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

JUN 21 2018

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Afton S. Baker
Process Safety/Risk Management Compliance Manager
Pacific Ethanol Pekin, Inc.
1300 South Second Street
Pekin, Illinois 61555

Re: Pacific Ethanol Pekin, Inc., Pekin, Illinois, Consent Agreement and Final Order
Docket No. **CAA-05-2018-0011**

Dear Ms. Baker:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on June 21, 2018. Please pay the civil penalty in the amount of **$73,747.00** in the manner prescribed in paragraph(s) 76 thru 78 and reference your check with the number BD **CAA-05-2018-0011** and the docket number. In addition, your client must complete the Supplemental Environmental Projects worth at least **$209,416.00** as prescribed in paragraphs 83 thru 86.

Please feel free to contact Silvia Palomo at (312) 353-2172 if you have any questions regarding the enclosed documents. Please direct any legal questions to Kris Vezner, Associate Regional Counsel at (312) 886-6827. Thank you for your assistance in resolving this matter.

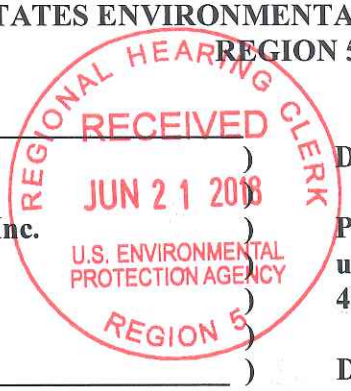
Sincerely,

Bob Maylt for

Michael E. Hans, Chief
Chemical Emergency
Preparedness and Prevention Section

Enclosures Consent Agreement and Final Order

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



IN THE MATTER OF:	)	**Docket No.**
Pacific Ethanol Pekin, Inc. **Pekin, Illinois**	)	**Proceeding to Assess a Civil Penalty under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)**
Respondent.	)	
	)	**Docket No. CAA-05-2018-0011**

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, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the implementing regulations.

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (EPA), Region 5, Chicago, Illinois.

3. Respondent is Pacific Ethanol Pekin, Inc. ("Pacific Ethanol" or "Respondent"), a corporation doing business in the State of Illinois.

4. 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). 40 C.F.R. § 22.13(b).

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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the 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 the 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. In accordance with Section 112(r) of the Act, 42 U.S.C. § 7412(r), EPA promulgated regulations to prevent accidental releases of regulated substances and minimize the consequences of releases that do occur. These regulations, known as the Risk Management Program regulations, are codified at 40 C.F.R. Part 68.

10. The Act defines "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

11. The Act defines "person" to include any individual, corporation, partnership or association. 42 U.S.C. § 7602(e).

12. The Risk Management Program regulations define "stationary source" as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

13. The Risk Management Program regulations define "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such a substance, or combination of these activities. 40 C.F.R. § 68.3.

14. The Risk Management Program regulations apply to the owner or operator of any stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under 40 C.F.R. § 68.115. *See also* 40 C.F.R. § 68.3, for definition of "threshold quantity."

15. The List of Regulated Toxic and Flammable Substances and Threshold Quantities for Accidental Release Prevention is codified at 40 C.F.R § 68.130. Procedures to determine whether a threshold quantity of a regulated substance is present at a stationary source are codified at 40 C.F.R. § 68.115.

16. Generally, if a regulated substance is present in a mixture and the concentration of the substance is one percent or greater by weight of the mixture, then, for purposes of determining whether a threshold quantity is present at the stationary source, the entire weight of the mixture is treated as the regulated substance. 40 C.F.R. § 68.115(b)(2).

17. At all times relevant to this Complaint, anhydrous ammonia was a "regulated substance," as that term is defined at Section 112(r)(2) of the Act, 42 U.S.C. § 7412(r)(2), and 40 C.F.R. § 68.3. See 40 C.F.R. § 68.130, Tables 1 and 2.

18. At all times relevant to this Complaint, the threshold quantity for anhydrous ammonia was 10,000 pounds. 40 C.F.R. § 68.130, Tables 1 and 2.

19. At all times relevant to this Complaint, butane, isopentane, pentane, and propane were each a "regulated substance," as that term is defined at Section 112(r)(2) of the Act, 42 U.S.C. § 7412(r)(2), and 40 C.F.R. § 68.3. See 40 C.F.R. § 68.130, Tables 3 and 4.

20. At all times relevant to this Complaint, the threshold quantities for butane, isopentane, pentane, and propane were all 10,000 pounds. 40 C.F.R. § 68.130, Tables 3 and 4.

