



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

DEC 23 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steve Kelly
General Manager
One Earth Energy, LLC
202 North Jordan Drive
Gibson City, Illinois 60936

Dear Mr. Kelly:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves One Earth Energy, LLC, Respondent, EPA docket number CAA-05-2014-0007. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on DEC 27 2013.

Pursuant to Paragraph 40 of the CAFO, One Earth Energy, LLC must pay the civil penalty within 30 days of DEC 27 2013. Your check must display the case name One Earth Energy, LLC and the docket number CAA-05-2014-0007.

Please direct any questions regarding this case to Cynthia King, Regional Counsel, at (312) 886-6831.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan A. Frank".

Nathan A. Frank, P.E.
Section Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Cynthia King/C-14J
Ray Pilapil

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

| | | |
|-------------------------------|---|--------------------------------------------------|
| In the Matter of: |) | Docket No. CAA-05-2014-0007 |
| |) | |
| One Earth Energy, LLC, |) | Proceeding to Assess a Civil Penalty |
| Gibson City, 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 One Earth Energy, LLC (One Earth), a limited liability company 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). 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.

5. One Earth consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

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U.S. EPA REGION 5
CHICAGO, ILLINOIS

Jurisdiction and Waiver of Right to Hearing

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

7. One Earth 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.

Applicable Statutory and Regulatory Background

8. 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. 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 of the CAA, 42 U.S.C. § 7413.

9. EPA promulgated approval of 35 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.

10. EPA promulgated approval of the Illinois Federally Enforceable State Operating Permit (FESOP) program on December 17, 1992. See 57 Fed. Reg. 59928. Illinois' FESOP program became effective on February 16, 1993.

11. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

12. 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.

13. 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

14. One Earth owns and operates an ethanol plant located at 202 North Jordan Drive, Gibson City, Illinois (the Facility).

15. The Illinois EPA (IEPA) issued a Construction Permit to the facility dated May 7, 2007.

16. The IEPA issued a FESOP to the facility dated January 25, 2011.

17. Construction Permit and FESOP conditions 2.2.5-2.b require the facility to operate the baghouses (Grain Unloading Baghouse and Hammermill Baghouse) with a pressure drop that is within a range that is consistent with manufacturer's recommended levels or that during emission testing demonstrated compliance with applicable requirements.

18. Construction Permit and FESOP condition 2.2.9.d requires the facility to maintain records of the differential pressure of each baghouse (Grain Unloading Baghouse and Hammermill Baghouse), recorded at least once per operating day.

19. Construction Permit and FESOP condition 2.6.5-1.a. requires the facility to operate the baghouses (Cooling Drum Baghouse and DDG Load-Out Baghouse) with a pressure drop that is within a range that is consistent with manufacturer's recommended levels or that during emission testing demonstrated compliance with applicable requirements.

20. Construction Permit and FESOP condition 2.6.9.b requires the facility to maintain records of the differential pressure of each baghouse (Cooling Drum Baghouse and DDG Load-Out Baghouse), recorded at least once per operating day.

21. Construction Permit and FESOP condition 2.3.5.a.i.A states that the minimum scrubber water flow rate based on the hourly average shall be maintained at levels that are consistent with levels at which emission testing demonstrated compliance with applicable requirements.

22. Construction Permit and FESOP condition 2.3.5.a.i.C states that the maximum scrubber exhaust gas outlet temperature based on the hourly average shall be maintained at levels that are consistent with levels at which emission testing demonstrated compliance with applicable requirements.

23. Construction Permit and FESOP condition 2.5.5.c.ii states that during periods when feed is present in the dryers or emissions from other units are vented to the oxidizer/boiler systems, the minimum combustion chamber temperature of each oxidizer/boiler system shall be maintained at a temperature that is consistent with the temperature at the manufacturer's recommended temperature or at which emission testing demonstrated compliance with applicable requirements.

24. Construction Permit and FESOP condition 2.5.6.a.ii states that CO emissions from the affected units controlled by the oxidizer/boiler systems shall be controlled by at least 90 weight percent or to a concentration of no more than 100 parts per million by volume (ppmv), whichever is less stringent.

25. Construction Permit and FESOP condition 3.4 states the recordkeeping and reporting requirements for operating deviations at the facility. Deviations or the lack of deviations shall be reported in quarterly compliance reports submitted to IEPA.

26. On September 21, 2011, EPA sent a CAA Section 114 Information Request to One Earth. On January 20, 2012, One Earth provided documentation in response to the CAA Section 114 Information response.

27. For baghouses in use at the facility, the baghouse manufacturer's specifications state that the pressure drop across the filter bags should be six inches of water column (in. W.C.) or less.

28. In November 2009, a performance test was conducted at the fermentation scrubber. The minimum scrubber water flow rate during the test was 88 gallons per minute. The maximum scrubber gas outlet temperature during the test was 72 °F.

29. In November 2009, a performance test was conducted at the two thermal oxidizers. The minimum combustion temperature at thermal oxidizer one (TO1) was 1,540.4 °F. The minimum combustion temperature at thermal oxidizer two (TO2) was 1534.3 °F.

