



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 24 2019

REPLY TO THE ATTENTION OF

VIA E-MAIL

Brian Kletscher  
Chief Executive Officer  
Highwater Ethanol, LLC  
24500 US Highway 14  
Lamberton, Minnesota 56152  
Email: [kevin@sgslawyers.com](mailto:kevin@sgslawyers.com)

Dear Mr. Kletscher:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Highwater Ethanol, LLC, docket no. CAA-05-2019-0025. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

June 24, 2019.

Pursuant to paragraph 26 of the CAFO, Highwater Ethanol, LLC must pay the civil penalty within 30 days of the filing date. Your check must display the case name and case docket number.

Please direct any questions regarding this case to Robert H. Smith, Office of Regional Counsel, (312) 886-0765.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Marshall", with a large flourish at the end.

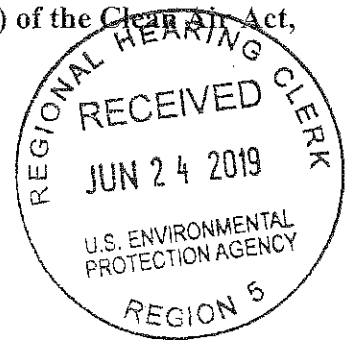
Sarah Marshall, Chief *for*  
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail  
Regional Hearing Clerk/via electronic mail  
Robert H. Smith/via electronic mail  
Sarah Kilgriff/via electronic mail  
Kevin Stroup/via electronic mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:	)	Docket No.	CAA-05-2019-0025
	)		
Highwater Ethanol, LLC	)	Proceeding to Assess a Civil Penalty	
Lamberton, Minnesota	)	Under Section 113(d) of the Clean Air Act,	
	)		
Respondent.	)	42 U.S.C. § 7413(d)	
_____	)		



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 (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 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Highwater Ethanol, LLC (Highwater or “facility”), a corporation doing business in Minnesota.

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 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. EPA delegated to the Minnesota Pollution Control Agency (MPCA) the authority to issue federally-enforceable operating permits under Title V of the CAA, 42 U.S.C. §§ 7661 et seq., as part of the Minnesota State Implementation Plan (SIP) (See 60 Fed. Reg. 21447, May 2, 1995 and 40 C.F.R. Part 70). The Minnesota Title V permitting process is codified in Minnesota Administrative Rules (Minn. R.) Chapter 7007 Air Emissions Permits. The Minnesota SIP includes Minn. R. 7007.0800.16(J) (See 40 C.F.R. § 52.1220(c)).

10. On February 14, 2012, MPCA issued Air Emission Permit No. 12700053-002 to Highwater, which was superseded by a Major Permit Amendment, Air Emission Permit No. 12700053-003, issued on September 15, 2014, (Permit) pursuant to Minn. R. Chapter 7007.

11. Total Facility Permit condition No. 6 on Permit page A-1 limits the emissions of any single hazardous air pollutant (HAP) to 9.0 tons per year (TPY) using a 12-month Rolling Sum.

12. Total Facility Permit conditions Nos. 9 and 14 on Permit pages A-1 and A-2 require compliance with Minn. R. 7007.0800.16(J). Minn. R. 7007.0800.16(J) requires Highwater to properly operate and maintain the facilities and systems of treatment and control and the appurtenances related to them which are installed or used to achieve compliance with the Permit.

13. GP 004 Fermentation Units Controlled by Gas Scrubber CE003 (Fermentation Units) Permit condition No. 1 on Permit page A-9 limits emissions of volatile organic compounds (VOC) to 10 pounds per hour (lb/hr) using 3-hour averages from this process.

14. Fermentation Units Permit condition No. 5 on Permit page A-9 requires all emissions from this process be vented to the carbon dioxide (CO<sub>2</sub>) scrubber.

15. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$47,357 per day of violation up to a total of \$378,852 where the violations occurred after November 2, 2015, and for which penalties are assessed on or after January 15, 2019, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

### **Findings**

16. EPA conducted an on-site inspection of Highwater on June 29, 2018. Highwater provided information to EPA during the inspection and shortly after the inspection via electronic correspondence about Highwater's fermentation process and leak detection and repair program since January 1, 2016.