21. The Risk Management Program regulations require the owner or operator of a subject stationary source to comply with those regulations by the latest of the following dates: June 21, 1999; three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or the date on which a regulated substance is first present in a process in more than a threshold quantity. 40 C.F.R. §§ 68.10(a).

22. Anhydrous ammonia, butane, isopentane, pentane, and propane were all first listed under 40 C.F.R. § 68.130 on or about January 31, 1994. 59 Fed. Reg. 4493, 4495-4499 (January 31, 1994).

23. The Risk Management Program regulations require the owner or operator of a subject stationary source to develop and implement a Risk Management Plan ("RMP") to prevent accidental releases to the air and minimize the consequences of releases that do occur. 40 C.F.R. §§ 68.12, 68.150-68.195.

24. The Risk Management Program regulations require the owner or operator of a subject stationary source to submit the first RMP no later than the latest of June 21,1999; three years after the date on which a regulated substance is first listed under 40 C.F.R. § 130; or the date on which a regulated substance is first present above a threshold quantity in a process.

25. The Risk Management Program regulations require that the RMP reflect all covered processes. 40 C.F.R. § 68.12(a).

26. The Risk Management Program regulations require the owner or operator of a subject stationary source to conduct a process hazard analysis (PHA) to identify, evaluate and

control the hazards involved in processes, at least once every 5 years. 40 C.F.R. §§ 68.67(a), 68.67(f).

27. 40 C.F.R. § 68.67(b) sets forth acceptable PHA methodologies.

28. 40 C.F.R. § 68.67(c) and its subsections set forth what a PHA must address. Required components include but are not limited to 1) stationary source siting; and 2) human factors.

29. The Risk Management Program regulations require the owner or operator of a subject stationary source to establish a system to promptly address the findings and recommendations of the team performing the PHA; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions. 40 C.F.R. § 68.67(e).

30. The Risk Management Program regulations require the owner or operator of a subject stationary source to implement operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information. 40 C.F.R. § 68.69(a).

31. 40 C.F.R. § 68.69(a) and its subsections list the minimum elements that operating procedures must address. Required elements include but are not limited to 1) consequences of deviations; 2) steps required to correct or avoid deviation; 3) safety and health considerations; and 4) safety systems and their functions.

32. The Risk Management Program regulations require the owner or operator of a subject stationary source to certify annually that the operating procedures are current and accurate. 40 C.F.R. § 68.69(c).

33. The Risk Management Program regulations require the owner or operator of a subject stationary source to establish and implement written procedures to maintain the ongoing integrity of certain process equipment. 40 C.F.R. §§ 68.73(a), 68.73(b).

34. The Risk Management Program regulations require the owner or operator of a subject stationary source to perform inspections and tests on certain process equipment. 40 C.F.R. §§ 68.73(a), 68.73(d)(1).

35. For the inspections and tests referenced in paragraph 34, Risk Management Program regulations require inspection and testing procedures to follow recognized and generally accepted good engineering practices. 40 C.F.R. §§ 68.73(a), 68.73(d)(2).

36. For the inspections and tests referenced in paragraph 34, Risk Management Program regulations require their frequency to be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience. 40 C.F.R. §§ 68.73(a), 68.73(d)(3).

37. For the inspections and tests referenced in paragraph 34, Risk Management Program regulations require the owner or operator of the subject stationary source to document them with a level of specificity set forth at 40 C.F.R. § 68.73(d)(4). 40 C.F.R. §§ 68.73(a), 68.73(d)(4).

38. The Risk Management Program regulations require the owner or operator of a subject stationary source, to conduct an audit at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed. 40 C.F.R. § 68.79(a).

39. The Risk Management Program regulations require the owner or operator of a subject stationary source to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected. 40 C.F.R. § 68.79(d).

40. The Administrator of EPA ("the Administrator") may assess a civil penalty against any person who violates any requirement or prohibition of the Risk Management Program regulations, up to $37,500 per day of violation and up to $295,000 in total, for each offense that occurred after January 12, 2009, through November 2, 2015, or up to $45,268 per day of violation and up to $362,141 in total, for each offense that occurred after November 2, 2015, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

41. 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

42. The Administrator and the Attorney General of the United States, each through their respective delegatees, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this Complaint.

General Allegations

43. At all times relevant to this Complaint, Respondent was a Delaware corporation doing business in the State of Illinois.

