (defined as October 1-May 31) (“Wet Season”), contaminants in  
 5 Stormwater Discharges shall not exceed the standards in Table 1<sup>4</sup> (“Consent Decree  
 6 Standards”). Beginning with the 2013-2014 Wet Season, if a contaminant in a  
 7 Stormwater Discharge exceeds a Consent Decree Standard(s), Defendant shall implement  
 8 an Action Plan pursuant to paragraph 14 of this Consent Decree sufficient to meet the  
 9 applicable Consent Decree Standard(s).

10 **Table 1**

<b><u>Contaminant</u></b>	<b><u>Consent Decree Standard</u></b> (All but pH expressed as mg/L; hardness dependent limits in bold)
Total Suspended Solids	100
Total Recoverable Copper	<b>0.0123</b>
Dissolved Copper	<b>0.013</b>
Total Recoverable Lead	<b>0.069</b>
Dissolved Lead	<b>0.065</b>
Total Recoverable Zinc	<b>0.110</b>
Dissolved Zinc	<b>0.120</b>
Oil and grease	15
Total Recoverable Aluminum	0.750
Total Arsenic	<b>0.1685</b>
Dissolved Cadmium	<b>0.0043</b>
Total Recoverable Iron	1.0
Total Recoverable Mercury	0.0024
Dissolved Nickel	<b>0.470</b>

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<sup>4</sup> The total recoverable Consent Decree Standards in Table 1 are derived from U.S. EPA Benchmarks included in the NPDES Storm Water Multi-Sector General Permit for Industrial Activities (“Multi-Sector Permit”), 65 Federal Register 64839, 64766 (2000); *see also*, Multi-Sector Permit (2008). The dissolved Consent Decree Standards in Table 1 are derived from the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 (“CTR”). Several of the Consent Decree Standards are hardness-dependent. The total recoverable Consent Decree Standards are expressed in Table 1 using an assumed hardness range of 75-100 mg/l CaCO<sub>3</sub>. The dissolved Consent Decree Standards are expressed in Table 1 using an assumed hardness range of 75-100 mg/l CaCO<sub>3</sub>. Defendant shall adjust the total recoverable Consent Decree Standards using the methods provided in Appendix J of the 2008 EPA MSGP (Multi-Sector General Permit), and shall adjust the dissolved Consent Decree Standards using the methods provided in the CTR.



<u>Contaminant</u>	<u>Consent Decree Standard</u> (All but pH expressed as mg/L; hardness dependent limits in bold)
Dissolved Silver	<b>0.0034</b>
Chemical Oxygen Demand	120
Biochemical Oxygen Demand	30
pH	6.5 to 8.5 units

14. **Action Plans for Table 1 Exceedances.** Beginning with the 2013-2014 Wet Season, Defendant shall submit a plan for reducing and/or eliminating the discharge of pollutants (“Action Plan”) if sampling conducted pursuant to paragraph 16 of this Consent Decree demonstrates that the concentration of any Table 1 contaminant in any Stormwater Discharge exceeds the applicable Consent Decree Standard. Defendant shall submit an Action Plan, if required, no later than July 1 following the Wet Season in which the Table 1 Consent Decree Standard was exceeded. Action Plans are not required for any Stormwater Discharge that is the result of precipitation in excess of the Design Standard.

a. **Action Plan Requirements.** Action Plans shall include at a minimum: (1) the identification of the pollutant(s) discharged in excess of the Consent Decree Standard(s), (2) an assessment of the source of each pollutant exceedance, (3) the identification of additional BMPs, including structural BMPs and/or systems/devices to treat stormwater prior to discharge from the Facility, with demonstrated effectiveness in meeting the applicable Consent Decree Standard(s), and that will be implemented to reduce and/or eliminate the discharge of pollutants from the Facility so that contaminants in Stormwater Discharges do not exceed the applicable Consent Decree Standard(s) (“Action Plan BMPs”), and (4) time schedules for implementation of the Action Plan BMPs. The time schedule(s) for implementation shall ensure that all Action Plan BMPs are implemented no later than October 1 (prior to the next Wet Season).

b. **Action Plan Review.** Coastkeeper shall have thirty (30) days upon receipt of Defendant’s Action Plan to provide Defendant with comments. Within thirty (30)

1 days from the date Coastkeeper comments on Defendant’s Action Plan, Defendant shall  
2 provide Coastkeeper with a written explanation if Defendant refuses to develop and/or  
3 implement any of Coastkeeper’s recommended additional BMPs and or refuses to accept  
4 and incorporate any of Coastkeeper’s comments.

5 c. Any disputes as to the adequacy of the Action Plan shall be resolved  
6 pursuant to the dispute resolution provisions of this Consent Decree, set out in Section IV  
7 below.

8 d. Defendant shall revise its SWPPP to include the Action Plan BMPs by  
9 October 1 (prior to the next Wet Season).

10 e. Defendant shall have until October 1 (prior to the next Wet Season) to  
11 implement any Action Plan BMPs agreed upon by Defendant and Coastkeeper.

12 f. If any Action Plan BMP(s) require any agency approval, then Defendant  
13 shall contact Coastkeeper to request an extension of the deadline, if necessary, to  
14 implement the Action Plan BMP(s) requiring agency approval. Coastkeeper’s consent to  
15 Defendant’s requested extension shall not be unreasonably withheld.

16 **C. Storm Water Pollution Prevention Plan**

17 15. Additional Revisions to SWPPP. Defendant shall revise the SWPPP as  
18 necessary and appropriate, including but not limited to: (a) each time additional BMPs  
19 are developed to achieve compliance with the terms of this Consent Decree and/or the  
20 Storm Water Permit; (b) as required by the Storm Water Permit, as it may be amended.  
21 Defendant shall submit a revised SWPPP to Coastkeeper for review and comment as  
22 soon as it is completed and Coastkeeper may provide comments on the revised SWPPP  
23 within thirty (30) days of receipt. Defendant will consider and respond to Coastkeeper’s  
24 comments within thirty (30) days of receipt. Any disputes as to the adequacy of any  
25 revised SWPPP shall be resolved pursuant to the dispute resolution provisions of this  
26 Consent Decree, set out in Section IV below.