17. The inspection conducted by EPA using an optical gas imaging (OGI) camera as well as audio, visual and olfactory (AVO) observations revealed uncaptured emissions from the fermentation process from components on the top of the Highwater's fermenters and beer well.

18. Emissions calculations performed by EPA in accordance with *the Handbook of Chemical Hazard Analysis Procedures* (FEMA, USDOT, USEPA, 1989) and based on information provided to EPA by Highwater show that uncaptured emissions from the Fermentation Units identified in Paragraph 17 were greater than 10 lb/hr VOC.

### Alleged Violations

19. From at least June 29, 2018 to August 22, 2018, Highwater has failed to properly maintain components that are part of the Fermentation Units, including pressure relief valves/vacuum breakers and agitators, that have the capacity to vent fermentation emissions uncontrolled directly to the atmosphere in violation of Total Facility Permit conditions Nos. 9 and 14 on Permit pages A-1 and A-2 and Minn. R. 7007.0800.16(J).

20. Since at least June 29, 2018, Highwater emitted more than 10 lb/hr of VOCs from the Fermentation Units in violation of Fermentation Units Permit condition No. 1 on Permit page A-9.

21. Since at least June 29, 2018, Highwater has failed to vent all emissions from the Fermentation Units to the CO<sub>2</sub> scrubber in violation of Fermentation Units Permit condition No. 5 on Permit page A-9.

22. On March 15, 2019, EPA issued Highwater a Notice and Finding of Violation (NOV/FOV) for the violations alleged in Paragraphs 19 to 21 above.

23. On April 17, 2019, EPA spoke with Highwater via conference call to discuss the alleged violations in the NOV/FOV.

24. Highwater has implemented corrective action to mitigate the alleged violations in Paragraphs 19 to 21 above, including:

- a. Replacement or rebuild of all pressure relief/vacuum breakers atop fermenters and the beer well by August 21, 2018.
- b. Replacement of the vapor sealing barrier on the shaft of each agitator atop the fermenters and the beer well by August 22, 2018.
- c. Initiated emission monitoring of pressure relief valves/vacuum breakers and agitators on March 12, 2019, to ensure compliance with the permit conditions cited in Paragraphs 19 to 21 above.

#### Civil Penalty

25. 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 Highwater's cooperation, efforts to promptly return to compliance, and agreement to complete a supplemental environmental project (SEP), Complainant has determined that an appropriate civil penalty to settle this action is a cash civil penalty of \$64,000 and SEP costing Highwater at least \$180,000.

26. Within 30 days after the effective date of this CAFO, Respondent must pay the \$64,000 cash penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes) please use the following address instead:

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 the docket number of this CAFO.

27. 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 (ECA-18J)  
Air Enforcement and Compliance Assurance Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Robert H. Smith (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

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

29. If Respondent does not timely pay the civil penalty or any stipulated penalties due under Paragraph 43 below, 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.

30. 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).

#### **Supplemental Environment Project**

31. Highwater agrees to complete a SEP designed to further protect the environment and public health by reducing emissions of related air pollutants to the environment. In particular, the SEP will reduce VOC emissions and other air pollutants from diesel-fired bus engines.

32. Highwater must complete the SEP as follows. Highwater must purchase, in whole or in part, two alternative fuel school buses for the Lamberton, Minnesota School District (LSD). In this case, an alternative fuel school bus shall mean a low-emissions diesel bus. The new buses will be selected by LSD and must be replacements for traditionally-fueled school buses. The traditionally-fueled school buses must be destroyed once the alternative fuel school buses are put in service.

33. Respondent must spend at least \$180,000 on the SEP.

34. Respondent certifies as follows:

I certify that Highwater is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Highwater has not



received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Highwater is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

35. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

36. Respondent must maintain copies of the underlying research and data for all reports submitted to EPA pursuant to this CAFO. Respondent must provide the documentation of any underlying research and data to EPA within seven days of EPA's request for the information.