44. At all times relevant to this Complaint, Respondent owned, leased, operated, controlled or supervised a facility for ethanol fuel production at or about 1300 South Second Street, Pekin, Illinois 61554 ("the Facility").

45. At all times relevant to this Complaint, Respondent conducted activity involving anhydrous ammonia at the Facility, including using, storing, handling or moving on-site anhydrous ammonia (anhydrous ammonia process).

46. At all times relevant to this Complaint, Respondent conducted activity involving a flammable mixture that included natural gas condensates (flammable mixture) at the Facility, including using, storing, handling or moving on-site the flammable mixture (flammable mixture process).

47. At all times relevant to this Complaint, Respondent was a "person", as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

48. At all times relevant to this Complaint, the Facility was a "stationary source", as that term is defined at 40 C.F.R. § 68.3.

49. At all times relevant to this Complaint, Respondent was the "owner or operator" of the Facility, as that term is defined at Section 112(a)(9) of the Act, 42 U.S.C. § 7412(r)(a)(9).

The anhydrous ammonia process

50. At all times relevant to this Complaint, the anhydrous ammonia process at the Facility was any activity involving anhydrous ammonia including any use, storage, manufacturing, handling, or on-site movement of such a substance, or combination of these activities.

51. At all times relevant to this Complaint, the anhydrous ammonia process at the Facility was a "process", as that term is defined at 40 C.F.R. § 68.3.

52. At all times relevant to this Complaint, the total quantity of anhydrous ammonia contained in the anhydrous ammonia process at the Facility exceeded 10,000 pounds.

53. At all times relevant to this Complaint, a threshold quantity of a regulated substance anhydrous ammonia listed at 40 C.F.R. § 68.130 was present at the Facility.

54. Anhydrous ammonia was first present in a Facility process in more than a threshold quantity in or before November 2006.

The flammable mixture process

55. At all times relevant to this Complaint, the flammable mixture process at the Facility was any activity involving the flammable mixture including any use, storage, manufacturing, handling, or on-site movement of such a substance, or combination of these activities.

56. At all times relevant to this Complaint, the flammable mixture was a flammable mixture of regulated substances including one or more of butane, isopentane, pentane, and propane.

57. At all times relevant to this Complaint, one or more of butane, isopentane, pentane, and propane was present in the flammable mixture with a concentration of one percent or greater by weight of the mixture.

58. At all times relevant to this Complaint, the flammable mixture process at the Facility was a "process", as that term is defined at 40 C.F.R. § 68.3.

59. At all times relevant to this Complaint, the total quantity of flammable mixture contained in the flammable mixture process at the Facility exceeded 10,000 pounds.

60. At all times relevant to this Complaint, a threshold quantity of one or more of the regulated substances butane, isopentane, pentane, and propane listed at 40 C.F.R. § 68.130 was present at the Facility.

61. One or more of butane, isopentane, pentane, and propane was first present in a Facility process in more than a threshold quantity prior to 1990.

62. At all times relevant to this Complaint, regarding the Facility, Respondent was the owner or operator of any stationary source that had more than a threshold quantity of a regulated substance in a process, as determined under 40 C.F.R. § 68.115.

Procedural history

63. On or about July 17, 2008, EPA inspected the Facility regarding compliance with Section 112(r) of the Act and the Risk Management Program regulations at the Facility.

64. Prior to on or about July 15, 2015, Respondent's name was Aventine Renewable Energy, Inc.

65. On or about April 7, 2009, Respondent filed for bankruptcy.

66. On or about February 24, 2010, Respondent emerged from bankruptcy.

67. On or about April 19, 2011, EPA issued Respondent a letter notifying Respondent that EPA intended to file a complaint against Respondent for violations of Section 112(r) of the Act and of the Risk Management Program regulations.

68. In 2011 and 2012, EPA requested information from Respondent regarding Respondent's compliance with Section 112(r) of the Act and the Risk Management Program regulations at the Facility.

69. On or about January 11, 2013, EPA issued an information request to Respondent pursuant to Section 114(a) of the Act, 42 U.S.C. § 7414(a), regarding Respondent's compliance

with Section 112(r) of the Act and the Risk Management Program regulations at the Facility. Respondent responded at least in part on or about February 13, 2013.

70. On or about March 27, 2014, EPA issued an information request to Respondent pursuant to Section 114(a) of the Act, 42 U.S.C. § 7414(a), regarding Respondent's compliance with Section 112(r) of the Act and the Risk Management Program regulations at the Facility. Respondent responded at least in part on or about June 4, 2014.

