

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0030
)	
Didion Ethanol LLC)	Proceeding to Assess a Civil Penalty
Cambria, Wisconsin)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
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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 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 Didion Ethanol LLC (Didion Ethanol), a corporation doing business in Wisconsin.

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 a Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations or the alleged violations of law 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

Wisconsin State Implementation Plan (Wisconsin SIP) and Permit Conditions

9. Each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the CAA, 42 U.S.C. § 7410. Upon approval by EPA, the plan becomes part of the federally enforceable State Implementation Plan (SIP) for the state.

10. In 1995, EPA delegated to the Wisconsin Department of Natural Resources (WDNR) 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 Wisconsin SIP (See 60 Fed. Reg. 3543, Jan. 18, 1995 and 40 C.F.R. Part 70). The Wisconsin Title V permitting process is codified in Wisconsin Administrative Code (WAC) NR 406 Construction Permits and NR 407 Operation Permits.

11. On January 6, 2014, the WDNR issued to Didion Ethanol a Construction Permit No. 13-DCF-144 (2014 Permit), pursuant to NR 406.

12. On April 3, 2018, WDNR issued to Didion Ethanol Part 70 Operation Permit No. 111081520-P01 (2018 Permit), pursuant to NR 407.

13. On May 4, 2020, WDNR issued Part 70 Operation Permit No. 111081520-P03 (2020 Permit) to Didion Ethanol pursuant to NR 407.

14. On August 16, 2021, WDNR issued Part 70 Operation Permit No. 11108152A-P08 (2021 Permit) to Didion Ethanol pursuant to NR 407.

15. The preamble to Didion Ethanol's 2018 Permit states that the ethanol recovery system (Process P205) consists of C30, CO2 scrubber; control device C50, knockout scrubber; and control device C31, vent gas scrubber.

16. Didion Ethanol's 2021, 2020, and 2018 Permit conditions I.A.1.b.(1) and I.A.1.b.(2)(b) and its 2014 Permit condition I.A.1.b.(1)(a) require emissions of volatile organic compounds (VOCs) from the fermentation process to be directed to an ethanol recovery system (e.g., scrubbers) followed by a regenerative thermal oxidizer (RTO).

17. Didion Ethanol's 2021, 2020, and 2018 Permit condition I.A.3.b(1) and its 2014 Permit condition I.A.3.b.(1) require emissions of acetaldehyde to be directed to an ethanol recovery system (e.g., scrubbers) followed by an RTO.

18. Didion Ethanol's 2021, 2020, 2018, and 2014 Permit condition I.ZZZ.3(a)(2) require air pollution control equipment be operated and maintained in conformance with good engineering practices to minimize the possibility for the exceedance of any emission limitations.

19. Didion Ethanol's 2021, 2020, 2018, and 2014 Permit condition I.ZZZ.3(a)(1) and (b)(3) require that a malfunction prevention and abatement plan (MPAP) be developed to prevent, detect, and correct malfunctions or equipment failures which may cause any applicable emissions limitation to be violated or which may cause air pollution. The MPAP shall require a copy of the operation and maintenance manual for the control equipment to be maintained on site and contain all of the elements in s. NR 439.11(1)(a) - (h), Wis. Adm. Code.

20. NR 439.11(1) states that "[t]he owner or operator of any direct or portable source which may emit hazardous substances or emits more than 15 pounds in any day or 3 pounds in

any hour of any air contaminant for which emission limits have been adopted shall prepare a malfunction prevention and abatement plan to prevent, detect, and correct malfunctions or equipment failures which may cause any applicable emission limitation to be violated or which may cause air pollution. The plan shall be in writing and updated at least every 5 years, and shall include:

- (a) Identification of the individual responsible for inspecting, maintaining and repairing the air pollution control equipment.
- (b) The maximum intervals for inspection and routine maintenance of the air pollution control equipment. The maximum interval for routine inspection and maintenance may not exceed that recommended by the manufacturer unless otherwise specified in a plan prepared under this section.
- (c) A description of the items or conditions that will be checked.
- (d) A listing of materials and spare parts that will be maintained in inventory.
- (e) A description of the corrective procedures that will be taken in the event of a malfunction or failure which results in the exceedance of the applicable emission limitation. These corrective procedures shall achieve and maintain compliance with the applicable emission limitations as expeditiously as possible but not longer than the time necessary to discontinue operation of the source consistent with safe operating procedures.”

