



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 09 2016

REPLY TO THE ATTENTION OF:

VIA E-MAIL: jim.leiting@bigriverresources.com
RETURN RECEIPT REQUESTED

Jim Leiting, Chief Operating Office
Big River Resources Galva, LLC
1100 SE 2nd Street,
Galva, Illinois 61434

Dear Mr. Leiting:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Big River Resources Galva, LLC, docket no. CAA-05-2017-0004. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

November 9, 2016.

Pursuant to paragraph 28 of the CAFO, Big River Resources Galva, LLC must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Cynthia A. King, Office of Regional Counsel, (312) 886.6831.

Sincerely,

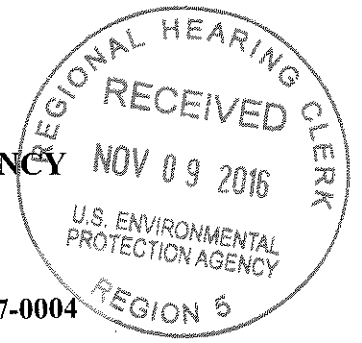
A handwritten signature in black ink, appearing to read "Sarah Marshall".

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer (C-14J)
Regional Hearing Clerk (E-19J)
Cynthia A. King (C-14J)
Yasmine Keppner-Bauman, Acting Manager, Illinois Compliance Section, Bureau of Air
Yasmine.Keppner-Bauman@Illinois.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)	Docket No.	CAA-05-2017-0004
)		
Big River Resources Galva, LLC)	Proceeding to Assess a Civil Penalty	
Galva, Illinois,)	Under Section 113(d) of the Clean Air Act,	
)	42 U.S.C. § 7413(d)	
Respondent.)		
_____)		

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Big River Resources Galva, LLC (Respondent or Big River), a limited liability corporation doing business in Illinois.

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

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

Jurisdiction and Waiver of Right to Hearing

6. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

7. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

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

Statutory and Regulatory Background

9. Section 110(a)(1) of the CAA, 42 U.S.C. § 7410(a)(1), requires each state to adopt and submit to the EPA for approval a State Implementation Plan (SIP) that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS). Under Section 110(a) of the CAA, 42 U.S.C. § 7410(a), each SIP must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. Pursuant to Section 113(a) and (b) of the CAA, 42 U.S.C. § 7413(a) and (b), upon EPA approval, SIP requirements are federally enforceable under Section 113.

10. Under 40 C.F.R. § 52.23, any permit limitation or condition contained within a permit issued under an EPA-approved program that is incorporated in a SIP, is a requirement of the SIP, and is federally enforceable under Section 113, 42 U.S.C. § 7413.

11. EPA promulgated approval of Illinois Administrative Code (IAC) Part 201, "Permits and General Conditions," as part of the federally enforceable SIP for the State of Illinois on May 31, 1972, 37 Fed. Reg. 10862. Since then, EPA has approved several revisions of 35 IAC Part 201 into the federally-enforceable SIP.

12. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for CAA violations that occurred after January 12, 2009 through December 6, 2013 and up to \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

13. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

14. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

15. Big River owns and operates an ethanol production facility located at 1100 SE 2nd Street, Galva, Illinois (the facility).

16. The facility has operated since 2008 under an Illinois Construction Permit issued on June 8, 2007 by Illinois Environmental Protection Agency (IEPA) (original permit). The permit was revised and reissued to Big River by IEPA on June 22, 2011 (current permit).

17. On July 1, 2011, EPA conducted an inspection at the facility.

18. The facility has two thermal oxidizers (TO), referred to as TO #1 and TO #2. Both of the TOs vent to a combined stack. The facility has one fermentation scrubber.

19. On October 18, 2013, EPA issued a Section 114 Information Request to Big River.

20. One December 5, 2013, Big River submitted a response to the October 11, 2013, Section 114 Information Request (Section 114 Response).

21. Condition Number 2.5.5-1(c)(ii) of the current permit requires that the facility operate the thermal oxidizers at the minimum hourly combustion chamber operating temperature of 1,450 degree Fahrenheit, excluding periods of shutdown, power outages, and continuous emission monitor maintenance and calibration.

22. On March 6, 2014 EPA issued Big River a Notice of Violation and Findings of Violation (NOV/FOV).

23. On April 22, 2014 EPA met with Big River to discuss the NOV/FOV and an April 18, 2014 letter from Big River to EPA.

24. In response to the April 22, 2014 meeting, Big River provided additional information to EPA on April 25, 2014, May 2, 2014, and August 19, 2015.

25. Based on the information provided by Big River on May 2, 2014 and August 19, 2015, from September 1, 2011, to June 30, 2015, there were periods that the hourly operating temperature of the TOs did not meet the minimum hourly combustion chamber operating temperature of 1,450 degrees Fahrenheit, excluding periods of shutdown, power outages, and continuous emission monitor maintenance and calibration.

26. Big River's failure to maintain the hourly minimum combustion temperature operating requirement of 1450 degrees Fahrenheit, contained in its permit, from September 1, 2011 to June 30, 2015, was in violation of Section 110 of the CAA, 42 U.S.C. § 7410 and the Illinois SIP

Civil Penalty

27. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, and the fact that Big River has been cooperative in

responding to the NOV/FOV and working with Region 5 to find a mechanism for compliance and possibly settlement, Complainant has determined that an appropriate civil penalty to settle this action is \$23,915.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$23,915 civil penalty by electronic funds transfer, payable to Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

29. Respondent must send a notice of payment that states Respondent’s name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Cynthia A. King (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

31. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

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

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

35. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

36. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 34, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

37. Respondent certifies that it is complying fully with the Condition Number 2.5.5-1(c)(ii) of its current permit.

38. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

39. The terms of this CAFO bind Respondent, its successors and assigns.

40. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

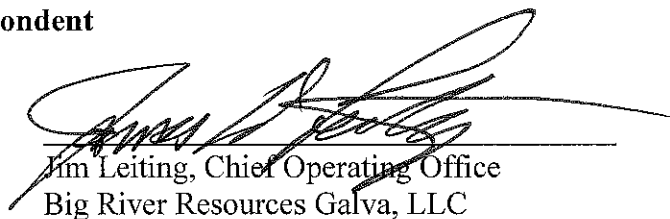
41. Each party agrees to bear its own costs and attorneys' fees in this action.

42. This CAFO constitutes the entire agreement between the parties.

43. This Consent Agreement and Final Order shall become effective immediately upon filing with the Regional Hearing Clerk.

Big River Resources Galva, LLC, Respondent


10-7-2016
Date



Jim Leiting, Chief Operating Office
Big River Resources Galva, LLC

United States Environmental Protection Agency, Complainant

11/3/16
Date



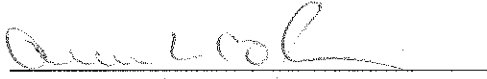
Edward Nam
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Big River Resources Galva, LLC
Docket No. CAA-05-2017-0004

Final Order

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

November 18, 2016
Date


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

Consent Agreement and Final Order
In the matter of: Big River Resources Galva, LLC, Galva, Illinois
Docket Number: **CAA-05-2017-0004**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CAA-05-2017-0004**, which was filed on *November 9, 2016*, in the following manner to the following addressees:

Copy by E-mail to Respondent: Jim Leiting
jim.leiting@bigriverresources.com

Copy by E-mail to
Attorney for Complainant: Cynthia A. King
king.cynthia@epa.gov

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

Dated: *November 9, 2016* 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5