71. On or about July 15, 2015, Pacific Ethanol, Inc. acquired Respondent's parent, Aventine Renewable Energy Holdings, Inc.

72. On or about July 15, 2015, Respondent changed its name to Pacific Ethanol Pekin, Inc. On or about January 21, 2017, Respondent converted to an LLC and changed its name to Pacific Ethanol Pekin, LLC.

73. EPA has identified the following alleged violations of the Act and Risk Management Program regulations by Respondent:

a. For the flammable mixture process, failure to include that process in a risk management plan, as required under 40 C.F.R. § 68.12(a).

b. For both processes, failure to promptly address a process hazard analysis team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; complete actions as soon as possible; and communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions, as required under 40 C.F.R. § 68.67(e).

c. For the anhydrous ammonia process, failure to develop and implement

written operating procedures, including 1) operating limits; and 2) the properties of, and hazards presented by, ammonia, as required under 40 C.F.R. §§ 68.69(a), 68.69(a)(2)(i), 68.69(a)(2)(ii), 68.69(a)(3)(i).

d. For the flammable mixture process, failure to develop and implement written operating procedures, including 1) procedures for emergency shutdown; 2) operating limits; and 3) the properties of, and hazards presented by, the flammable mixture, as required under 40 C.F.R. §§ 68.69(a), 68.69(a)(1)(iv), 68.69(a)(2)(i), 68.69(a)(2)(ii), 68.69(a)(3)(i).

e. For both processes, failure to certify annually that the operating procedures are current and accurate, as required under 40 C.F.R. § 68.69(c).

f. For both processes, failure to establish and implement written procedures to maintain the on-going integrity of process equipment, as required under 40 C.F.R. § 68.73(b).

g. For the anhydrous ammonia process, failure to 1) perform inspections and tests of process equipment; 2) use inspection and testing procedures that follow recognized and generally accepted good engineering practices; 3) conduct inspections and tests of process equipment with a frequency consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience; and 4) document each inspection and test that has been performed on process equipment, as required under 40 C.F.R. §§ 68.73(d)(1), 68.73(d)(2), 68.73(d)(3), 68.73(d)(4).

h. For the flammable mixture process, failure to 1) perform inspections and tests of process equipment; 2) use inspection and testing procedures that follow recognized and generally accepted good engineering practices; and 3) document each inspection and test that has been performed on process equipment, as required under 40 C.F.R. §§ 68.73(d)(1), 68.73(d)(2), 68.73(d)(4).

i. For both processes, failure to timely perform an audit of the prevention program, as required under 40 C.F.R. § 68.79(a).

j. For both processes, failure to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected, as required under 40 C.F.R. § 68.79(d).

74. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

75. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Civil Penalty

76. 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 other factors such as cooperation and prompt compliance, Complainant has determined that an appropriate civil penalty to settle this action is $73,747.00.

77. Within 30 days after the effective date of this CAFO, Respondent must pay a $73,747.00 civil penalty by sending a cashier's or certified check, by regular U.S. Postal Service mail, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "Pacific Ethanol Pekin, Inc.", the docket number of this CAFO and the billing document number.

78. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Silvia Palomo (SC-6C)
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Kris Vezner (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

80. If Respondent does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, 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.

81. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 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.

Supplemental Environmental Projects

82. Respondent must complete three supplemental environmental projects (collectively, the "SEPs") described at paragraphs 83-86, below. The SEPs are designed to protect the environment and public health, by reducing the risks associated with the anhydrous ammonia and flammable mixture processes.

83. The first SEP is installing, operating and maintaining a centralized, wireless system for monitoring all of the fire alarms, fire suppression systems and fire sprinklers at the following Facility locations: Main Fire Pump House; Foam Pump House (North); Foam Pump House (South); Dry Mill; Warehouse (Building 43) – North/South; Shipping & Receiving (Building 66); Building #7; Yeast Plant; Logistics (Main Control Panel – Location); and the automatic fire protection system that is the subject of the second SEP described at paragraphs 84 and 86, below. Respondent shall monitor this centralized monitoring system from a central

location (security and logistics office) that is manned 24 hours a day, seven days a week. This centralized monitoring system shall be UL864 listed; meet NFPA 72 requirements (2010-2016 edition); be FM approved; and meet the requirements of the FCC Part 15. Respondent has chosen and EPA has accepted Tyco Integrated Security as the contractor for this SEP.