27 **C. Sampling and Monitoring at the GenOn Facility**

1           16. Sample Analysis and Sample Frequency. Defendant shall collect and  
2 analyze stormwater samples as follows:

3           a. Defendant shall collect samples from each Stormwater Discharge location  
4 and from at least the first four (4) Stormwater Discharge events per Wet  
5 Season. (For the 2012-2013 Wet Season, Defendant shall collect samples  
6 from each Stormwater Discharge location during the first two Stormwater  
7 Discharge events after the Effective Date.) For each storm event that results  
8 in a discharge from the Facility, if the storm event commences between 7:00  
9 a.m. and 6:00 p.m. Defendant must take samples during the first two hours  
10 of discharge. If stormwater is stored onsite prior to discharge, and released  
11 outside of 7:00 a.m. to 6:00 p.m., Defendant must take samples during the  
12 first two hours of this discharge. Any failure to sample a discharge from  
13 each discharge location at the Facility until four (4) storm events per Wet  
14 Season have been sampled shall be documented and submitted to Plaintiffs  
15 within five (5) days of the date a sample could have been collected but was  
16 not. The Defendant shall analyze the samples for the constituents identified  
17 in Table 1.

18           b. Defendant shall use a state certified laboratory, that adheres to the EPA  
19 methods for total and dissolved metals analysis, to conduct all sample  
20 analysis pursuant to this Consent Decree. The Defendant shall select  
21 laboratories and analytical limits such that, at a minimum, the method  
22 detection limits are below the Consent Decree Standards in Table 1.

23           **D. Compliance Monitoring and Reporting**

24           17. Annual Site Visits. A Coastkeeper representative, and if Coastkeeper  
25 desires up to two additional representatives or consultants (including an attorney), may  
26 conduct one site visit (“Site Visit”) of the Facility’s stormwater program each year that  
27 this Consent Decree is in effect. Site Visits shall occur during normal business hours

1 (7:00 a.m. to 3:00 p.m., Monday through Friday, excluding holidays). Coastkeeper shall  
2 provide Defendant with as much notice as possible, but at a minimum shall provide at  
3 least thirty-six (36) hours' notice prior to a Site Visit during wet weather, and five (5)  
4 days' notice prior to a Site Visit during dry weather. Notice will be provided by  
5 telephone and electronic mail during normal business hours; effective notice for purposes  
6 of this paragraph requires confirmation from Defendant, which may not be unreasonably  
7 withheld, at least thirty-six (36) hours before the Site Visit, by e-mail or telephone, that it  
8 is aware that Coastkeeper will be conducting a Site Visit. During the Site Visit,  
9 Defendant shall allow Coastkeeper and/or its representatives access to the Facility's  
10 SWPPP, the Monitoring and Reporting Plan, monitoring records related to Stormwater  
11 Discharges, and to all monitoring reports and data for the Facility related to Stormwater  
12 Discharges. During a Site Visit in which Defendant samples Stormwater Discharges,  
13 Coastkeeper and/or its representatives may observe such sampling. No photography or  
14 video recording will be permitted during Site Visits.

15       18. Coastkeeper's Compliance Monitoring. Defendant agrees to compensate  
16 Plaintiff for time to be spent monitoring Defendants' compliance with the Consent  
17 Decree. To this end, Defendant shall pay Coastkeeper the sum of Fifteen Thousand  
18 Dollars (\$15,000) within thirty (30) days of the Effective Date for Coastkeeper's efforts  
19 to monitor Defendant's compliance with this Consent Decree. Anytime Defendant is  
20 required to submit an Action Plan to Coastkeeper pursuant to paragraph 14 of this  
21 Consent Decree, Defendant shall make a compliance monitoring payment in the amount  
22 of Twelve Thousand Dollars (\$12,000) upon submission of the Action Plan. All  
23 payments required under this paragraph shall be submitted and made payable to "Ventura  
24 Coastkeeper," addressed to Ventura Coastkeeper, 3875-A Telegraph Road #423, Ventura,  
25 California 93003, and sent via courier or overnight delivery.

26       19. Data Reporting. During the life of this Consent Decree, Defendant shall  
27 provide Coastkeeper with analytical data from sampling conducted pursuant to this  
28

1 Consent Decree within 30 days of Defendant receiving the analytical results from the  
2 laboratory; Defendant shall also e-mail Coastkeeper when it submits monitoring data,  
3 inspection reports, and laboratory analyses to the State Board pursuant to the Storm  
4 Water Permit.

5       20. Document Provision. During the life of this Consent Decree, Defendant  
6 shall copy Coastkeeper on all formal, written communications (which excludes e-mails)  
7 Defendant submits to the Regional Board or the State Board regarding the Facility’s  
8 compliance with the Storm Water Permit. Such communications shall be provided to  
9 Coastkeeper concurrently as they are sent to the Regional Board or State Board.  
10 Defendant shall provide to Coastkeeper any formal, written communications (which  
11 excludes e-mails) it receives from the Regional Board or State Board regarding the  
12 Facility’s compliance with the Storm Water Permit within ten (10) business days of  
13 receipt by Defendant.

14  
15       **E. Environmental Project, Reimbursement of Litigation Fees and Costs**

16       21. Environmental Project. Defendant agrees to make an initial payment of Sixty  
17 Five Thousand Dollars (\$65,000) within thirty (30) days of the Effective Date to the Rose  
18 Foundation for Communities and the Environment for a project related to water quality  
19 designed to analyze, reduce, prevent, or otherwise mitigate the ecological effects of  
20 stormwater and/or non-stormwater discharges to the Ormond Beach Wetlands, Mugu  
21 Lagoon, or the Mugu Lagoon Area of Special Biological Significance (“ASBS”). The  
22 payment shall be mailed via certified mail or overnight delivery to the attention of Tim  
23 Little at 6008 College Avenue Suite 10, Oakland, California 94618-1382. Defendant  
24 shall provide Coastkeeper with a copy of such payment. Further, if Defendant elects not  
25 to implement one of the stormwater management options described above in clauses (a)  
26 or (b) in paragraph 10 by November 1, 2013, then Defendant shall make a supplemental  
27 payment of Forty Thousand Dollars (\$40,000) to the Rose Foundation for Communities

1 and the Environment, by December 1, 2013, on the same terms described above.