Alleged Violations

30. On multiple occasions from September 2009 to July 2011, baghouse pressure drop readings at the Grain Unloading Baghouse and Hammermill Baghouse exceeded six in. W.C., as required by Construction Permit and FESOP condition 2.2.5-2.b.

31. On multiple occasions from December 2009 to July 2011, baghouse pressure drop readings at the Cooling Drum Baghouse and DDG Load-Out Baghouse exceeded six in. W.C., as required by Construction Permit and FESOP condition 2.6.5-1.a.

32. On multiple occasions from September 2009 to September 2011, One Earth failed to record the pressure drop at the Grain Unloading Baghouse and Hammermill Baghouse, as required by Construction Permit and FESOP condition 2.2.9.d.

33. On multiple occasions from September 2009 to September 2011, One Earth failed to record the pressure drop at the Cooling Drum Baghouse and DDG Load-Out Baghouse, as required by Construction Permit and FESOP condition 2.6.9.b.

34. On multiple occasions from December 2009 to June 2011, One Earth failed to maintain the scrubber water flow rate above the limit established during the November 2009 performance test, as required by Construction Permit and FESOP condition 2.3.5.a.i.A.

35. On multiple occasions from November 2009 to September 2011, One Earth failed to maintain the scrubber gas outlet temperature below the limit established during the November 2009 performance test, as required by Construction Permit and FESOP condition 2.3.5.a.i.C.

36. On multiple occasions from November 2009 to September 2011, One Earth failed to maintain the combustion temperature in either TO1 and/or TO2 above the minimum temperature established during the November 2009 performance test, as required by Construction Permit and FESOP condition 2.5.5.c.ii.

37. On multiple occasions from November 2009 to September 2011, One Earth failed to limit the CO emissions at the combined stack for the oxidizer/boiler systems (thermal oxidizers) to less than 200 ppmv (combined stack limit), as required by Construction Permit and FESOP condition 2.5.6.a.ii.

38. One Earth failed to record and report the multiple operating parameter deviations noted above at the baghouses, fermentation scrubber, and thermal oxidizers, as required by Construction Permit and FESOP condition 3.4.

Civil Penalty

39. 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 One Earth's prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$89,227.00.

40. Within 30 days after the effective date of this CAFO, One Earth must pay a \$89,227.00 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name and docket number of this CAFO.

41. One Earth must send a notice of payment that states One Earth's name, and the docket number of this CAFO to EPA at the following addresses:

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

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

43. If One Earth 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.

44. One Earth 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). One Earth 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, One Earth must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. Under

42 U.S.C. § 7413(d)(5), 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.

General Provisions

45. This CAFO resolves only One Earth's liability for federal civil penalties for the violations alleged in this CAFO.

46. 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.

47. This CAFO does not affect One Earth's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in Paragraph 45, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

48. One Earth certifies that it is complying fully with the above-stated provisions of its Construction Permit and FESOP.

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

50. The terms of this CAFO bind One Earth, its successors and assigns.

51. 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.

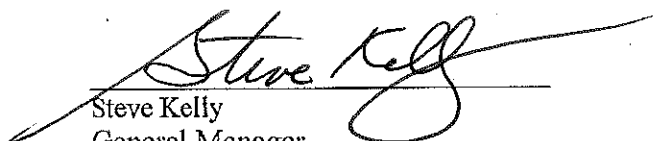
52. Each party agrees to bear its own costs and attorneys fees in this action.

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

54. This CAFO shall become effective immediately upon filing with the Regional Hearing Clerk.

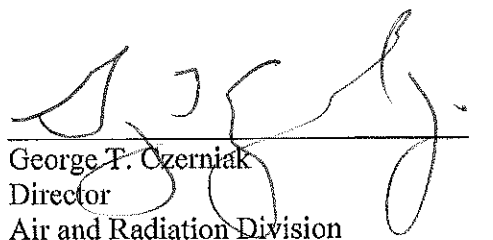
One Earth Energy, LLC, Respondent

12-12-2013
Date


Steve Kelly
General Manager
One Earth Energy, LLC

United States Environmental Protection Agency, Complainant

12/20/13
Date



George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: One Earth Energy, LLC, Gibson City, Illinois
Docket No. CAA-05-2014-0007

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.

12/23/13
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

**Consent Agreement and Final Order
In the Matter of: One Earth Energy, LLC
Docket No.**

CAA-05-2014-0007

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2014-0007 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Steve Kelly, General Manager
One Earth Energy, LLC
202 North Jordan Drive
Gibson City, Illinois 60936

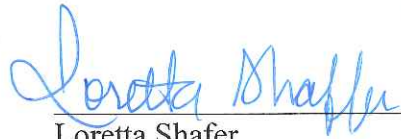
I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Ann Coyle
Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Ray Pilapil, Manager
Bureau of Air, Compliance and Enforcement Section
Illinois Environmental Protection Agency
P.O. Box 19506
Springfield, Illinois 62794

On the 30 day of December 2013.



Loretta Shafer
Administrative Program Assistant

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CERTIFIED MAIL RECEIPT NUMBER:

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