



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

AUG 07 2012

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Louise E. Tosi
Shumaker Loop & Kendrick
1000 Jackson Street
Toledo, Ohio 43604

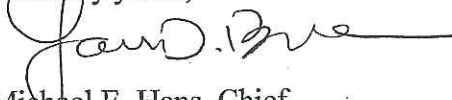
Re: **The Andersons Albion Ethanol, LLC, Albion, Michigan and The Andersons
Clymers Ethanol, LLC, Logansport, Indiana**
Consent Agreement and Final Order.
Docket No. CAA-05-2012-0043

Dear Mr. Tosi:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on AUG 07 2012. Please inform your client of their obligation to pay a civil penalty in the amount of \$140,000 in the manner prescribed in paragraphs 44-49 and please note that your client must reference their check with the number BD 2751203A044 and docket number.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Louise Gross, Regional Counsel, at (312) 886-6844. Thank you for your assistance in resolving this matter.

Sincerely yours,


for Michael E. Hans, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

cc. Louise Gross, ORC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
AUG -7 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)

The Andersons Albion Ethanol, LLC)
Albion, Michigan)

and)

The Andersons Clymers Ethanol, LLC)
Logansport, Indiana)

Respondents.)

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

Docket No. CAA-05-2012-0043

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 (U.S. EPA), Region 5, Chicago, Illinois.

3. Respondents are The Andersons Albion Ethanol, LLC and The Andersons Clymers Ethanol, LLC (Respondents), corporations doing business in the States of Michigan and Indiana.

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. In order to resolve this matter without litigation, Respondents consent to entry of this CAFO and the assessment of the specified civil penalty, and agree to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in the CAFO.

8. Respondents waive their 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 their right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include

monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

14. Under Section 112(f) of the Act, 42 U.S.C. § 7412(f), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

15. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated "Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)," 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions.

16. "Stationary source" is defined to mean "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." 40 C.F.R. § 68.3.

17. "Process" is defined to mean "any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities." 40 C.F.R. § 68.3.

18. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator has listed anhydrous ammonia, CAS No. 7664-47-7, as a substance which, in the case of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The Administrator has further identified a threshold quantity of 10,000 lbs. of anhydrous ammonia for determining whether sources are subject to the Risk Management Program. 40 C.F.R. § 68.130, Table 1.

19. 40 C.F.R. § 68.115 provides that a "threshold quantity of a regulated substance listed in § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold."

20. 40 C.F.R. § 68.12 requires that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single RMP, as provided in 40 C.F.R. §§ 68.150 through 68.185.

21. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirement of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

22. Section 113(d) of the Act 42 U.S.C. §7413(d) and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA may assess a civil penalty of up to \$32,500 per day of

violation up to a total of \$270,000 for each violation of Section 112(r) of the Act that occurred from March 15, 2004 to January 12, 2009 and a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for each violation of Section 112(r) of the Act that occurred after January 12, 2009.

23. Section 113(d)(1) of the Act 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.

24. 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 periods of violations alleged in this complaint.

Factual Allegations and Alleged Violations

25. Respondents are a "person," as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

26. Respondent The Andersons Albion Ethanol, LLC owns and operates a facility, located at 26250 B Drive, North, Albion, Michigan, which consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person (Albion Facility).

27. On April 4, 2007, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations, 40 C.F.R. Part 68, Respondent submitted to U.S. EPA an RMP for the Albion Facility.