2 22. Reimbursement of Plaintiffs' Fees and Costs. Defendant agrees to partially  
3 reimburse Plaintiffs for their investigation fees and costs, consultant fees and costs,  
4 reasonable attorneys' fees, and other costs incurred as a result of investigating and filing  
5 the lawsuit, and negotiating a resolution of this matter in an amount totaling Seventy-  
6 Nine Thousand Dollars (\$79,000). All such payments shall be made within thirty (30)  
7 days of the Effective Date and shall be made payable to "Ventura Coastkeeper,"  
8 addressed to Ventura Coastkeeper, 3875-A Telegraph Road #423, Ventura, CA 93003,  
9 and sent via certified mail or overnight delivery.

10 **F. Agency Review of Consent Decree**

11 23. Plaintiffs shall submit this Consent Decree to the Federal Agencies, within  
12 three (3) days of the final signature of the Parties, for agency review consistent with 40  
13 C.F.R. § 135.5. The agency review period expires forty-five (45) days after receipt by  
14 both agencies, as evidenced by written acknowledgement of receipt by the agencies or the  
15 certified return receipts, copies of which shall be provided to Defendant. In the event that  
16 the Federal Agencies object to entry of this Consent Decree, the Parties agree to meet and  
17 confer to attempt to resolve the issue(s) raised by the Federal Agencies.

18 **IV. DISPUTE RESOLUTION**

19 24. This Court shall retain jurisdiction over this matter for the purposes of  
20 adjudicating all disputes among the Parties that may arise under the provisions of this  
21 Consent Decree. The Court shall have the power to enforce this Consent Decree with all  
22 available legal and equitable remedies, including contempt.

23 25. Meet and Confer. A party to this Consent Decree shall invoke the dispute  
24 resolution procedures of this Section by notifying all other Parties in writing of the  
25 matter(s) in dispute and of the party's proposal to resolve the dispute under this Section.  
26 The Parties shall then meet and confer in an attempt to resolve the dispute no later than  
27 fourteen (14) calendar days from the date of the notice.

1           26. If the Parties cannot resolve a dispute by the end of the meet and confer  
2 process, the party initiating the dispute resolution provision may invoke formal dispute  
3 resolution by filing a motion before the United States District Court for the Central  
4 District of California. The Parties shall jointly apply to the Court for an expedited  
5 hearing schedule on the motion.

6           27. If Coastkeeper initiates a motion or proceeding before the Court to enforce  
7 the terms and conditions of this Consent Decree, Coastkeeper shall be entitled to recover  
8 reasonable fees and costs incurred to enforce the terms of this Consent Decree consistent  
9 with the provisions of Sections 505 and 309 of the CWA, 33 U.S.C. §§ 1365, 1319.

10 **V. MUTUAL GENERAL RELEASE OF LIABILITY AND COVENANT NOT**  
11 **TO SUE**

12           28. The Parties hereby release each other and each of their current, former, and  
13 future predecessors-in-interest, successors in interest, parents, ultimate parent companies,  
14 directly and indirectly affiliated, joint ventures, partnerships, related companies,  
15 subsidiaries and/or affiliates, together with all their current and former respective  
16 officers, employees, directors, partners, members, Board of Directors, shareholders,  
17 officials, agents, accountants, attorneys, insurance carriers and reinsurers, sureties,  
18 representatives, independent contractors, consultants, advisors, and all successors, assigns  
19 and persons/entities in privity with any one or more of such persons/entities, of and from  
20 any and all demands, actions, causes of action, suits, obligations, assessments, damages,  
21 liabilities, investigation costs, remediation costs, restoration costs, other costs, losses, or  
22 expenses (including attorneys' fees and expert witness fees) of any kind or nature  
23 whatsoever (whether legal or equitable, past, present or future, ascertained or  
24 unascertained, known or unknown, suspected or unsuspected) that have been or could  
25 have been asserted up through the Effective Date, including, but not limited to, claims  
26 that were presented or that could have been presented in the Complaint. However, this  
27 general release specifically excludes the pending case *GenOn West, LP v. State Water*

1 *Resources Control Board* (Super. Ct. Sacramento County, Oct. 27, 2010, No. 2010-  
2 80000701), and excludes claims for the Defendant's failure to comply with this Consent  
3 Decree.

4 29. With respect to, and subject to the terms of, the general release contained in  
5 paragraph 28 above, the Parties expressly waive any rights or benefits available under  
6 section 1542 of the California Civil Code, which provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
8 WHICH THE CREDITOR DOES NOT KNOW OR  
9 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME  
10 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY  
11 HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
12 OR HER SETTLEMENT WITH THE DEBTOR.

13 30. Except as stated in paragraphs 28 and 29, this Consent Decree does not limit  
14 Plaintiffs' right to address or take any position that it deems necessary or appropriate in  
15 any formal or informal proceeding before the Regional Board, EPA, state, local, or  
16 federal agency, or any other judicial or administrative body on any other matter relating  
17 to Defendant, including, without limitation, the right to advocate for stricter effluent  
18 limits or monitoring requirements in the Individual NPDES Permit and in the Storm  
19 Water Permit when they are reissued, amended, or renewed.

20 31. Plaintiffs will give Defendant at least 15 days' written notice before making  
21 any formal or informal complaint related to or under the Clean Water Act (including  
22 without limitation any notices of intent to sue, lawsuits, or requests for agency action or  
23 enforcement) concerning the Facility or the Mandalay Generating Station to any  
24 administrative body, court, or government entity. If either Party desires to issue a press  
25 release regarding this Consent Decree or issues related to the Complaint, the First  
26 Amended Complaint, the Notice Letter, or the Supplemental Notice Letter, the Parties  
27 shall meet and confer to develop mutually agreeable language for a press release.

