

ENVIRONMENTAL SETTLEMENT AGREEMENT

This Environmental Settlement Agreement ("Agreement"), dated as of June 18, 2001, is made between PSEG Nuclear LLC ("PSEG"), a Delaware Limited Liability Company, and the Delaware Department of Natural Resources and Environmental Control ("DNREC"), an agency of the State of Delaware (collectively referred to as the "Parties").

WHEREAS, PSEG currently operates the Salem Generating Station ("Salem") under New Jersey Pollutant Discharge Elimination System ("NJPDES") Permit No. NJ0005622 ("Current NJPDES Permit") issued July 20, 1994 by the New Jersey Department of Environmental Protection ("NJDEP") pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1; and

WHEREAS, PSEG filed a renewal application on March 4, 1999, which continues the Current NJPDES Permit in effect until NJDEP issues a renewal permit, and on December 8, 2000, NJDEP issued a draft NJPDES permit for Salem ("Draft NJPDES Permit") for public review and comment; and

WHEREAS, NJDEP received comments from DNREC and others during the public comment period, which closed on March 14, 2001; and

WHEREAS, NJDEP is considering the comments of DNREC and others and will issue a final NJPDES permit ("Final NJPDES Permit") and respond to such comments; and

WHEREAS, it is anticipated that as a result of NJDEP's review of the administrative record and the comments, the Final NJPDES Permit will require PSEG to

continue certain existing measures and implement various new measures that are protective of the Delaware Estuary, which measures are expected to include the following which are responsive to DNREC's comments, more specifically: (i) feasibility studies of various technologies that may reduce entrainment and impingement losses at the Salem intake structure, including the hydrodynamics in the vicinity of the intake structure, and operational implementation of such measures as are determined to be feasible, cost-effective and biologically meaningful; (ii) enhanced biological monitoring, which will collect data necessary to reduce uncertainties as to loss estimates for finfish representative important species ("RIS"), and to estimate a conditional mortality rate ("CMR") for striped bass and which is also expected to permit CMRs to be estimated for finfish RIS, exclusive of Atlantic croaker; and (iii) continued research into effective methods for *Phragmites* control; and

WHEREAS, the Parties entered into a Settlement Agreement in 1995 ("1995 Agreement") and a Memorandum of Agreement in 1999 ("MOA") related to the Current NJPDES Permit to assure the implementation and funding of activities in Delaware that are protective of the Delaware Estuary, including (i) the restoration of 2000 acres of degraded marsh in accordance with the requirements of the Current NJPDES Permit for "credit" under the Current NJPDES Permit, which is being accomplished by restoration of an aggregate of 2,599 acres of marsh at Cedar Swamp Marsh and the Rocks Marsh; (ii) the restoration of approximately 2100 acres of degraded marsh at Woodland Beach, the Lang Tract and Silver Run marshes and an additional approximate 3000 acres of *Phragmites*-dominated or otherwise degraded wetlands in Delaware (collectively referred to as "Non-creditable *Phragmites* Restoration Sites"); (iii) the acquisition and

preservation of approximately 2000 acres of uplands; (iv) restoration of partial tidal exchange to approximately 1,000 acres at Augustine Creek; (v) the construction, operation and maintenance of up to three fish ladders at sites in Delaware, which has resulted in the installation of fish ladders at six sites in Delaware; and (vi) the construction of artificial reefs in Delaware Bay; and

WHEREAS, the record for the Final NJPDES Permit proceeding has closed, such that any unresolved concerns or comments raised by DNREC are, therefore, now ripe for resolution; and

WHEREAS, the environmentally protective measures described in this Agreement which are expected to be included in the Final NJPDES Permit, together with the additional measures required by this Agreement, adequately respond to DNREC's comments, and the Parties believe that the expeditious implementation of these measures will further their mutual interest in protecting the health of the Delaware Estuary.

NOW, THEREFORE, IN FULL RECOGNITION OF AND RELIANCE ON THE RECITALS SET FORTH ABOVE AND INTENDING TO BE LEGALLY BOUND THE PARTIES AGREE AS FOLLOWS:

1. **DNREC Representation on EEPAC.** PSEG agrees to nominate two representatives from DNREC to serve on the Estuary Enhancement Program Advisory Committee ("EEPAC"). The Parties further agree that one of the DNREC persons nominated shall have experience in wetlands ecology or marsh restoration and the other nominee shall have experience in estuarine fish or fisheries science or management.