28. According to the RMP submitted to U.S. EPA by Respondent, the Albion Facility:
- a. fails within NAICS Code 325193, as Ethyl Alcohol Manufacturing;
 - b. used "anhydrous ammonia" CAS No, 7664-47-7 as a process chemical during its operations; and
 - c. held 85,527 lbs. of anhydrous ammonia.
29. On April 14, 2009, authorized representatives of U.S. EPA conducted an inspection at the Albion Facility to determine its compliance with 40 C.F.R. Part 68.
30. The Albion Facility is a "stationary source," as defined at 40 C.F.R. § 68.3.
31. On July 25, 2006, having held for use in its operations at the Albion Facility 10,000 lbs. or more of anhydrous ammonia, Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and became subject to 40 C.F.R. Part 68.
32. For purposes of compliance with 40 C.F.R. Part 68, in its RMP, Respondent acknowledged that it was required to meet Program 3 eligibility requirements.
33. Based on the inspection conducted on April 14, 2009, U.S. EPA identified the following alleged violations of RMP requirements in a May 5, 2010 Finding of Violation:
- a. Failure to file a Risk Management Plan on the first day ammonia was present at the facility in a quantity greater than 10,000 pounds, as provided under 40 C.F.R. § 68.12(a).
 - b. Failure to document other persons responsible for implementing individual requirements of the risk management program and define the lines of authority through an organization chart or similar document, as provided under 40 C.F.R. § 68.15(c).
 - c. Failure to complete a compilation of written process safety information that includes; safe upper and lower limits for such items as temperatures, pressures, flows, or compositions; piping and instrumentation diagrams; relief system design basis; design codes and standards employed; and safety systems; as provided under 40 C.F.R. § 68.65(a).
 - d. Failure to document that equipment complies with recognized and generally accepted good engineering practices, as provided under 40 C.F.R. § 68.65(d)(2).

- e. Failure to establish a system to promptly address the team's findings and recommendations noted as a result of the January 2007 Process Hazard Analysis conducted, as provided under 40 C.F.R. § 68.67(e).
- f. Failure to develop and implement written operating procedures that address emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner; startup following a turnaround, or after emergency shutdown; operating limits; and safety systems and their functions, as provided under 40 C.F.R. § 68.69(a)(1).
- g. Failure to establish and implement written procedures to maintain the on-going integrity of process equipment, as provided under 40 C.F.R. § 68.73(b).
- h. Failure to ensure that recognized and generally accepted good engineering practices for inspection and testing procedures are followed, as provided under 40 C.F.R. § 68.73(d)(2).
- i. Failure to ensure the frequency of inspections and tests of process equipment is consistent applicable manufacturers' recommendations, good engineering practices, and prior operating experience, as provided under 40 C.F.R. § 68.73(d)(3).
- j. Failure to document each inspection and test that has been performed on process equipment, as provided under 40 C.F.R. § 68.73(d)(4).
- k. Failure to obtain and evaluate information regarding the contractor operator's safety performance and program when selecting a contractor, as provided under 40 C.F.R. § 68.87(b)(1).
- l. Failure to explain to the contract operator the provisions of the emergency response or emergency action program, as provided under 40 C.F.R. § 68.87(b)(3).
- m. Failure to evaluate the performance of the contractor operator's obligations under 40 C.F.R. § 68.87(c), as provided under 40 C.F.R. § 68.87(b)(5).

34. Respondent The Andersons Clymers Ethanol, LLC owns and operates a facility, located at 3389 West County Road 300 South, Logansport, Indiana, which consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person (Logansport Facility).

35. On May 29, 2007, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations, 40 C.F.R. Part 68, Respondent submitted to U.S. EPA an RMP for the Logansport Facility.

36. According to the RMP submitted to U.S. EPA by Respondent, the Logansport Facility:

- a. falls within NAICS Code 325193, as Ethyl Alcohol Manufacturing;
- b. used "anhydrous ammonia" CAS No. 7664-47-7 as a process chemical during its operations; and
- c. held 85,527 lbs. of anhydrous ammonia.

37. On June 18, 2009, authorized representatives of U.S. EPA conducted an inspection at the Logansport Facility to determine its compliance with 40 C.F.R. Part 68.

38. The Logansport Facility is a "stationary source," as defined at 40 C.F.R. § 68.3.

39. On April 30, 2007, having held for use in its operations at the Logansport Facility 10,000 lbs, or more of anhydrous ammonia, Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and became subject to 40 C.F.R. Part 68.

40. For purposes of compliance with 40 C.F.R. Part 68, in its RMP, Respondent acknowledged that it was required to meet Program 3 eligibility requirements.