28 32. Neither the Consent Decree nor any payment pursuant to the Consent Decree



1 shall constitute or be construed as a finding, adjudication, or acknowledgement of any  
2 fact, law or liability, nor shall it be construed as an admission of violation of any law,  
3 rule, or regulation. Defendant maintains and reserves all defenses it may have to any  
4 alleged violations that may be raised in the future.

5 33. Force Majeure. Defendant shall notify Coastkeeper pursuant to the terms of  
6 this paragraph, when timely implementation of the requirements set forth in this Consent  
7 Decree becomes impossible, despite the timely good-faith efforts of Defendant, due to  
8 circumstances beyond the reasonable control of Defendant or its agents, and which could  
9 not have been reasonably foreseen and prevented by the exercise of due diligence by  
10 Defendant. In no circumstances shall a claim of inability to pay be considered Force  
11 Majeure.

12 a. If Defendant claims impossibility, it shall notify Coastkeeper in writing  
13 within twenty-one (21) days of the date that Defendant first knew of the event or  
14 circumstance that caused or would cause a violation of this Consent Decree. The notice  
15 shall describe the reason for the nonperformance and specifically refer to this Section. It  
16 shall describe the anticipated length of time the delay may persist, the cause or causes of  
17 the delay, the measures taken or to be taken by Defendant to prevent or minimize the  
18 delay, the schedule by which the measures will be implemented, and the anticipated date  
19 of compliance. Defendant shall adopt all reasonable measures to avoid and minimize  
20 such delays.

21 b. The Parties shall meet and confer in good-faith concerning the non-  
22 performance and, where the Parties concur that performance was or is impossible, despite  
23 the timely good faith efforts of Defendant, due to circumstances beyond the control of  
24 Defendant that could not have been reasonably foreseen and prevented by the exercise of  
25 due diligence by Defendant, new deadlines shall be established.

26 c. If Coastkeeper disagrees with Defendant's notice, or in the event that the  
27 Parties cannot timely agree on the terms of new performance deadlines or requirements,

1 either party shall have the right to invoke the Dispute Resolution Procedure pursuant to  
2 Section IV. In such proceeding, Defendant shall bear the burden of proving that any  
3 delay in performance of any requirement of this Consent Decree was caused or will be  
4 caused by force majeure and the extent of any delay attributable to such circumstances.

5 **VI. MISCELLANEOUS PROVISIONS**

6 34. The Parties understand that Defendant is evaluating the possibility of  
7 discharging stormwater that is subject to this Consent Decree to the Pacific Ocean  
8 pursuant to its Individual Permit. This Consent Decree does not limit or prohibit  
9 Defendant from pursuing this approach; provided, however, that Defendant shall only  
10 seek authorization to redirect Stormwater Discharges to the Pacific Ocean in the context  
11 of a formal amendment or renewal of the Facility's Individual Permit, in which  
12 amendment, reissuance, or renewal process Coastkeeper would have all of its rights under  
13 applicable Federal and state public notice and comment requirements, and law.

14 35. Construction. The language in all parts of this Consent Decree shall be  
15 construed according to its plain and ordinary meaning, except as to those terms defined in  
16 the Storm Water Permit, the Clean Water Act, or specifically herein.

17 36. Choice of Law. The laws of the United States shall govern this Consent  
18 Decree.

19 37. Severability. In the event that any provision, paragraph, section, or sentence  
20 of this Consent Decree is held by a court to be unenforceable, the validity of the  
21 enforceable provisions shall not be adversely affected.

22 38. Correspondence. All notices required herein or any other correspondence  
23 pertaining to this Consent Decree shall be sent by regular mail or electronic mail as  
24 follows:

25 If to Plaintiffs:

26 Jason Weiner  
27 Staff Attorney

1 Wishtoyo Foundation / Ventura Coastkeeper  
2 3875-A Telegraph Road #423  
3 Ventura, CA 93003  
4 jweiner.venturacoastkeeper@wishtoyo.org

5 If to Defendant:

6 Peter Landreth  
7 Assistant Regional General Counsel – West Region  
8 NRG Energy  
9 696 W. 10th Street  
10 P.O.Box 192  
11 Pittsburg, CA 94565  
12 Peter.Landreth@nrgenergy.com

13 With copies to:

14 Daniel Brunton  
15 Latham & Watkins LLP  
16 600 W. Broadway, Suite 1800  
17 San Diego, CA 92101  
18 daniel.brunton@lw.com

19 Notifications of communications shall be deemed submitted three (3) days after the  
20 date that they are postmarked and sent by first-class mail, or immediately after  
21 acknowledgement of receipt via email by the receiving party. Any change of address or  
22 addresses shall be communicated in the manner described above for giving notices.

23 39. Effect of Consent Decree. Plaintiffs do not, by its consent to this Consent  
24 Decree, warrant or aver in any manner that Defendant’s compliance with this Consent  
25 Decree will constitute or result in compliance with any federal or state law or regulation.  
26 Nothing in this Consent Decree shall be construed to affect or limit in any way the  
27 obligation of Defendant to comply with all federal, state, and local laws and regulations  
28 governing any activity required by this Consent Decree.

39. Counterparts. This Consent Decree may be executed in any number of  
counterparts, all of which together shall constitute one original document. Telecopy

1 and/or facsimile copies of original signature shall be deemed to be originally executed  
2 counterparts of this Consent Decree.

3 41. Modification of the Consent Decree. This Consent Decree, and any  
4 provisions herein, may not be changed, waived, discharged, or terminated unless by a  
5 written instrument, signed by the Parties.

6 42. Full Settlement. This Consent Decree constitutes a full and final settlement  
7 of this matter.

8 43. Integration Clause. This is an integrated Consent Decree. This Consent  
9 Decree is intended to be a full and complete statement of the terms of the agreement  
10 between the Parties and expressly supersedes any and all prior oral or written agreements  
11 covenants, representations, and warranties (express or implied) concerning the subject  
12 matter of this Consent Decree.