2. **Wetlands Protection/Enhancement/Restoration.** 2a. Land Acquisition and Water Management. PSEG agrees to continue to fund additional activities by DNREC in

Delaware that will protect or improve coastal wetland habitats for fishes that utilize the Delaware Estuary, Delaware River and their tributaries (collectively, the "Delaware Estuary"). DNREC shall use the funds specified in this Article 2a to (i) acquire Delaware Estuary degraded wetlands, coastal impoundments and uplands adjacent to those lands presently in private ownership in Delaware, and (ii) restore and/or enhance degraded wetlands or coastal impoundments in the Delaware Estuary that are protective of and or useful as fish habitats by improving hydrological features of coastal impoundments or implementing other appropriate restoration techniques. PSEG shall fund the projects described in this Article 2a in the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000), in accordance with Article 11a of this Agreement.

2b. Landowner Habitat Technical Assistance Program. PSEG agrees to fund and DNREC shall use the monies funded under this Article 2b to support a DNREC-sponsored program that provides technical advice and financial assistance to Delaware private landowners for the (i) enhancement of the ecological function of private lands in the Delaware Estuary where needed to protect coastal marshes from the effects of non-point source runoff, and (ii) assistance with various water management projects, which would be protective of the aquatic resources of the Delaware Estuary. PSEG shall fund the projects described in this Article 2b in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), in accordance with Article 11a of this Agreement.

2c. Non-creditable *Phragmites* Control. PSEG agrees to continue to fund and DNREC shall use the monies so funded under this Article 2c to control *Phragmites* at the Non-Creditable *Phragmites* Restoration Sites and other *Phragmites*-degraded lands.

PSEG shall fund the projects described in this Article 2c in the amount of Five Hundred Thousand Dollars (\$500,000), in accordance with Article 11a of this Agreement.

3. **Artificial Reefs.** PSEG agrees to fund and DNREC shall use the monies so funded under this Article 3 to construct additional artificial reefs at a location or locations in Delaware Bay determined by DNREC. PSEG shall fund Article 3 in the amount of Five Hundred Thousand Dollars (\$500,000), in accordance with Article 11a of this Agreement. DNREC agrees to apply for matching federal funds, if entitled.

4. **DNREC Biological Monitoring.** PSEG agrees to fund and DNREC shall use the monies funded under this Article 4 to conduct certain of the biological monitoring programs of DNREC relevant to assessments of the species subject to entrainment or impingement at Salem. PSEG shall fund Article 4 in the amount of One Million Thirty-Seven Thousand Five Hundred Dollars (\$1,037,500), in accordance with Article 11a of this Agreement. DNREC also may use funds from this Article to defray costs associated with: (i) DNREC's review of PSEG-generated reports and analyses, (ii) participation on the EEPAC, (iii) database or information management related to fisheries resources in the Delaware Estuary, and (iv) conducting or contracting for stock assessments of the RIS for Salem. DNREC agrees to apply for matching federal funds, if entitled.

5. **Fish Ladders.** 5a. Monitoring and Maintenance of Existing Fish Ladders. PSEG agrees to conduct monitoring, maintenance and stocking of the six (6) fish ladders in Delaware constructed pursuant to the Current NJPDES Permit, consistent with the Final NJPDES Permit. The estimated cost of such activities is Six Hundred Seventy-Five Thousand Dollars (\$675,000), which PSEG shall fund in accordance with Article 11b of this Agreement.

5b. Installation, Monitoring and Maintenance of Additional Fish Ladders. PSEG agrees to apply for permits and construct up to two (2) additional fish ladders at Delaware locations agreed upon jointly by PSEG and DNREC during the period covered by the Final NJPDES Permit. The estimated cost of such activities is Three Hundred Thirty Thousand Dollars (\$330,000), which PSEG shall fund in accordance with Article 11b of this Agreement. PSEG agrees to operate, maintain, monitor and stock each new fish ladder so constructed during the term of the Final NJDEP Permit. The estimated cost of such activities is Twenty-Two Thousand Five Hundred Dollars (\$22,500) per fish ladder per year of operation, which PSEG shall fund in accordance with Article 11b of this Agreement.

