

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

DOCKET NO: CAA (112r)-~~16~~-2018-0003

** FILED **

30JUL2018 - 04:00PM

U.S.EPA - Region 09

This ESA is issued to: Pacific Ethanol, Madera
31470 Avenue 12
Madera, CA 93638

For: Violation of Section 112(r)(7) of the Clean Air Act.
At: Pacific Ethanol, Madera, 31470 Avenue 12, Madera, CA 93638

This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region IX, by its duly delegated official, Enrique Manzanilla, Superfund Director, and Pacific Ethanol, Madera. ("Respondent") pursuant to Section 113(a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). EPA has obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 2 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

Following its May 25, 2017 inspection, EPA alleges Respondent's failure to:

- 1) Comply with the requirements of 40 C.F.R. § 68.65(c)(1)(v) in that the process safety information has inconsistent consequence of deviation information in that the Denaturant Unloading Standard Operating Procedure ("SOP") indicates that the maximum unloading pressure is 40 pounds per square inch gauge ("psig") above which will open the tank pressure safety valve ("PSV"), but a local sign indicates 30 psig maximum, and the relief valve is actually set at 25 psig, with a design document indicating a vessel working pressure of under 25 psig. The process safety information does not provide consistent consequences of deviation.
- 2) Comply with the requirements of 40 C.F.R. § 68.65(d)(1)(i) in that within the piping specification S-PIPE-001, dated July 23, 2014, PEM-2017-01118 through PEM-2017-01157, the denaturant ("DN") is not indicated in the piping specification service table, not indicated as a service for CS2, nor is DN indicated as an appropriate service for any of the piping specifications, so it is unclear what is the appropriate material for DN, within the piping specification. The process safety information does not accurately include the materials of construction.
- 3) Comply with the requirements of 40 C.F.R. § 68.65(d)(1)(ii) in that Piping and instrument diagrams ("P&ID") drawing 156-PI-6102, dated May 30, 2013, "Ethanol Storage and Layout" sheet 2 of 2, PEM-2017-00069 included errors as observed as part of the walk down. The P&ID is not correct.
- 4) Comply with the requirements of 40 C.F.R. § 68.65(d)(1)(iv) in that The Facility does not have the design basis for the pressure/vacuum relief on the denaturant Tank 6104A.
- 5) Comply with the requirements of 40 C.F.R. § 68.69(3)(ii) in that the operating procedures do not adequately address precautions to prevent exposure to personnel in SOPs Emergency Action for Production Operators, 1/2/2016, PEM-2017-011265 thru PEM-2017-01266, Denaturant SOP-Tank Farm-Denaturant Unload, Driver, 10/12/2016, PEM-2017-01257 thru PEM-2017-01262, and Denaturant Tank Farm-Capacities, 06/20/2016, PEM-2017-00055 thru PEM-2017-00056, Denaturant Tank Farm-Day Tanks Recirculation & Transfer, 06/20/2017, PEM-2017-01272 thru PEM-2017-01276, had missing or inadequate specification of use of personal protective equipment information.

- 6) Comply with the requirements of 40 C.F.R. § 68.73(d)(2) in that the Facility did not ensure that the inspection of Tank 6104A, the denaturant tank, was conducted by a qualified inspector. Mechanical Integrity, "Inspection and testing procedures", including API 510 (2006) Appendix B specifies the inspector should be certified to API 510. The denaturant tank inspection and testing procedures did not follow recognized and generally accepted good engineering practices.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history and previous penalties assessed, if any, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, and other factors as justice may require, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of **\$4,500**.

This settlement is subject to the following terms and conditions:

The Respondent by signing below admits to jurisdiction, neither admits nor denies the specific factual allegations contained above, and consents to the assessment of the penalty as stated above. Respondent waives its rights to a hearing afforded by Section 113(d)(2)(A) of the Act, 42 U.S.C §7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own attorney's fees and costs, if any. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent has corrected the violations listed above and has sent an **Online Payment through the Department of Treasury: WWW.PAY.GOV** (Enter SFO 1.1 in search field. Open form and complete required fields) **or alternatively has sent a cashier's check or certified check** (payable to the Treasurer, United States of America) in the amount of **\$4,500** in payment of the full penalty amount to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The check or online payment should reference Respondent's name and a copy of this ESA must be included with the check/online payment going to the EPA Cincinnati Finance Center. This original ESA and a copy of the check or online receipt must also be sent by certified mail to:

Angie Proboszcz (SFD-9-3)
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 30 days of the date of Respondent's receipt of the proposed ESA and EPA has not granted an extension of its offer to settle, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT – Pacific Ethanol, Madera.

Signature: Michael Q. Kandris

Date: 5/29/18

Name (print): Mike Kandris

Title (print): Chief Operating Officer Executive

FOR COMPLAINANT:

Enrique Manzanilla

Date: July 2018

Enrique Manzanilla
Superfund Director
U.S. EPA Region IX

It is hereby ORDERED that this ESA be entered and Respondent pays the above penalty.

Steven L. Jawgiel

Date: 07/26/18

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA Region IX

CERTIFICATE OF SERVICE

This is to certify that a FINAL ORDER for the Expedited Settlement Agreement (ESA) in the matter of Pacific Ethanol, Madera [Docket Number CAA(112R)-09-2018-0003] has been signed by the Regional Judicial Officer and has been filed with the Regional Hearing Clerk.

The Final Order has been served on Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:
(With Return Receipt)

Respondent -

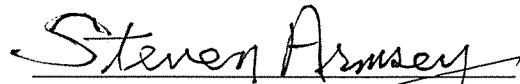
Mike Kandris
Chief, Operating Officer Executive
Pacific Ethanol
31470 Avenue 12
Madera, CA 93638

HAND DELIVERED:

Complainant -
(By Counsel)

Andrew Helmlinger
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA. 94105

Dated at San Francisco, CA, July 30, 2018;



Steven Armsey
Regional Hearing Clerk
EPA, Region 9