13 44. Authority. The undersigned representatives for Plaintiffs and Defendant  
14 each certify that he/she is fully authorized by the party whom he/she represents to enter  
15 into the terms and conditions of this Consent Decree.

16 45. The provisions of this Consent Decree apply to and bind the Parties,  
17 including their respective successors in interest by way of merger, acquisition, or  
18 otherwise, and their permitted assigns. The Parties certify that their undersigned  
19 representatives are fully authorized to enter into this Consent Decree, to execute it on  
20 behalf of the Parties, and to legally bind the Parties to its terms.

21 46. There are no intended third-party beneficiaries to this Consent Decree, and  
22 only the Parties and their heirs, assigns, representatives, and successors may enforce this  
23 Consent Decree.

24 47. The Parties agree to be bound by this Consent Decree and not to contest its  
25 validity in any subsequent proceeding to implement or enforce its terms. By entering into  
26 this Consent Decree, Defendant does not admit liability for any purpose as to any  
27 allegation or matter arising out of this Action.

1 The undersigned representatives for Coastkeeper and Defendant each certify that  
2 he/she is fully authorized by the party whom he/she represents to enter into the terms  
3 and conditions of this Consent Decree and that this Consent Decree binds that party.

4 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as  
5 of the date first set forth above.

6 **IT IS SO ORDERED:**

7 May 8, 2013.

8 Date: \_\_\_\_\_



9 \_\_\_\_\_  
10 Honorable  
11 DISTRICT COURT JUDGE  
12 CENTRAL DISTRICT OF CALIFORNIA

13 APPROVED AS TO CONTENT

14 VENTURA COASTKEEPER AND  
15 WISHTOYO FOUNDATION

16 Dated: April \_\_\_\_, 2013

17 \_\_\_\_\_  
18 Mati Waiya, Executive Director  
19 Ventura Coastkeeper and  
20 Wishtoyo Foundation

21 GENON WEST, LP

22 Dated: April \_\_\_\_, 2013

23 \_\_\_\_\_  
24 John Chillemi, President  
25 GenOn West, LP

1 APPROVED AS TO FORM

2 LATHAM & WATKINS LLP

3  
4 Dated: April 3, 2013

/s/ Daniel Brunton  
Daniel Brunton  
Attorney for Defendant

5  
6  
7  
8 Dated: April 3, 2013

WISHTOYO FOUNDATION AND  
VENTURA COASTKEEPER  
/s/ Jason Weiner  
Jason Weiner  
Staff Attorney for Plaintiffs

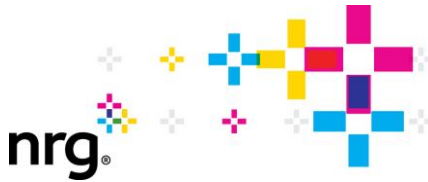
Exhibit 1  
Revised SWPPP

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## **Exhibit 2**

### **GenOn Consent Decree Action Plans and Stormwater Discharge Data submitted to Wishtoyo and its Ventura Coastkeeper Program**





Ormond Beach Generating Station Action Plan Pursuant to NRG-Wishtoyo Consent Decree  
July 1, 2014

Pursuant to paragraph 14 of the Consent Decree, NRG submits this Action Plan to the Wishtoyo Foundation and its Ventura Coastkeeper (VCK) program to address the Table 1 exceedances disclosed in the sampling results submitted to VCK on April 10, 2014. Paragraph 14 provides that an Action Plan must include: (1) the identification of the pollutant(s) discharged in excess of the Consent Decree Standard(s); (2) an assessment of the source of each pollutant exceedance, (3) the identification of additional BMPs, including structural BMPs and/or systems/devices to treat stormwater prior to discharge from the Facility, with demonstrated effectiveness in meeting the applicable Consent Decree Standard(s), and that will be implemented to reduce and/or eliminate the discharge of pollutants from the Facility so that contaminants in Stormwater Discharges do not exceed the applicable Consent Decree Standard(s) (“Action Plan BMPs”); and (4) time schedules for implementation of the Action Plan BMPs, and such time schedule(s) for implementation shall ensure that all Action Plan BMPs are implemented no later than October 1 (prior to the next Wet Season). Each of these Action Plan elements is addressed in turn below.

1. Identification of pollutants discharged in excess of the Consent Decree Standards

The sampling results indicated exceedances of the following pollutants in the February 27, 2014 sampling event: Dissolved Copper, Dissolved Zinc, Total Recoverable Aluminum, Total Recoverable Copper, Total Recoverable Iron, and Total Recoverable Zinc. Sampling results from the subsequent March 5, 2014 sampling event indicated exceedances of Total Recoverable Copper and Total Recoverable Zinc.

2. Assessment of the source of each pollutant exceedance

During one of the driest winters on record, the February 27<sup>th</sup> storm event was the first real test of the newly installed OBGS stormwater treatment system. During that initial event the visual properties of the water being discharged from the system were not consistent with what would be expected from the particulate size the system was designed for. Samples were taken in accordance with the Consent Decree along with an additional sample to analyze the particulate size distribution. The results of the particulate size distribution identified that the larger sized particulates were not being effectively filtered as designed. Stormwater Systems, the vendor who designed and installed the system, was called out help investigate the issues. After inspection of the system it was found that there were four contributors to the exceedances:

- a. The bag filter canisters and bag filters themselves were introducing a source of iron downstream of the system. We found that the bag filter ring support was carbon steel instead of stainless steel. An apparent manufacturing defect of the canister created a situation where the lid would crush the carbon steel ring that held the filtration sock open. This resulted in damage to the epoxy coating on the inside of the canister, exposing the steel ring and creating a source of rust.

- b. The sand filter was not being allowed to settle properly due to the backwash frequency.
- c. System priming procedure was unseating the bag filters allowing flow bypass.
- d. The particulate size distribution would better be handled by a smaller size bag filter along with a need for a higher efficiency rated filter as the originals were only 75% efficient at removing the particle size they were rated for.