6. **Creditable *Phragmites* Control.** In accordance with the 1999 MOA for Delaware's two (2) NJPDES Permit creditable sites, PSEG agrees to continue the ongoing *Phragmites* control activities at the Cedar Swamp Marsh and The Rocks Marsh, for creditable (and associated non-creditable) acreage at these two sites under the Final NJPDES Permit. The estimated cost of such restoration is One Million One Hundred Forty-Four Thousand Dollars (\$1,144,000), which PSEG shall fund in accordance with Article 11b of this Agreement.

7. **Alternative Fish Protection Technologies.** 7a. Feasibility Studies. Consistent with the Final NJPDES Permit, PSEG agrees to (i) develop Plans of Study ("POS") for the conduct of feasibility studies of various fish protection technologies individually and in combinations, which technologies are strobe light technology, air bubble technology, and sound deterrents; (ii) submit the POS to NJDEP for review and approval; and (iii) submit the results of these studies to NJDEP. PSEG also agrees to

conduct a study of the feasibility of installing jetties in the vicinity of the intake structure to reduce entrainment and to submit the results of this study to NJDEP and DNREC.

7b. Implementation of Fish Protection Technologies. Consistent with the Final NJPDES Permit, PSEG agrees to implement any cost-effective alternative intake technologies that may be required by NJDEP as a result of studies conducted pursuant to Article 7a that will minimize impingement and entrainment effects based on the results of the studies conducted pursuant to Article 7a of this Agreement. If PSEG were to disagree with NJDEP's determination that a given technology were feasible, cost-effective and biologically effective, PSEG reserves its right to challenge the implementation of the technology but, subject to the continued operation of Salem, agrees to implement any technology ultimately required to be installed as a result of a final, non-appealable determination or order.

8. **Biological Monitoring and Analyses.** 8a. Enhanced Biological Monitoring Program. PSEG agrees (i) to develop for review by the EEPAC and approval by NJDEP an enhanced biological monitoring program ("BMP"), which shall be no less rigorous than the BMP PSEG presented at the June 2000 Monitoring Advisory Committee meeting; and (ii) to implement the BMP approved by the NJDEP, as contemplated by the Final NJPDES Permit.

8b. Juvenile Herring Monitoring. PSEG agrees to: (i) include juvenile alewife and blueback herring out-migration monitoring at fish ladder sites as a component of the BMP; (ii) conduct such monitoring at least once during the term of the Final NJPDES Permit; and (iii) investigate alternative methods for such monitoring, which methods would reduce sampling-induced mortality.

8c. Conditional Mortality Rates. The data collected through the BMP should allow PSEG to estimate a CMR for striped bass, and other finfish RIS exclusive of Atlantic croaker. PSEG agrees, prior to expiration of the Final Permit, to estimate a CMR for striped bass and, dependent upon availability of data from non-PSEG controlled monitoring programs, to estimate CMRs for these other finfish RIS, absent issuance of regulations or guidance recommending use of other analytical methodologies or availability of superior analytical methodologies for application at Salem.

9. *Phragmites* Control Test Area Program. PSEG agrees to continue to implement its program to assess the relative efficacy of various techniques for controlling *Phragmites* (the "Test Area Program"), as described in the Plan of Action submitted pursuant to the Land Use Regulation Program permit for PSEG's Alloway Creek Watershed Restoration Site. PSEG agrees to implement the Test Area Program through 2005.

10. Reporting. 10a. DNREC Reporting Obligations. DNREC agrees to prepare reports describing the implementation of the projects described in Articles 2, 3 and 4 of this Agreement on a quarterly basis and to provide PSEG with copies of said reports no later than the 45th day following the end of each quarter. Each report shall include both a summary of the activities undertaken in connection with the project and a summary of the funds expended by Article.

10b. DNREC Biological Monitoring Data. If requested, DNREC shall provide to PSEG, in a reasonable form and within a reasonable timeframe, data and information related to, and the results obtained from, the implementation of the measures funded pursuant to Articles 2, 3 and 4 of this Agreement, except that DNREC specifically agrees

to exercise reasonable efforts to provide the data collected pursuant to Article 4 on or by February 28 of the year following collection of the data. DNREC agrees that PSEG shall have the right to use such data and information for its purposes.

