



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

Neal Jakel
General Manager
Illinois River Energy
1900 Steward Road
Rochelle, Illinois 61068

Dear Mr. Jakel:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Illinois River Energy, Respondent, EPA docket number CAA-05-2014-0008. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on DEC 30 2013.

Pursuant to Paragraph 37 of the CAFO, Illinois River Energy must pay the civil penalty within 30 days of DEC 30 2013. Your check must display the case name Illinois River Energy and the docket number CAA-05-2014-0008.

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

Sincerely,



Nathan A. Frank
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-05-2014-0008
)	
Illinois River Energy, Rochelle, Illinois,)	Proceeding to Assess a Civil Penalty Under Section 113(d) of the Clean Air Act 42 U.S.C. § 7413(d)
Respondent.)	
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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 Illinois River Energy (IRE), 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. IRE 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
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Jurisdiction and Waiver of Right to Hearing

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

7. IRE 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. Section 111(b) of the CAA, 42 U.S.C. § 7411(b), requires EPA to publish a list of categories of stationary sources and, within a year after the inclusion of a category of stationary

sources in the list, to publish proposed regulations establishing Federal standards of performance for new sources within the source category.

11. Under Section 111, 42 U.S.C. § 7411, EPA proposed Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units on June 13, 2007 (NSPS Subpart Db), 72 Fed. Reg. 32742. The subpart is codified at 40 C.F.R. §§ 60.40b – 60.49b.

12. NSPS Subpart Db, at 40 C.F.R. § 60.44b(a)(1)(i), states that no owner or operator of an affected facility that is subject to the provisions of this section and that combusts only coal, oil, or natural gas shall cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides (NO_x) in excess of 0.10 lb/mmBtu.

13. 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.

14. 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.

15. 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

16. IRE owns and operates an ethanol plant located at 1900 Steward Road, Rochelle, Illinois (the Facility).

17. The Illinois Environmental Protection Agency (IEPA) issued a Construction Permit, Application No. 06060083, dated May 23, 2007 (2007 Construction Permit) to IRE for the Facility.

18. The IEPA issued a Construction Permit dated March 19, 2012 (2012 Construction Permit) to IRE for the Facility.

19. Permit Condition 1.4 of the 2007 Construction Permit and the 2012 Construction Permit states that the permittee shall operate and maintain the emission units at the plant, including associated air pollution control equipment, in a manner consistent with good air pollution control practices.

20. Permit Condition 1.1.b.i of the 2007 Construction Permit states that the amount of grain processed by the plant, including the grain processed by the expansion, shall not exceed 102,500 tons/month and 1,202,600 tons/year.

21. Permit Condition 2.3.5.a.i.B of the 2007 Construction Permit and the 2012 Construction Permit states that maximum scrubber water outlet temperature, based on an hourly average, shall be maintained at levels that are consistent with levels at which emission testing demonstrated compliance with applicable requirements.

22. Permit Condition 2.3.5.a.i.C of the 2007 Construction Permit and the 2012 Construction Permit states that the maximum scrubber exhaust gas outlet temperature, based on an hourly average, shall be maintained at levels that are consistent with levels at which emission testing demonstrated compliance with applicable requirements.

23. Permit Condition 2.3.8.a of the 2007 Construction Permit and the 2012 Construction Permit states the facility shall equip the new fermentation scrubber with continuous monitoring devices for, among other things, the rate of reagent addition to the scrubbant.

24. Permit Condition 2.5.3.b.i. of the 2007 Construction Permit and the 2012 Construction Permit states that the emission of NO_x from the oxidizer/boiler system, including period of startup, malfunction, and breakdown shall not exceed 0.1 lb/mmBtu, pursuant to the provisions of 40 C.F.R. § 60.44b(a)(1)(i), for low heat release steam generating units and with compliance determined in accordance with applicable compliance procedures of the New Source Performance Standards (NSPS).

25. Permit Condition 2.5.6-1.a.iii of the 2007 Construction Permit states that compliance with the control efficiency requirements of Permit Conditions 2.5.6-1.a.i and 2.5.6-1.a.ii shall be determined from the “uncontrolled” emissions entering the oxidizer/boiler system and the emissions from the system, without consideration of any uncontrolled emissions introduced to the system with combustion air.

