



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

SEP 04 2013

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Robert Malnight, Plant Manager  
Valero Renewable Fuels Company, LLC  
203 West County Road 1100 North  
Linden, Indiana 47955

Dear Mr. Malnight:

Enclosed is a filed stamped Consent Agreement and Final Order (CAFO) which resolves *In the matter of Valero Renewable Fuels Company, LLC*, CAA Docket No.

**CAA-05-2013-0040**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 04 2013.

Pursuant to paragraph 28 of the CAFO, Valero must pay the \$75,347.16 civil penalty within 30 days of the date CAFO was filed, SEP 04 2013. Your check must display the case docket number, **CAA-05-2013-0040**.

Please direct any questions regarding this case to Cynthia King at 312-886-6810.

Sincerely,

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

Enclosure

cc: Phil Perry, Chief  
Compliance and Enforcement Branch  
Office of Air Quality  
Indiana Department of Environmental Management

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No.</b>	<b>CAA-05-2013-0040</b>
	)		
<b>Valero Renewable Fuels Company LLC</b>	)	<b>Proceeding to Assess a Civil Penalty</b>	
<b>Linden, Indiana</b>	)	<b>Under Section 113(d) of the Clean Air Act,</b>	
	)	<b>42 U.S.C. § 7413(d)</b>	
<b>Respondent.</b>	)		
_____	)		

**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 Act), 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 Valero Renewable Fuels Company LLC (VRF or Respondent), a limited liability corporation doing business in Indiana.
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.

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6. VRF consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. VRF admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. VRF 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.

**Statutory and Regulatory Background**

9. The Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. *See* Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

10. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to the Administrator of EPA (Administrator) a plan which provides for the implementation, maintenance and enforcement of all national primary or secondary standards established pursuant to Section 109 of the Act, 42 U.S.C. § 7409. These State Implementation Plans (SIPs) are required to include enforceable emission limitations, control measures, schedules for compliance, and permit programs for new sources.

11. On June 28, 1989, 54 Fed. Reg. 27274, EPA issued guidance on federally enforceable state operating permits (FESOP) establishing federally enforceable limits.

12. On October 25, 1994, the Indiana Department of Environmental Management (IDEM) submitted to EPA a proposed revision to the Indiana SIP establishing a FESOP program in Indiana (set forth at Ind. Admin. Code tit. 326, r. 2-8).

13. On August 18, 1995, 60 Fed. Reg. 43008, EPA approved the Indiana FESOP program, Ind. Admin. Code tit. 326, r. 2-8, as part of the federally enforceable Indiana SIP, effective October 17, 1995 at 40 C.F.R. § 52.770(c)(97).

14. 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 Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

15. Section 113(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.

16. 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**

17. VRF owns and operates a fuel grade ethanol dry mill production facility at 203 West County Road 1100 North, Linden, Indiana (Facility).

18. VRF's Facility includes: two natural gas-fired dried distillers grains with soluble (DDGS) dryers (identified as EU039 and EU040), with emissions controlled by a thermal oxidizer and heat recovery steam generating (HRSG) system (identified as CE003 and exhausting to stack EP003); and two natural gas-fired DDGS dryers (identified as EU042 and

EU043), with emissions controlled by a thermal oxidizer and HRSG system (identified as CE006 and exhausting to stack EP003).

19. The Facility has the potential to emit more than 100 tons per year of nitrogen oxides (NO<sub>x</sub>).

20. On February 8, 2006, IDEM issued FESOP No. F107-21453-00061 (with conditions) to the previous owner of the Facility, ASA Ethanol Linden. FESOP No. F107-21453-00061 limited the Facility's NO<sub>x</sub> emissions to less than 100 tons per year.

21. On December 28, 2010, IDEM renewed FESOP No. F107-29252-00061 (the FESOP), and issued it to VRF.

22. The FESOP established the following permit conditions:

- (a) Permit Condition D.3.2(f) stated that NO<sub>x</sub> emissions from thermal oxidizers systems CE003 and CE006 (including four DDGS dryers EU039, EU040, EU042, and EU043), "shall not exceed 21.45 lbs/hr."
- (b) Permit Condition D.3.11(a) stated that "[VRF] shall operate CE003, at or above the 3-hour average temperature of 1,510<sup>0</sup> F or the temperature established during the most recent valid stack test. [VRF] shall operate CE006 at or above the 3-hour average temperature of 1516<sup>0</sup>F, or the temperature established during the most recent valid stack test. When a temperature is outside the normal ranges listed above or the ranges established during the latest stack test, [VRF] shall take reasonable steps . . . A temperature that is outside the above mentioned ranges is not a deviation from this permit. Failure to take response steps shall be considered a deviation from this permit."