37. Respondent must complete the SEP by no later than November 30, 2019.

38. Respondent must submit a SEP completion report to EPA no later than December 31, 2019. This report must contain, at a minimum, the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems executing the SEP and the actions taken to correct the problems;
- c. Certification from the recipients that the funds were spent in conformity with the SEP as described or, if the recipient school has not yet completed the project, certification from the recipient school that any unused funds are being held in an account earmarked for the specified purposes;

- d. Certification or documentation demonstrating that the replaced traditionally fueled school buses were destroyed or disassembled such that it will no longer be operated;
- e. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- f. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

39. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch and Robert H. Smith at the addresses provided in Paragraph 27.

40. In each report that Respondent submits as provided by this CAFO, 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.

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

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under Paragraph 43.

42. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an

agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 43, below.

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

- a. Except as provided in Subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$180,000.
- b. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in Paragraph 33, Respondent must pay a penalty equal to \$180,000 less the amount Highwater spent on the SEP.
- c. If Respondent did not timely submit the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$500	1 <sup>st</sup> through 14 <sup>th</sup> day
\$1,000	15 <sup>th</sup> through 30 <sup>th</sup> day
\$1,500	31 <sup>st</sup> day and beyond

44. EPA's determination of whether Respondent completed the SEP satisfactorily will bind Respondent.

45. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraphs 26 and 27, above, and will pay interest and nonpayment penalties on any overdue amounts.

46. Any public statement that Respondent makes referring to the SEP must include the following language: "Highwater Ethanol, LLC undertook this project under the settlement of

the United States Environmental Protection Agency's enforcement action against Highwater for violations of the Clean Air Act.”

47. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

### General Provisions

48. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: [smith.roberth@epa.gov](mailto:smith.roberth@epa.gov) (for Complainant), and [kevin@sgslawyers.com](mailto:kevin@sgslawyers.com) (counsel for Respondent).

49. Full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

50. 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.

51. 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 49 of this CAFO, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

52. Respondent certifies that it is complying fully with the CAA and Minnesota SIP.

53. 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).

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

55. 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.

56. Each party agrees to bear its own costs and attorney's fees in this action.


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

**Consent Agreement and Final Order**

**In the Matter of:** Highwater Ethanol, LLC, Lamberton, Minnesota

**Highwater Ethanol, LLC, Respondent**

6/11/2019  
Date

  
\_\_\_\_\_  
Brian Kletscher  
Chief Executive Officer  
Highwater Ethanol, LLC

**Consent Agreement and Final Order**

**In the Matter of:** Highwater Ethanol, LLC, Lamberton, Minnesota

**United States Environmental Protection Agency, Complainant**

10/19/19  
Date

*Sara Bannina*  
for Michael D. Harris  
Acting Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**

In the Matter of: Highwater Ethanol, LLC, Lamberton, Minnesota  
Docket No. CAA-05-2019-0025

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.

6/21/19  
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: Highwater Ethanol, LLC  
Docket Number: CAA-05-2019-0025

CERTIFICATE OF SERVICE

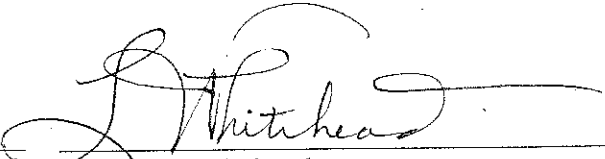
I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA05 2019 0025, which was filed on June 24, 2019, in the following manner to the following addresses:

Copy by E-mail to Kevin Stroup  
Attorney for Respondent: [kevin@sgslawyers.com](mailto:kevin@sgslawyers.com)

Copy by E-mail to Robert H. Smith  
Attorney for Complainant: [smith.roberth@epa.gov](mailto:smith.roberth@epa.gov)

Copy by E-mail to Ann Coyle  
Regional Judicial Officer: [coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: June 24, 2019

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