84. The second SEP is installing, operating and maintaining an automatic fire protection system including a deluge water spray, at the Facility's "wet mill" area for loading and unloading rail cars. This system shall cover four rail car loading arms and two rail car unloading pumps, across two canopy-covered loading/unloading platforms and one open loading/unloading platform. The deluge water spray system shall be designed and installed in accordance with FM Global Data Sheet DS 4-1N "Fixed Water Spray System for Fire Protection" and shall be based on NFPA 15, Water Spray Fixed Systems – Exposure Protection for Vessels. Respondent has chosen and EPA has accepted F.E. Moran, Inc. Fire Protection as the contractor for this SEP.

85. The third SEP is paying for a Pekin Fire Department firefighter to attend specialized training for foam firefighting relevant to the Facility. This training shall include expertise in foam firefighting equipment and materials currently available at the Facility. Respondent has chosen and EPA has accepted ICL's Hellfighter U and Phos-Chek combined training as the provider of this training.

86. The SEPs shall further consist of all components and aspects set forth in SEP descriptions and bid proposals that Respondent transmitted to EPA via email on or about May 22, 2017 and June 19, 2017.

87. Respondent has provided EPA with documentation supporting Respondent's cost estimates for all SEPs.

88. Respondent will complete the SEPs as follows:

a. By May 31, 2018, Respondent must (1) complete the installation of the centralized wireless system for fire alarm monitoring set forth at paragraphs 83 and 86, above, and (2) begin operating that system.

b. Respondent alleges that it has already (1) completed the installation of the rail loading/unloading area fire suppression system set forth at paragraphs 84 and 86, above, and (2) begun operating that system.

c. Respondent alleges that a Pekin Fire Department firefighter has already completed the firefighter foam training set forth at paragraphs 85 and 86, above.

89. With regard to the SEPs, Respondent certifies the truth and accuracy of each of the following:

a. That all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and that Respondent in good faith estimates or for completed SEPs estimated that the cost to implement the SEPs is $69,686.00 for the centralized fire alarm monitoring SEP; $135,850.00 for the rail loading/unloading area fire suppression system SEP; and $3,880.00 for the firefighter foam training SEP;

b. That, as of the date of executing this CAFO, Respondent is not required to perform or develop any of the SEPs by any federal, state, or local law or regulation and is not required to perform or develop any of the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any

forum;

c. That none of the SEPs is a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

d. That Respondent has not received and will not receive credit for any of the SEPs in any other enforcement action;

e. That Respondent has not received and will not receive reimbursement for any portion of any of the SEPs from another person or entity;

f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing any of the SEPs.

g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as any of the SEPs;

h. That Respondent has inquired of the Pekin Fire Department, ICL, Hellfighter U and Phos-Check whether any of those entities are a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP described at paragraphs 85-86, above, and has been informed by the Pekin Fire Department, ICL, Hellfighter U and Phos-Check that none of those entities are a party to such a transaction.

90. Respondent must submit a SEP completion report to EPA regarding the centralized wireless system for fire alarm monitoring SEP, within 30 days after completion of

that SEP. Respondent must submit a SEP completion report to EPA regarding each of the other SEPs, within 21 days after the entry date of this CAFO. A SEP completion report shall contain the following information for each SEP that it addresses:

a. Detailed description of the SEP as completed, with photographs showing all relevant aspects of the completed SEP;

b. Description of any operating problems and the actions taken to correct each problem;

c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;

d. Certification that Respondent has completed the SEP in compliance with this CAFO; and

e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution prevention, if feasible).

91. Respondent must submit all notices and reports required by this CAFO by first class mail, to:

Silvia Palomo (SC-5J)
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

92. In each report that Respondent submits under paragraph 90, above, it must certify that the report is true and complete by including the following statement signed by one of its officers:

> I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

93. Following receipt of the SEP completion report described in paragraph 90, above, EPA must notify Respondent in writing that:

a. Respondent has satisfactorily completed the SEP and the SEP completion report; or

b. There are deficiencies in the SEP as completed or in the SEP completion report and Respondent has 30 days to correct the deficiencies; or

c. Respondent has not satisfactorily completed the SEP or the SEP completion report and EPA will seek stipulated penalties under paragraph 95, below.

94. If EPA exercises option b. under Paragraph 93, above, then Respondent may object in writing to that deficiency notice within 30 days of receiving that notice. The parties will then have 60 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, then EPA will give Respondent a written decision regarding Respondent's objection. Respondent will comply with any requirement that EPA imposes in that written decision regarding Respondent's objection and the deficiencies. If Respondent does not complete the SEP as required by EPA's written decision, then Respondent will pay stipulated penalties to the United States under paragraph 95, below.

