



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

**AUG - 4 2017**

REPLY TO THE ATTENTION OF:

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

Matt Tomano, Registered Agent  
POET Biorefining-Portland, LLC  
1542 South 200 West  
Portland, Indiana 47371

Dear Mr. Tomano:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves POET Biorefining-Portland, LLC, docket no. CAA-05-2017-0036. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on AUG - 4 2017.

Pursuant to paragraph 34 of the CAFO, POET Biorefining-Portland 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 King, Associate Attorney, at (312)886-6840.

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  
Phil Perry, Chief, Air Compliance Branch [PPERRY@idem.IN.gov](mailto:PPERRY@idem.IN.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



**In the Matter of:** ) **Docket No. CAA-05-2017-0036**  
)  
POET Biorefining–Portland, LLC ) **Proceeding to Assess a Civil Penalty**  
Portland, Indiana ) **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 POET Biorefining –Portland, LLC (POET-Portland), a domestic Limited Liability Company 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.

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

8. 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.

### **Statutory and Regulatory Background**

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

10. On October 25, 1994, the Indiana Department of Environmental Management (IDEM) submitted to EPA proposed revisions to the Indiana State Implementation Plan (SIP) to establish a FESOP program (set forth at Ind. Admin. Code tit. 326, r. 2-8).

11. On August 18, 1995, 60 Fed. Reg. 43008, EPA approved the Indiana FESOP program, Ind. Admin. Code tit. 326, r. 2-1-3.2 and Indiana's Enhanced NSR regulation, Ind. Admin. Code tit. 326, r. 2-8-4, as part of the federally enforceable Indiana SIP, effective October 17, 1995. *See* 40 C.F.R. § 52.770 (c)(97)-(98).

12. Ind. Admin. Code tit. 326, r. 2-8-4(1) requires that all FESOP permits contain emission limitations and standards assuring compliance with all applicable requirements in effect at the time of the FESOP issuance.

13. Ind. Admin. Code tit. 326, r. 2-8-4(5) states that the permittee must comply with all conditions of the FESOP. Noncompliance with any provisions of the FESOP is a grounds for an enforcement action; FESOP termination, revocation and reissuance, or modification; or for denial of a FESOP renewable application.

14. Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to EPA an operating permit program (Title V Permit Program). On December 4, 2001, 66 Fed. Reg. 62969, EPA granted Indiana final approval of its Title V Permit Program, effective November 30, 2001.

15. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b), provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

16. On February 20, 2008, 73 Fed. Reg. 9201-9203, EPA approved 326 IAC 8-5-6, fuel grade ethanol production at dry mills, to its volatile organic compounds (VOC) rules as a revision to the SIP at 40 C.F.R. § 52.770(c)(182).

17. On November 14, 2012, IDEM issued Title V Operating Permit No. T075-30802-00032 to POET-Portland. Prior to November 14, 2012, the facility operated using the FESOP Permit #F075-22858-00032 issued on September 8, 2006 which was later revised and renumbered as F075-28068-00032 issued on September 1, 2009.

18. Part D.2.9 of the FESOP permit required POET-Portland to operate both RTO CE009 and Scrubber CE008 to control VOC emissions from the fermentation and distillation processes at all times when these units are in operation in order to comply with the VOC emissions limits in D.2.4.

19. Part D.2.4 of the FESOP permit limits fermentation process VOC emissions to 30.80 lbs/hr from scrubber CE008.

20. Part D.2.1 of the Title V Permit limits fermentation process acetaldehyde emissions to 5.50 lbs/hr from scrubber CE009.

21. 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 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

22. 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.

23. 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**

24. POET-Portland owns and operates a fuel grade ethanol production dry mill facility at 1542 South 200 West, Portland, Indiana (the facility).

25. POET-Portland is a "person" as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

26. On December 20, 2013, EPA issued a Request for Information under Section 114 of the Act, 42 U.S.C. § 7414, to the POET-Portland facility.