41. Based on the inspection conducted on April 14, 2009, U.S. EPA identified the following alleged violations of RMP requirements in a May 5, 2010 Finding of Violation:

- a. Failure to file a Risk Management Plan on the first day ammonia was present at the facility in a quantity greater than 10,000 pounds, as provided under 40 C.F.R. § 68.12(a).
- b. Failure to complete a compilation of written process safety information including a block flow diagram or simplified process flow diagram of the system; the maximum intended inventory; safe upper and lower limits for such items as temperatures, pressures, flows, or compositions; relief system design basis; and the material and energy balance; as provided under 40 C.F.R. § 68.65.(a).

- c. Failure to adequately train the operators that work with the ammonia system in operating procedures prior to the employees being involved in operating the ammonia process, as provided under 40 C.F.R. § 68.71(a).
- d. Failure to ascertain that each employee involved in operating the ammonia process received and understood training required, as provided under 40 C.F.R. § 68.71(c).
- e. Failure to prepare a record which contains the identity of each employee involved in operating the ammonia process, the date of training, and the means used to verify that the employee understood training, as provided under 40 C.F.R. § 68.71(c).
- f. Failure to implement written procedures to manage changes to equipment, in this case the permanent removal of the ammonia pump, as provided under 40 C.F.R. § 68.75(a).
- g. Failure to perform a pre-startup safety review that confirmed that the construction and design of the system was in accordance with design specifications and that the Process Hazard Analysis recommendations had been resolved prior to start-up of the process, as provided under 40 C.F.R. § 68.77(b).
- h. Failure to obtain and evaluate information regarding the contract operator's safety performance and program when selecting a contractor, as provided under 40 C.F.R. § 68.87(b)(1).
- i. Failure to evaluate the performance of a contract operator's obligations under 40 C.F.R. § 68.87(c), as provided under 40 C.F.R. § 68.87(b)(5).

42. 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.

43. 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

44. 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 \$140,000.

45. Within 30 days after the effective date of this CAPO, Respondents must pay a \$140,000 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 "The Andersons Albion Ethanol, LLC and The Andersons Clymers Ethanol, LLC," the docket number of this CAFO and the billing document number.

46. A transmittal letter stating Respondents' name, complete address, the case docket number, and the billing document number must accompany the payment. Respondents 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 Blvd.
Chicago, IL 60604

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

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

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

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

48. If Respondents do 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.

49. Pursuant to 31 C.F.R. § 901.9, Respondents 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. Respondents must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondents 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.

General Provisions

50. This CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged in this CAFO.

51. 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.

52. This CAFO does not affect Respondents' responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 50, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

53. Respondents certify that they are complying fully with 40 C.F.R. Part 68.

54. The terms of this CAFO bind Respondents, their successors, and 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 attorneys' fees in this action.

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

CONSENT AGREEMENT AND FINAL ORDER

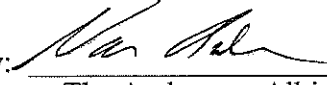
In the Matter of

The Andersons Albion Ethanol, LLC, Albion,
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LLC, Logansport, Indiana

Docket No.

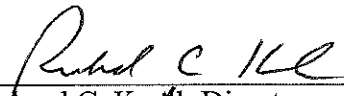
The Andersons Albion Ethanol, LLC and The
Andersons Clymers Ethanol, LLC, Respondents

Date: 7/10/12

By: , V.P. The Andersons, Inc.,
The Andersons Albion Ethanol, LLC, and
The Andersons Clymers Ethanol, LLC *on behalf of manager et*

United States Environmental Protection Agency, Complainant

Date: 8-6-12

By: 
Richard C. Karp, Director
Superfund Division

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of

**The Andersons Albion Ethanol, LLC, Albion,
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Docket No. CAA-05-2012-0043**

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AUG - 7 2012

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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.

8-6-2012

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Docket #: CAA-05-2012-0043

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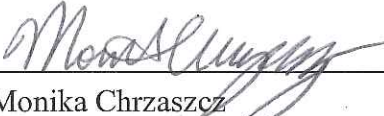
Certificate of Service

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the person designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

Louis E. Tosi
Shumaker Loop & Kendrick
1000 Jackson Street
Toledo, OH 43604

I have further caused the original CAFO and this Certificate of Service, and one copy, to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 7th day of August, 2012.



Monika Chrzaszcz
U.S. Environmental Protection Agency Region 5