95. If Respondent violates any requirement of this CAFO relating to the SEP, then Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph d. below, if Respondent does not complete the centralized wireless system for fire alarm monitoring SEP set forth at paragraphs 83 and 86, above, satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 88 above, as it may be extended under paragraph 99, then Respondent must pay an additional penalty of $87,108.

b. Except as provided in subparagraph d. below, if Respondent does not complete the rail loading/unloading area fire suppression system SEP set forth at paragraphs 84 and 86, above, satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 88 above,

as it may be extended under paragraph 99, Respondent must pay an additional penalty of $169,813.

c. Except as provided in subparagraph d. below, if Respondent does not complete the foam firefighting training SEP set forth at paragraphs 85 and 86, above, satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 88 above, as it may be extended under paragraph 99, Respondent must pay an additional penalty of $4,850.

d. If Respondent does not complete a SEP satisfactorily according to the requirements of this CAFO, but both 1) EPA determines that Respondent made good faith and timely efforts to complete that SEP; and 2) Respondent certifies pursuant to paragraph 92, above, with supporting documents acceptable to EPA, that Respondent has spent at least 90 percent of the amounts set forth at paragraph 89.a, above, for that SEP, then Respondent will not be liable for any stipulated penalty for that SEP under the applicable paragraph among subparagraphs a., b. and c., above.

e. If Respondent completes all SEPs satisfactorily according to the requirements of this CAFO, but spends less than 90 percent of the amounts set forth at paragraph 89.a, above, added together, then Respondent must pay an additional civil penalty of $20,942.

f. If Respondent fails to timely submit one or more SEP completion reports required under paragraph 90, above, as each individual report's deadline may have been extended under paragraph 99, below, then Respondent must pay stipulated penalties for each individual late report, as follows:

Penalty per violation per day	Period of violation
$100	1st through 14th day
$250	15th through 30th day
$500	31st day and beyond

For each late report, these penalties will accrue from that report's submission deadline until Respondent submits that report.

96. EPA's determination of whether Respondent satisfactorily completed the SEPs and whether Respondent made good faith and timely efforts to complete the SEPs will bind Respondent.

97. Respondent must pay any stipulated penalties within 21 days of receiving EPA's

written demand for the penalties. Respondent will use the method of payment specified in paragraph 77, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts as provided in paragraph 80, above.

98. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to any of the SEPs under this CAFO from the date of this CAFO's execution shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action *In the Matter of: Pacific Ethanol Pekin, Inc.*, taken on behalf of the U.S. Environmental Protection Agency to enforce federal laws."

99. If an event occurs which causes or may cause a delay in completing a SEP as required by this CAFO:

a. Respondent must notify EPA in writing within 10 days after learning of the event which caused or may cause a delay in completing that SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, then Respondent will not receive an extension of time to complete that SEP.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing that SEP, then the parties will stipulate to an extension of time no longer than the period of delay.

c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause delay in completing that SEP, then EPA will notify Respondent in writing of its decision and any delays in completing that SEP will not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing that SEP. Increased costs for completing a SEP will not be a basis for an extension of time under subparagraph b., above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

General Provisions

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

101. The CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

102. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 100, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

103. Respondent certifies that it is complying fully with 40 C.F.R. Part 68.

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

105. Each person signing this CAFO 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.

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

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

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of Pacific Ethanol Pekin, Inc.
Docket No. CAA-05-2018-0011

Pacific Ethanol Pekin, Inc., Respondent

Date: 5/29/18 By: Michael Kandris
Michael Kandris

Chief Operating Officer

Pacific Ethanol Pekin, Inc.

United States Environmental Protection Agency, Complainant

6/12/2018
Date

Douglas Ballotti, Acting Director
Superfund Division

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.

Ann L Coyle

Date: 6/30/18

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

In the Matter of: Pacific Ethanol Pekin, Pekin, Illinois
Docket No. CAA-05-2018-0011

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on June 21, 2018 in the following manner to the addressees:

Copy by Certified Mail
Return Receipt Requested: Afton S. Baker
Pacific Ethanol Pekin, Inc.
1300 South Second Street
Pekin, Illinois 61555

Copy by E-mail to
Attorney for Complainant: Kris Vezner
vezner.kris@epa.gov

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

Dated: June 21, 2018

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7009 1680 0000 7666 2161