27. On February 27, and March 27, 2014, POET-Portland responded to EPA's Request for Information.

28. Emissions from the fermentation processes are controlled by the packed-bed wet scrubber CE008. Periods of downtime at the scrubber result in VOC emissions from fermentation being vented to the atmosphere.

29. The following table summarizes scrubber downtime when emissions from fermentation were directly vented to the atmosphere:

<b>Date</b>	<b>Scrubber Downtime (Hours)</b>
March 1, 2011	14 hours
October 18, 2011	16 hours
March 6 through 8, 2012	18 hours
May 15, 2012	4 hours
July 9, 2012	8.50 hours

30. On December 18, 2012, POET-Portland performed compliance emissions testing at the scrubber CE008. The testing identified an emission rate of 8.38 pounds of VOC per hour, and 4.24 pounds of acetaldehyde per hour. Based on scrubber CE008's actual control efficiency of 98.14%, the uncontrolled emissions from fermentation processes were at least 451.15 pounds of VOC per hour and approximately 11 pounds of acetaldehyde per hour.

31. From March 1, 2011 through July 9, 2012, POET-Portland operated fermentation operations during scrubber downtime and emitted VOC emissions in excess of the permitted limit of 30.6 lbs/hr as required by the FESOP and subsequently the Title V Permit No. T075-30802-00032, Emission Limit D.2.4, which constitutes a violation of the Indiana SIP, Section 502(a) of the Act, 42 U.S.C. § 7661(a), and 40 C.F.R. § 70.7(b).

32. From March 1, 2011 through July 9, 2012, POET-Portland operated fermentation operations during scrubber downtime and emitted acetaldehyde emissions in excess of the permitted limit of 5.50 lbs/hr, as required by Title V Permit No. T075-30802-00032, Emission Limit D.2.1, which constitutes a violation of the Indiana SIP, Section 502(a) of the Act, 42 U.S.C. § 7661(a), and 40 C.F.R. § 70.7(b).

33. On June 30, 2016, EPA issued a Notice of Violation and Finding of Violation to POET-Portland for violating emission limits established in accordance with the Indiana State Implementation Plan and POET-Portland's Title V Permit #T075-30802-00032 (issued November 14, 2012).

#### **Civil Penalty**

34. 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 Respondent's cooperation, and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$128,878. Within 30 days after the effective date of this CAFO, Respondent must pay a \$128,878 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

35. 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-18J)  
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

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

37. 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.

38. 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 attorney's 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**

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

40. 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.

41. 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 39, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

42. Respondent certifies that it is complying with the above-referenced provisions of its Title V Operating Permit No. T075-30802-00032.

43. 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).

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

45. 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.


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

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

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

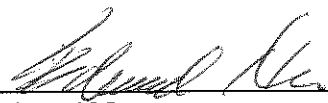
**POET Biorefining–Portland LLC, Respondent**

6/29/17  
Date

  
Matt Tomano, Registered Agent  
POET Biorefining–Portland, LLC

**United States Environmental Protection Agency, Complainant**

7/27/17  
Date

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

**Consent Agreement and Final Order**  
**In the Matter of: POET Biorefining-Portland, LLC**  
**Docket No. CAA-05-2017-0036**



**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.

August 1, 2017  
Date

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

Consent Agreement and Final Order  
In the matter of: POET Biorefining-Portland, LLC  
Docket Number: CAA-05-2017-0036



**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2017-0036, which was filed on 8/4/2017, in the following manner to the following addresses:

Copy by Certified Mail to Respondent: Matt Tomano, Registered Agent  
POET Biorefining-Portland, LLC  
1542 South 200 West  
Portland, Indiana 47371

Copy by E-mail to Attorney for Complainant: Cynthia A. King  
King.Cynthia@EPA.GOV

Copy by E-mail to Attorney for Respondent: Terri A Czajka  
Terri.Czajka@icemiller.com

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

Dated: 8/4/2017 for ~~LaDawn Whitehead~~ Andrew Anderson  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7009 1680 0000 7662 6897