### 3. Identification of additional BMPs

Based on the analysis of contributing factors described above in Section 2, we are implementing the following steps:

- a. Repaired the damage to the epoxy on the filter canisters and modified the lid to avoid crushing the filter rings.
- b. Required all bag filter rings to be stainless steel or plastic to avoid introducing contaminants into the system.
- c. Modified the control logic to backwash solely on pressure differential instead of time, allowing the sand filter to settle properly and perform efficiently.
- d. Adjusted the startup procedure of the system to no longer unseat the bag filters by back-filling the canisters allowing some flow bypass.
- e. Changed the bag filters being used: replaced 75% efficient 25- and 10-micron bag filters with 95% efficient 5- and 3-micron bag filters to better match the particulate size distribution observed in the February 27<sup>th</sup> sample.
- f. Install the capability to test water quality before directing to the service water tank to ensure we are in limits.

### 4. Time schedules for implementation

Items (a) through (d) in Section 3 above were implemented immediately following the February 27<sup>th</sup> sampling event and were in place before the March 5<sup>th</sup> sampling event. As documented in the sampling results previously disclosed to VCK, the quality of discharge substantially improved between the two sampling events: four of the six constituents that had exceeded the Table 1 limits on February 27 were in compliance by March 5, and concentrations of the two remaining constituents were significantly lower than they were in the first sampling event. Items (e) and (f) are currently being implemented and will be in place before the start of the 2014-2015 Wet Season. We fully expect the improvements to the stormwater treatment system described above to ensure that future stormwater discharges will comply with the Table 1 limits.

ORMOND BEACH CONSENT DECREE - TABLE 1 RESULTS							
TABLE 1 CONTAMINATE	C.D. STANDARD	TEST RESULTS					
		February 27, 2014			March 5, 2014		
	(mg/L)	Adjustment	(ug/L)	(mg/L)	Adjustment	(ug/L)	(mg/L)
Biochemical Oxyge Demand (BOD) (mg/L)	30			6.2			3.9
Chemical Oxygen Demand (COD) (mg/L)	120			BQL			BQL
Dissolved Cadmium	0.0043		BQL			BQL	
Dissolved Copper	0.013		47	0.047		BQL	
Dissolved Lead	0.065		BQL			BQL	
Dissolved Nickel	0.47		20	0.02		BQL	
Dissolved Silver	0.0034		BQL			BQL	
Dissolved Zinc	0.12		500	0.5		BQL	
Total Recoverable Aluminum	0.75		1300	1.3		170	0.17
Total Recoverable Arsenic	0.1685		BQL			BQL	
Total Recoverable Copper (adjusted for Appendix J)	0.0123	0.0123	54	0.054	0.0156	23	0.023
Total Recoverable Iron	1		2200	2.2		540	0.54
Total Recoverable Lead (adjusted for Appendix J)	0.069	0.069	12	0.012	0.095	BQL	
Total Recoverable Mercury	0.0024		BQL			BQL	
Total Recoverable Zinc (adjusted for Appendix J)	0.11	0.11	720	0.72	0.13	120	0.12
Total Suspended Solids (TSS) (mg/L)	100			32			7
Oil & Grease	15		BQL			BQL	
pH	6.5~8.5			7.75			7.43
Hardness (mg/L) - Appendix J		N/A			120		

**Table 1. Hardness Ranges to be used to determine Benchmark Values for California Copper, Lead, Nickel, Silver & Zinc**

All Units (mg/L)	Cadmium	Copper	Lead	Nickel	Silver	Zinc
0 - 25	0.0005	0.0038	0.014	0.15	0.0007	0.04
25 - 50	0.0008	0.0056	0.023	0.2	0.0007	0.05
50 - 75	0.0013	0.0090	0.045	0.32	0.0017	0.08
75 - 100	0.0018	0.0123	0.069	0.42	0.003	0.11
100 - 125	0.0023	0.0156	0.095	0.52	0.0046	0.13
125 - 150	0.0029	0.0189	0.122	0.61	0.0065	0.16
150 - 175	0.0034	0.0221	0.151	0.71	0.0087	0.18
175 - 200	0.0039	0.0253	0.182	0.8	0.0112	0.2
200 - 225	0.0045	0.0285	0.213	0.89	0.0138	0.23
225 - 250	0.0050	0.0316	0.246	0.98	0.0168	0.25
250+	0.0055	0.0332	0.262	1.02	0.0183	0.26



Ormond Beach Generating Station Action Plan Pursuant to NRG Wishtoyo Consent Decree  
July 1, 2015

Pursuant to paragraph 14 of the Consent Decree, NRG submits this Action Plan to address the Table 1 exceedances disclosed in the sampling results submitted to you on February 6, 2015. Paragraph 14 provides that an Action Plan must include: (1) the identification of the pollutant(s) discharged in excess of the Consent Decree Standard(s); (2) an assessment of the source of each pollutant exceedance, (3) the identification of additional BMPs, including structural BMPs and/or systems/devices to treat stormwater prior to discharge from the Facility, with demonstrated effectiveness in meeting the applicable Consent Decree Standard(s), and that will be implemented to reduce and/or eliminate the discharge of pollutants from the Facility so that contaminants in Stormwater Discharges do not exceed the applicable Consent Decree Standard(s) (“Action Plan BMPs”); and (4) time schedules for implementation of the Action Plan BMPs, and such time schedule(s) for implementation shall ensure that all Action Plan BMPs are implemented no later than October 1 (prior to the next Wet Season). Each of these Action Plan elements is addressed in turn below.

1. Identification of pollutants discharged in excess of the Consent Decree Standards

The sampling results indicated exceedances of the following pollutants in the December 2, 2014 sampling event: Dissolved Zinc and Total Recoverable Zinc. Sampling results from the subsequent December 12, 2014 sampling event indicated no exceedances.

2. Assessment of the source of each pollutant exceedance

The December 2<sup>nd</sup> storm event was the first storm of the year that initiated the operation of the Stormwater filtration system. Samples were taken in accordance with the Consent Decree. Potential sources of Zinc in the area are:

- a. The reinforced drain covers are galvanized to prevent corrosion and maintain structural integrity if equipment is being driven over them.
- b. The rock placed in the area for electrical safety has a dielectric property and one of the metals that can contribute to this property is Zinc.
- c. Corrugated galvanized pipe is a component of some of the piping system.