23. On October 19, 2010, EPA inspected the Facility. During the inspection, EPA requested copies of stack tests performed by VRF, records of hourly NO<sub>x</sub> emissions from the thermal oxidizers, CE003 and CE006, and records of the combustion chamber temperatures for thermal oxidizers CE003 and CE006.

24. On March 22, June 3 and 15, 2011, VRF submitted information requested by EPA in subsequent calls to VRF after the October 19, 2010 inspection.

25. EPA alleges that VRF exceeded the hourly NO<sub>x</sub> emissions limit from the thermal oxidizers CE003 and CE006 in violation of the FESOP Permit Condition D.3.2(f) and Section 110 of the Act, 42 U.S.C. § 7410.

26. EPA alleges that VRF operated the thermal oxidizer systems CE003 and CE006 below the 3-hour average temperatures of 1510<sup>0</sup>F (CE003) and 1516<sup>0</sup>F (CE006) in violation of the FESOP Permit Condition D.3.11(a) and Section 110 of the Act, 42 U.S.C. § 7410.

**Civil Penalty**

27. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case and VRF's cooperation and prompt return to compliance in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$75,347.16.

28. Within 30 days after the effective date of this CAFO, VRF must pay the \$75,347.16 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and send 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, the docket number of this CAFO and the billing document number.

29. VRF must send a notice of payment, including VRF's name, complete address, the case docket number of this CAFO and the billing document number 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 VRF 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 Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. VRF 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). VRF 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, VRF 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. This CAFO resolves only VRF's liability for federal civil penalties for the violations alleged in this CAFO.

34. 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.

35. This CAFO does not affect VRF's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in paragraph 33, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

36. IDEM issued a Title V permit for the Linden VRF facility effective February 2, 2013, and therefore the terms and conditions of the FESOP no longer apply. VRF certifies, based on information and belief formed after reasonable inquiry, that it is complying fully with the NOx emission limits as set forth in Permit Condition D.3.1 and the thermal oxidizer temperature requirements as set forth in Permit Condition D.3.11 in its current Title V permit.

37. 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 Act, 42 U.S.C. § 7413(e).

38. The terms of this CAFO bind VRF, its successors and assigns.

39. 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.

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

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



42. This CAFO is effective on the date that the Final Order is filed with the Regional Hearing Clerk.

**Valero Renewable Fuels Company LLC, Respondent**


8/8/2013  
Date

  
\_\_\_\_\_

Valero Renewable Fuels Company LLC

**United States Environmental Protection Agency, Complainant**

8/27/13  
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: Valero Renewable Fuels Company LLC**  
**Docket No. CAA-05-2013-0040**

**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.

8-28-13

Date



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

In the Matter of:

Valero Renewable Fuels Company, LLC

Docket No. CAA-05-2013-0040

Certificate of Service

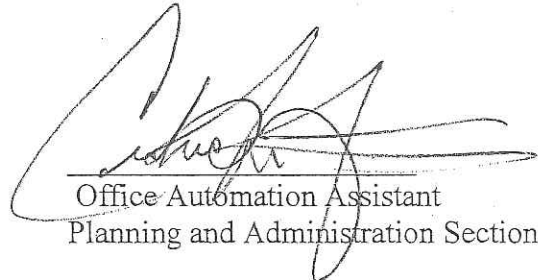
I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-13J), United States Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7009 1686 0000 7676 1147, the second original to Respondent, addressed as follows:

Robert Malnight, Plant Manager  
Valero Renewable Fuels Company, LLC  
203 West County Road 1100 North  
Linden, Indiana 47955

I also certify that I sent copies of the Consent Agreement and Final Order by first class mail to:

Phil Perry, Chief  
Compliance and Enforcement Branch  
Office of Air Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue, room IGCN 1003  
Indianapolis, Indiana 46206-6015

On this 4<sup>th</sup> day of Sept, 2013.

  
Office Automation Assistant  
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 7009 1686 0000 7676 1147

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