10c. PSEG Reporting Obligations. In addition to any reporting obligations PSEG has under the terms and conditions of the Final NJPDES Permit, PSEG shall prepare reports describing the implementation of the projects described in Articles 5 and 6 of this Agreement on a quarterly basis and provide DNREC with copies of said reports no later than the 45th day following the end of each quarter. Each report shall include both a summary of the activities undertaken in connection with the project and a summary of the funds expended by Article.

11. **Funding.** 11a. Funding for DNREC-Administered Articles. Within sixty (60) days after the date of the execution of this Agreement by both of the Parties, PSEG shall deposit for DNREC-administered Articles 2, 3 and 4 an aggregate of Five Million Seven Hundred Eighty-Seven Thousand Five Hundred Dollars (\$5,787,500) into an interest-bearing Escrow Account established pursuant to an Escrow Agreement, which agreement shall be in a form mutually agreeable to the Parties. These funds shall be used by DNREC to fund Articles 2, 3 and 4 of this Agreement in accordance with the provisions of, and during the term of the Escrow Agreement. This deposit shall completely discharge PSEG from any further financial obligations during the term of the Final NJPDES Permit for Articles 2, 3 and 4 of the Agreement.

11b. Funding for PSEG-Administered Articles. For PSEG-administered Articles 5 and 6, PSEG shall fund such projects from its internal funds and shall report to DNREC on the expenditure of these funds pursuant to Article 10b of this Agreement.

11c. Reimbursements to PSEG for DNREC-Requested Work. PSEG shall be entitled to reimbursement from DNREC for consultant, contractor, and/or ancillary costs that PSEG incurs in connection with responding to requests by DNREC for technical support and technical services related to projects administered or implemented by DNREC under Articles 2, 3 and/or 4 of this Agreement.

12. Termination of Escrow Account and Agreement. 12a. The Escrow Account and Escrow Agreement shall terminate on the thirtieth (30th) day following the latter of the date that the United States Environmental Protection Agency ("USEPA") approves the Final NJPDES Permit or the Delaware River Basin Commission ("DRBC") renews or revises its Docket for Salem to reflect the terms or conditions in the Final NJPDES Permit. Upon such termination, the funds in the Escrow Account shall be transferred to interest-bearing accounts managed by DNREC, and shall be solely used by DNREC to undertake the activities in Articles 2, 3 and 4 of this Agreement.

13. Issue resolution. DNREC and PSEG agree that this Agreement resolves all issues between PSEG and DNREC relating to the Draft NJPDES Permit and the Final NJPDES Permit for the term of the Final NJPDES Permit, except compliance with the terms of the Final NJPDES Permit. DNREC and PSEG each agree that whether any NJPDES Permit creditable project described in this Agreement complies with the terms and conditions of the Final NJPDES Permit shall be a NJDEP determination. DNREC agrees to forego requesting an adjudicatory hearing on the Final NJPDES Permit. PSEG and DNREC agree that each shall hereafter work cooperatively and in good faith with and support the other with respect to the Draft NJPDES Permit and the Final NJPDES Permit and DRBC Docket so as to, inter alia, obtain any federal, interstate, state and/or

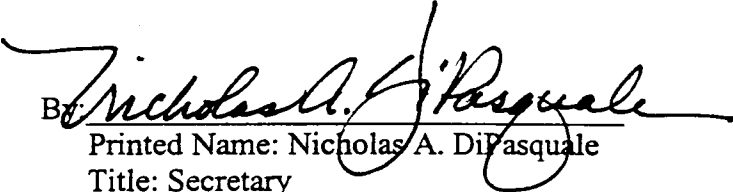
local agency regulatory approvals, authorizations and/or permits, including with the USEPA and the DRBC.

14. **Life of Agreement.** This Agreement shall terminate on the date that is five years from the date of issuance of the Final NJPDES Permit.

15. **Legal rights.** DNREC and PSEG each agree that this Agreement shall not affect or in any way limit the legal rights that each may have in respect of renewal of the Final NJPDES Permit upon its expiration.


IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated.

**DELAWARE DEPARTMENT OF NATURAL
RESOURCES AND ENVIRONMENTAL CONTROL**

By: 
Printed Name: Nicholas A. DiPasquale
Title: Secretary

Date: 6/25/01

PSEG NUCLEAR LLC

By: 
Printed Name: Harold W. Keiser
Title: President and Chief Nuclear Officer

Date: June 18, 2001