26. Permit Conditions 2.5.6-1.b.i of the 2007 Construction Permit and 2.5.6-1.b of the 2012 Construction Permit provide the volatile organic materials (VOM) and carbon monoxide (CO) emission limits for emission units controlled by the thermal oxidizer/boiler systems.

27. Permit Condition 2.5.11.a of the 2007 Construction Permit and the 2012 Construction Permit states that for VOM and CO emissions from the thermal oxidizer/boiler system, periods of excess emissions shall include any 1-hour periods when the feed dryers are operating in which the average combustion temperature is more than 50°F below the temperature during testing that demonstrated compliance with applicable requirements.

Alleged Violations

28. During an inspection of the Facility, EPA inspectors observed pressure relief valves at fermentation tanks No. 3, 4, and 7 venting to the atmosphere in violation of Permit Condition 1.4 of the 2007 Construction Permit and the 2012 Construction Permit.

29. During the month of December 2011, the facility processed in excess of 102,500 tons/month of grain in violation Permit Condition 1.1.b.i of 2007 Construction Permit.

30. IRE failed to comply with the emission limits for VOM and CO at the two thermal oxidizer/boiler systems (TO/B #1 and TO/B #2) in violation of Condition 2.5.11.a of the 2007 Construction Permit and the 2012 Construction Permit.

31. IRE exceeded the maximum scrubber water outlet temperature at Fermentation Scrubbers #1 and #2 in violation of Condition 2.3.5.a.i.B of the 2007 Construction Permit and 2012 Construction Permit.

32. IRE exceeded the maximum scrubber exhaust gas outlet temperature at Fermentation Scrubbers #1 and #2 in violation of Condition 2.3.5.a.i.c of the 2007 Construction Permit and 2012 Construction Permit.

33. IRE failed to install a continuous monitoring system to measure the rate of reagent addition to the scrubbant at the new fermentation scrubber until December 10, 2012 in violation of Permit Condition 2.3.8.a of the 2007 Construction Permit and 2012 Construction Permit.

34. IRE failed to limit NO_x emissions from the combined stack for the thermal oxidizers to less than 0.10 lb/mmBtu, as required by 40 C.F.R. § 60.44b(a)(1)(i), based on a 30-day rolling average on a daily basis.

35. On March 12, 2013, EPA issued a Notice and Finding of Violation to IRE alleging that IRE violated various provisions of the 2007 and 2012 Construction Permits and the NSPS Subpart Db.

Civil Penalty

36. 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 IRE's prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$69,399.00.

37. Within 30 days after the effective date of this CAFO, IRE must pay a \$69,399 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.

38. IRE must send a notice of payment that states IRE'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

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

40. If IRE 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.

41. IRE 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). IRE 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, IRE 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

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

43. 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.

44. 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 42, above,

compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

45. IRE certifies that it is complying fully with the above-stated provisions of its 2007 and 2012 Construction permits and the relevant provisions of the NSPS Subpart Db.

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

47. The terms of this CAFO bind IRE, its successors and assigns.

48. 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.

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

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


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

[Signature page follows.]

Consent Agreement and Final Order
In the Matter of: Illinois River Energy, Rochelle, Illinois
Docket No.

Illinois River Energy, Respondent

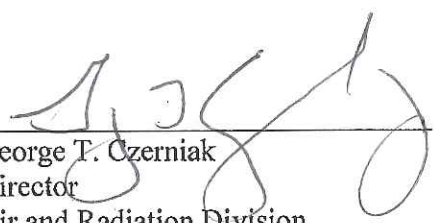
12-3-2013
Date



Neal Jakel
General Manager
Illinois River Energy

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: Illinois River Energy, Rochelle, Illinois
Docket No. CAA-05-2014-0008

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: Illinois River Energy
Docket No. **CAA-05-2014-0008**

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number **CAA-05-2014-0008** 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:

Neal Jakel
General Manager
Illinois River Energy
1900 Steward Road
Rochelle, Illinois 61068

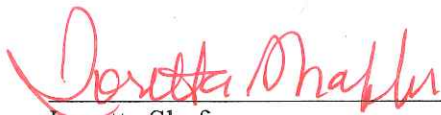
I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

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

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7669 6371

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