



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 SEP 10 AM 11:18

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2008-0028

IN THE MATTER OF:

NORTHERN LIGHT ETHANOL, LLC
D/B/A POET BIOREFINING-BIG STONE
BIG STONE CITY, SOUTH DAKOTA

RESPONDENT

)
)
)
)
)
)
)

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 10th DAY OF September, 2008.

Elyana R. Sunin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 SEP 10 AM 11:18

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Northern Lights Ethanol, LLC)
d/b/a Poet Biorefining –Big Stone)
Big Stone City, South Dakota)
)
Respondent)
_____)

EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

DOCKET NO. : CAA-08-2008-0028

This Expedited Settlement Agreement (also known as a “Combined Complaint and Consent Agreement,” hereafter “ESA”) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter.

This ESA is being entered into by the United States Environmental Protection Agency (“EPA”), Region 8, by its duly delegated official, the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, and by Northern Lights Ethanol, LLC d/b/a Poet Biorefining –Big Stone (“Respondent”) pursuant to sections 113(a)(3) and (d) of the Clean Air Act (the “Act”), 42 U.S.C. §§ 7413(a)(3) and (d), and 40 C.F.R. § 22.13(b). EPA and the U.S. Department of Justice have determined, pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that EPA may pursue this type of case through administrative enforcement action.

ALLEGED VIOLATION

On March 10, 2008, authorized representatives of EPA received a letter from Respondent’s facility located in Big Stone City, South Dakota, outlining compliance with the Risk Management Plan (“RMP”) regulations promulgated at 40 C.F.R. part 68 under section 112(r) of the Act. EPA found that the facility had violated regulations implementing section 112(r) of the Act by failing to timely resubmit the RMP update as required.

SETTLEMENT

In consideration of Respondent’s facility service size, its full compliance history, its good faith effort to comply, and other factors as justice may require, and upon consideration of the entire record, the parties enter into this ESA in order to settle the violation for the total penalty amount of \$1,200. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.

This settlement is subject to the following terms and conditions:

1. The Respondent by signing below waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained in the Checklist and Penalty Assessment and consents to the assessment of the penalty as stated above.
2. 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, and consents to EPA's approval of the ESA without further notice.
3. Each party to this action shall bear its own costs and fees, if any.

After the Regional Judicial Officer issues the Final Order, the Respondent will receive a fully executed copy of this ESA and the Final Order. Within twenty days (20) of receiving a signed Final Order, Respondent shall remit payment in the amount of \$1,200. The payment shall reference the name and docket number of this case and be made by remitting a cashier's or certified check, for this amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfers:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727

ACH Transactions:

PNC Bank/Remittance Express
ABA: 051036706
Account Number: 310006
CTX Format, Transaction Code 22, checking

There is now an On Line Payment Option, available through the US Department of Treasury. This payment option can be accessed from the information below:

www.PAY.GOV

A copy of the check, or notification that the payment has been made by one of the other methods listed above, shall be sent simultaneously to:

Tina Artemis, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8RC]
Denver, Colorado 80202-1129

and

Cheryl Turcotte
EPCRA/RMP Enforcement Coordinator
US EPA, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

The penalty specified in this ESA shall not be deductible for purposes of State or Federal taxes.

Upon Respondent's receipt of the signed ESA and Final Order by the Regional Judicial Officer and payment of the penalty as set forth in this ESA, EPA will take no further civil action against Respondent for the alleged violation of the Act referenced in the Risk Management Plan Penalty Checklist. EPA does not waive its right to take enforcement action for other violations of the Clean Air Act or for violations of any other statute.

If the signed original ESA is not returned to the EPA Region 8 office at the above address in correct form by the Respondent in a timely manner, the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violation identified herein.

In addition, if Respondent fails to comply with the provisions of this ESA by failing to timely submit the above-referenced payment the Respondent agrees this agreement shall become null and void and that EPA may file an administrative or civil enforcement action against Respondent for the violation addressed herein.

This ESA is binding on the parties signing below.

**Northern Lights Ethanol, LLC d/b/a Poet Biorefining – Big Stone
Expedited Settlement Agreement**

FOR RESPONDENT:

Blaine Gomer

Date: 8/19/2008

Name (print): Blaine Gomer

Title (print): General Manager

FOR COMPLAINANT:

Andrew M. Gaydosh

Date: 9/9/08

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and Environmental Justice

**RMP PROGRAM LEVEL 3 PROCESS CHECKLIST
ALLEGED VIOLATIONS AND PENALTY ASSESSMENT**

Facility Name: Northern Lights Ethanol, LLC d/b/a Poet Biorefining – Big Stone

Section H – Risk Management Plan [40 CFR 68.190 – 68.195]

PENALTY

Has the owner or operator reviewed and updated the RMP and submitted it to EPA [68.190(a)]?

Reason for update:

Five-year update. [68.190(b)(1)]

No. Five-year update was due on 7/3/07 and submitted on 3/4/08.

2,000



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

NOTHERN LIGHTS ETHANOL, LLC

EXPEDITED SETTLEMENT PENALTY MATRIX

MULTIPLIER FACTORS FOR CALCULATING PROPOSED PENALTIES FOR VIOLATIONS FOUND DURING RMP INSPECTIONS

Private Industry

*times the threshold quantity listed in CFR 68.130 for the particular chemical use in a process

# of Employees	*times the threshold quantity listed in CFR 68.130 for the particular chemical use in a process		
	1-5*	5-10*	>10*
1-5	.1	.15	.3
6-20	.15	.3	.4
21-50	.3	.4	.6
51-100	.4	.6	.7
>100	.6	.7	1

PROPOSED PENALTY WORKSHEET

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

The Unadjusted Penalty is calculated by adding up all the penalties listed on the Risk Management Program Inspections Findings, Alleged Violations and Proposed Penalty Sheet.

Employees = 40 (D&B 2006)

Times Threshold = > 10 (378,000 lbs pentane; threshold = 10,000 lbs)

RMP Checklist Program 3: Failure to submit five-year update [68.190(b)(1)] = \$2,000

Total Unadjusted = \$2,000

The Size-Threshold Quantity multiplier is a factor that considers the size of the facility and the amount of regulated chemicals at the facility.

Size-Threshold Quantity multiplier = .6

The Proposed Penalty is the amount of the non-negotiable penalty that is calculated by multiplying the Total Penalty and the Size/Threshold Quantity multiplier.

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

Proposed Adjusted Penalty = \$2,000 x .6 = \$1,200

:

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT (COMBINED AND CONSENT AGREEMENT)/FINAL ORDER** in the matter of **NORTHERN LIGHTS ETHANOL, LLC D/B/A POET BIOREFINING-BIG STONE, BIG STONE CITY, SOUTH DAKOTA; DOCKET NO.: CAA-08-2008-0028** was filed with the Regional Hearing Clerk on September 10, 2008.


Further, the undersigned certifies that a true and correct copy of the document was delivered to David Rochlin, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document were placed in the United States mail certified/return receipt requested on September 10, 2008, to:

Blaine Gomer
Northern Lights Ethanol, LLC d/b/a Poet Biorefining-Big Stone
48416 144th Street
Big Stone City, SD 57216

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MSD-0002)
Cincinnati, OH 45268

September 10, 2008


Tina Artemis
Paralegal/Regional Hearing Clerk



Printed on Recycled Paper