3. Identification of additional BMPs

Based on the analysis of contributing factors described above in Section 2, we are implementing the following steps:

- a. Added capability to transport stormwater from south side of plant to reclaim basin to allow for particulates to drop out before filtration.

- b. Introduce Greensand for metals reduction during filter operation.
- c. Coat drain covers with epoxy coating to reduce water-to-metal contact.
- d. Evaluate soil composition in unpaved areas on the south side of the plant to determine if it is a source of zinc. Depending on the results, a method to reduce contact of rain water to soil during rain events will be evaluated.

#### 4. Time schedules for implementation

Item (a) was implemented before the end of the Wet Season. Items (b), (c) and (d) (soil evaluation dependent) will be in place by October 1<sup>st</sup> 2015.

**ORMOND BEACH CONSENT DECREE - TABLE 1 RESULTS**

TABLE 1 CONTAMINATE	C.D. STANDARD	TEST RESULTS			
		December 2, 2014		December 12, 2014	
	(mg/L)	Hardness Adjusted Limits (mg/L)	Lab Results (mg/L)	Hardness Adjusted Limits (mg/L)	Lab Results (mg/L)
Hardness (mg/L) <sup>1</sup>	75~100		280		280
pH	6.5~8.5	6.5 - 8.5	7.68	6.5 - 8.5	8.2
Biochemical Oxygen Demand (BOD) (mg/L)	30	30	8.2	30	1.7
Chemical Oxygen Demand (COD) (mg/L)	120	120	35	120	9.3
Total Suspended Solids (TSS) (mg/L)	100	100	44	100	36
Oil & Grease (mg/L)	15	15	1.1	15	1
Dissolved Cadmium <sup>2</sup>	0.0043	0.0136	ND	0.0136	ND
Dissolved Copper <sup>2</sup>	0.013	0.035	0.023	0.035	0.018
Dissolved Lead <sup>2</sup>	0.065	0.24	ND	0.24	0.02
Dissolved Nickel <sup>2</sup>	0.47	1.12	0.006	1.12	ND
Dissolved Silver <sup>2</sup>	0.0034	0.0203	ND	0.0203	ND
Dissolved Zinc <sup>2</sup>	0.12	0.28	0.36	0.28	0.13
Total Recoverable Aluminum	0.75	0.75	0.51	0.75	0.59
Total Recoverable Arsenic	0.1685	0.1685	ND	0.1685	ND
Total Recoverable Copper <sup>3</sup>	0.0123	0.0332	0.026	0.0332	0.02
Total Recoverable Iron	1	1	1	1	1
Total Recoverable Lead <sup>3</sup>	0.069	0.262	ND	0.262	0.023
Total Recoverable Mercury	0.0024	0.0024	ND	0.0024	ND
Total Recoverable Zinc <sup>3</sup>	0.11	0.26	0.57	0.26	0.26

<sup>1</sup> Hardness samples were collected from the adjacent receiving water, an agricultural channel that leads to Oxnard Drain No. 3

<sup>2</sup> Dissolved Consent Decree Standards adjusted using the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR")

<sup>3</sup> Total recoverable Standards adjusted consistent with Appendix J of the 2008 EPA Multi-Sector General Permit.

## **Exhibit 3**

### **Numeric Water Quality Objectives for Metals in Chapter II, Table 1 of the 2012 California Ocean Plan**

**TABLE 1 (formerly TABLE B)  
WATER QUALITY OBJECTIVES**

	Units of <u>Measurement</u>	<u>Limiting Concentrations</u>		
		<u>6-Month Median</u>	<u>Daily Maximum</u>	<u>Instantaneous Maximum</u>
<b>OBJECTIVES FOR PROTECTION OF MARINE AQUATIC LIFE</b>				
Arsenic	µg/L	8.	32.	80.
Cadmium	µg/L	1.	4.	10.
Chromium (Hexavalent) (see below, a)	µg/L	2.	8.	20.
Copper	µg/L	3.	12.	30.
Lead	µg/L	2.	8.	20.
Mercury	µg/L	0.04	0.16	0.4
Nickel	µg/L	5.	20.	50.
Selenium	µg/L	15.	60.	150.
Silver	µg/L	0.7	2.8	7.
Zinc	µg/L	20.	80.	200.
Cyanide (see below, b)	µg/L	1.	4.	10.
Total Chlorine Residual (For intermittent chlorine sources see below, c)	µg/L	2.	8.	60.
Ammonia (expressed as nitrogen)	µg/L	600.	2400.	6000.
Acute* Toxicity	TUa	N/A	0.3	N/A
Chronic* Toxicity	TUc	N/A	1.	N/A
Phenolic Compounds (non-chlorinated)	µg/L	30.	120.	300.
Chlorinated Phenolics	µg/L	1.	4.	10.
Endosulfan	µg/L	0.009	0.018	0.027
Endrin	µg/L	0.002	0.004	0.006
HCH*	µg/L	0.004	0.008	0.012
Radioactivity	Not to exceed limits specified in Title 17, Division 1, Chapter 5, Subchapter 4, Group 3, Article 3, Section 30253 of the California Code of Regulations. Reference to Section 30253 is prospective, including future changes to any incorporated provisions of federal law, as the changes take effect.			

\* See Appendix I for definition of terms.



