

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

ESA NO: EPA-5-23-CAA-ESA-07**Docket No:** CAA-05-2023-0034**This ESA is issued to:** Badger State Ethanol, LLC**at:** 820 West 17th Street, Monroe, Wisconsin**for violations of Section 112(r)(7) of the Clean Air Act.**

EXPEDITED SETTLEMENT AGREEMENT

The United States Environmental Protection Agency, Region 5 (“EPA”), and Badger State Ethanol, LLC (“Respondent”), have agreed to the settlement of this action before the filing of a Complaint. EPA and Respondent (jointly “the Parties”) have agreed 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. This action is thus simultaneously commenced and concluded by this Expedited Settlement Agreement (“ESA”) and Final Order. *See* 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

This is an administrative action for the assessment of civil penalties instituted pursuant to EPA’s authority under Sections 113(a)(3) and (d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(a)(3) and (d). The Director of the Enforcement & Compliance Assurance Division, Region 5, EPA (“Complainant”) has been delegated the authority to issue an administrative complaint seeking the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). The Regional Administrator for Region 5 of EPA is authorized by Sections 113(a)(3) and (d)(1) of the CAA, 42 U.S.C. §§ 7413(a)(3), and (d)(1), to issue a Final Order ratifying this ESA. The Regional Administrator has delegated the authority to issue Final Orders ratifying settlements pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(3) to the Regional Judicial Officer, Office of Regional Counsel, EPA Region 5.

ALLEGED VIOLATIONS

On May 4, 2023, an authorized EPA representative conducted a compliance inspection of Badger State Ethanol, LLC, 820 West 17th Street, Monroe, Wisconsin (“Facility”) to determine the Facility’s compliance with the Chemical Accident Prevention Provisions promulgated pursuant to Section 112(r) of the CAA and set forth at 40 C.F.R. Part 68. Based on the May 4, 2023, inspection, EPA has determined that Respondent violated the following provisions:

1. 40 C.F.R. § 68.39(a): Failure to include, for worst-case scenarios, a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the rationale for selection; assumptions shall include use of any administrative controls and any passive mitigation that were assumed to limit the quantity that could be released. Documentation shall include the anticipated effect of the controls and mitigation on the release quantity and rate.

2. 40 C.F.R. § 68.39(b): Failure to include, for alternative release scenarios, a description of the scenarios identified, assumptions and parameters used, and the rationale for the selection of specific scenarios; assumptions shall include use of any administrative controls and any mitigation that were assumed to limit the quantity that could be released. Documentation shall include the effect of the controls and mitigation on the release quantity and rate.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history, its good faith efforts to comply, other factors as justice may require, and upon consideration of the entire record, the parties enter into this ESA in order to resolve any civil penalties for these alleged violations for the total penalty amount of **\$1,200.00**.

This settlement is subject to the following terms and conditions:

By signing below, Respondent consents to, and is bound by, the terms and conditions of this ESA, including the assessment of the civil penalty set forth above. Respondent admits the jurisdictional allegations in the ESA and waives any objections that it may have regarding jurisdiction. Respondent waives its right to contest the specific factual allegations contained herein, and neither admits nor denies these specific factual allegations. Respondent acknowledges that pursuant to 40 C.F.R. § 22.15(c), and Section 113(d)(2)(A) of the CAA, 42 U.S.C § 7413(d)(2)(A), it has the right to request a hearing on any material fact, or on the appropriateness of the penalty, but Respondent waives its rights to such a hearing. Respondent also waives its right to appeal this ESA and the accompanying Final Order.

Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has corrected the violations set forth in this ESA, and has made payment in the amount of **\$1,200.00** by either of the two following methods:

Payment method 1 – Preferred (electronic): Pay online through the Department of the Treasury using WWW.PAY.GOV. In the Search Public Form field, enter "SFO 1.1", click "EPA Miscellaneous Payments - Cincinnati Finance Center" and complete the SFO Form Number 1.1. The payment shall be identified in the online system with the ESA Number listed below.

On the same day, after submitting your payment, send an email to cinwd_acctsreceivable@epa.gov and the EPA contact email address noted below. Include in the subject line: "Payment Confirmation for Badger State Ethanol, LLC ESA Number EPA-5-23-CAA-ESA-07." Attach a copy of the ESA and your payment receipt to the email.

Payment method 2 (check): Mail, via CERTIFIED MAIL or private carrier, a certified check payable to the United States of America marked with "Badger State Ethanol, LLC", and the ESA Number listed below, with a copy of the ESA to:

U. S. Environmental Protection Agency

Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Attn: ESA Number EPA-5-23-CAA-ESA-07

On the same day, notice of payment must be sent by email to:

Charles Hall
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Hall.Charles@epa.gov

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

Upon Respondent's submission of the signed original ESA, and the issuance of the Final Order, Respondent's liability is resolved only for any federal civil penalties due as a result of the facts and violations alleged in this ESA. This ESA, the Final Order, and Respondent's full payment of the civil penalty set forth herein, do not affect the right of EPA to pursue appropriate injunctive, other equitable relief, or criminal sanctions for any violations of law. EPA also does not waive any enforcement authority for any other violation of the CAA or any other statute. The issuance of the Final Order does not waive, extinguish, or otherwise affect Respondent's duty to comply with the CAA, the regulations promulgated thereunder, or any other applicable law or requirement.

If the signed original ESA with proof of payment is not returned to the EPA Region 5 office at the above emails in correct form by Respondent within 30 days of the date of Respondent's receipt of this ESA (60 days if an extension is granted), the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified in this ESA.

This ESA is binding on the Parties signing below.

Each Party to this action shall bear its own costs and fees, if any.

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

FOR RESPONDENT:

Signature: KT Koller Date: 8/14/2023

Name (print): Kurt Koller

Title (print): Plant Manager

Tax Identification number: 39-1996522

Respondent

FOR COMPLAINANT:

Michael D. Harris, Director
Enforcement and Compliance Assurance Division

FINAL ORDER

The foregoing Expedited Settlement Agreement is hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ORDERED to comply with all of the terms of the foregoing Expedited Settlement Agreement, which upon its filing with the Regional Hearing Clerk shall become immediately effective. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

IT IS SO ORDERED.

Ann L. Coyle
Regional Judicial Officer