**TABLE 1 (formerly TABLE B) Continued**

<u>Chemical</u>	<u>30-day Average (µg/L)</u>	
	<u>Decimal Notation</u>	<u>Scientific Notation</u>
<b>OBJECTIVES FOR PROTECTION OF HUMAN HEALTH – NONCARCINOGENS</b>		
acrolein	220.	$2.2 \times 10^2$
antimony	1,200.	$1.2 \times 10^3$
bis(2-chloroethoxy) methane	4.4	$4.4 \times 10^0$
bis(2-chloroisopropyl) ether	1,200.	$1.2 \times 10^3$
chlorobenzene	570.	$5.7 \times 10^2$
chromium (III)	190,000.	$1.9 \times 10^5$
di-n-butyl phthalate	3,500.	$3.5 \times 10^3$
dichlorobenzenes*	5,100.	$5.1 \times 10^3$
diethyl phthalate	33,000.	$3.3 \times 10^4$
dimethyl phthalate	820,000.	$8.2 \times 10^5$
4,6-dinitro-2-methylphenol	220.	$2.2 \times 10^2$
2,4-dinitrophenol	4.0	$4.0 \times 10^0$
ethylbenzene	4,100.	$4.1 \times 10^3$
fluoranthene	15.	$1.5 \times 10^1$
hexachlorocyclopentadiene	58.	$5.8 \times 10^1$
nitrobenzene	4.9	$4.9 \times 10^0$
thallium	2.	$2. \times 10^0$
toluene	85,000.	$8.5 \times 10^4$
tributyltin	0.0014	$1.4 \times 10^{-3}$
1,1,1-trichloroethane	540,000.	$5.4 \times 10^5$
<b>OBJECTIVES FOR PROTECTION OF HUMAN HEALTH – CARCINOGENS</b>		
acrylonitrile	0.10	$1.0 \times 10^{-1}$
aldrin	0.000022	$2.2 \times 10^{-5}$
benzene	5.9	$5.9 \times 10^0$
benzidine	0.000069	$6.9 \times 10^{-5}$
beryllium	0.033	$3.3 \times 10^{-2}$
bis(2-chloroethyl) ether	0.045	$4.5 \times 10^{-2}$
bis(2-ethylhexyl) phthalate	3.5	$3.5 \times 10^0$
carbon tetrachloride	0.90	$9.0 \times 10^{-1}$
chlordane*	0.000023	$2.3 \times 10^{-5}$
chlorodibromomethane	8.6	$8.6 \times 10^0$

\* See Appendix I for definition of terms.

**TABLE 1 (formerly TABLE B) Continued**

<u>Chemical</u>	<u>30-day Average (µg/L)</u>	
	<u>Decimal Notation</u>	<u>Scientific Notation</u>
<b>OBJECTIVES FOR PROTECTION OF HUMAN HEALTH – CARCINOGENS</b>		
chloroform	130.	$1.3 \times 10^2$
DDT*	0.00017	$1.7 \times 10^{-4}$
1,4-dichlorobenzene	18.	$1.8 \times 10^1$
3,3'-dichlorobenzidine	0.0081	$8.1 \times 10^{-3}$
1,2-dichloroethane	28.	$2.8 \times 10^1$
1,1-dichloroethylene	0.9	$9 \times 10^{-1}$
dichlorobromomethane	6.2	$6.2 \times 10^0$
dichloromethane	450.	$4.5 \times 10^2$
1,3-dichloropropene	8.9	$8.9 \times 10^0$
dieldrin	0.00004	$4.0 \times 10^{-5}$
2,4-dinitrotoluene	2.6	$2.6 \times 10^0$
1,2-diphenylhydrazine	0.16	$1.6 \times 10^{-1}$
halomethanes*	130.	$1.3 \times 10^2$
heptachlor	0.00005	$5 \times 10^{-5}$
heptachlor epoxide	0.00002	$2 \times 10^{-5}$
hexachlorobenzene	0.00021	$2.1 \times 10^{-4}$
hexachlorobutadiene	14.	$1.4 \times 10^1$
hexachloroethane	2.5	$2.5 \times 10^0$
isophorone	730.	$7.3 \times 10^2$
N-nitrosodimethylamine	7.3	$7.3 \times 10^0$
N-nitrosodi-N-propylamine	0.38	$3.8 \times 10^{-1}$
N-nitrosodiphenylamine	2.5	$2.5 \times 10^0$
PAHs*	0.0088	$8.8 \times 10^{-3}$
PCBs*	0.000019	$1.9 \times 10^{-5}$
TCDD equivalents*	0.0000000039	$3.9 \times 10^{-9}$
1,1,2,2-tetrachloroethane	2.3	$2.3 \times 10^0$
tetrachloroethylene	2.0	$2.0 \times 10^0$
toxaphene	0.00021	$2.1 \times 10^{-4}$
trichloroethylene	27.	$2.7 \times 10^1$
1,1,2-trichloroethane	9.4	$9.4 \times 10^0$
2,4,6-trichlorophenol	0.29	$2.9 \times 10^{-1}$
vinyl chloride	36.	$3.6 \times 10^1$

\* See Appendix I for definition of terms.

Table 1 Notes:

- a) Dischargers may at their option meet this objective as a total chromium objective.
- b) If a discharger can demonstrate to the satisfaction of the Regional Water Board (subject to EPA approval) that an analytical method is available to reliably distinguish between strongly and weakly complexed cyanide, effluent limitations for cyanide may be met by the combined measurement of free cyanide, simple alkali metal cyanides, and weakly complexed organometallic cyanide complexes. In order for the analytical method to be acceptable, the recovery of free cyanide from metal complexes must be comparable to that achieved by the approved method in 40 CFR PART 136, as revised May 14, 1999.
- c) Water quality objectives for total chlorine residual applying to intermittent discharges not exceeding two hours, shall be determined through the use of the following equation:

$$\log y = -0.43 (\log x) + 1.8$$

where: y = the water quality objective (in µg/L) to apply when chlorine is being discharged;  
x = the duration of uninterrupted chlorine discharge in minutes.

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E. Biological Characteristics

- 1. Marine communities, including vertebrate, invertebrate, and plant species, shall not be degraded\*.
- 2. The natural taste, odor, and color of fish, shellfish\*, or other marine resources used for human consumption shall not be altered.
- 3. The concentration of organic materials in fish, shellfish\* or other marine resources used for human consumption shall not bioaccumulate to levels that are harmful to human health.

F. Radioactivity

- 1. Discharge of radioactive waste\* shall not degrade\* marine life.

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\* See Appendix I for definition of terms.