Section 111 of the CAA, New Source Performance Standards (NSPS)

21. Section 111(b) of the CAA, 42 U.S.C. § 7411(b), requires EPA to publish a list of categories of stationary sources and, within a year after the inclusion of a category of stationary sources in the list, to publish proposed regulations establishing federal standards of performance for new sources within the source category. These performance standards are known as the New Source Performance Standards (NSPS). EPA codified these standards at 40 C.F.R. Part 60.

22. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the operation of a new source in violation of any applicable standard of performance.

Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction or Modification Commenced After November 7, 2006 (NSPS Subpart VVa)

23. NSPS Subpart VVa applies to affected facilities in the synthetic chemical manufacturing industry. Didion Ethanol operates an NSPS Subpart VVa affected facility, including the closed-vent system routing emissions to a flare from ethanol loadout operations. 40 C.F.R. § 60.480a, 2014 Permit Condition I.H., and 2018 Permit Condition III.A.1.

24. NSPS Subpart VVa at 40 C.F.R. § 60.482-2a(a)(2) states that each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

25. NSPS Subpart VVa at 40 C.F.R. § 60.482-10a(d) states that flares used to comply with NSPS Subpart VVa shall comply with the requirements of 40 C.F.R. § 60.18, of the General Provisions, NSPS Subpart A.

26. NSPS Subpart VVa at § 60.482-10a(e) states that owners or operators of control devices used to comply with the provisions of this subpart shall monitor these control devices to ensure that they are operated and maintained in conformance with their designs.

27. NSPS Subpart A at 40 C.F.R. § 60.18(c)(1) states that flares shall be designed for and operated with no visible emissions (VE) except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

28. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$55,808 per day of violation up to a total of \$446,456 for violations that occurred after November 2, 2015, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

29. 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 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.

30. 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 period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

Factual Allegations

31. Didion Ethanol owns and operates an ethanol production facility at 501 S Williams St, Cambria, Wisconsin (facility).

32. On June 28, 2018, EPA conducted an on-site inspection of the facility (2018 Inspection).

33. During the 2018 Inspection, EPA observed uncaptured emissions from the fermentation process from the components on top of the Didion Ethanol's fermenters and beer well using an optical gas imaging forward looking infrared (FLIR) camera and identified buildup of solids at the outlet of some of these components.

34. During the 2018 Inspection, EPA observed VEs from the ethanol loadout flare continuously for more than 5 minutes, while Didion Ethanol was loading out E85 ethanol fuel blend.

35. After the 2018 Inspection, Didion Ethanol submitted additional information to EPA on August 17, 2018.

36. On August 17, 2018, Didion Ethanol provided to EPA the facility's Malfunction Prevention and Abatement Plan (MPAP), dated November 7, 2017. The MPAP did not contain

sufficient requirements to prevent, detect, and correct malfunctions or equipment failures related to the operation of the flare. Specifically, the MPAP section for the flare did not contain: a description of visible emission checks; a listing of spare parts; and a description of the corrective procedures that will be taken in the event of a malfunction or failure which results in the exceedance of the applicable emission limitation.

37. The MPAP also did not contain sufficient requirements to prevent, detect and correct malfunctions or equipment failures related to the routing of emissions from the fermentation process to the ethanol recovery system and from the ethanol recovery systems to the RTOs . Specifically, the MPAP did not contain the following: an inspection frequency for the components on the top of the fermenters and the beer well; an established pressure drop operating range for the knockout scrubber (C50) or the vent gas scrubber (C31); an established minimum water flow rate at the CO2 scrubber (C30); inspections and monitoring of the components on the top of the fermenters and beer well; and a description of the corrective procedures that will be taken in the event of emissions exiting the system through the components on the top of the fermenters and beer well.

38. On August 17, 2018, Didion Ethanol provided to EPA leak detection and repair (LDAR) reports for the first half 2013, 2016, 2017, and the first half 2018, respectively, as well as the LDAR inventory as of July 16, 2013 (2013 LDAR Inventory). These data show that some of the components on top of fermenters and beer well are not part of the facility's LDAR program.

39. On August 17, 2018, Didion Ethanol provided to EPA the manufacturer's Operation and Maintenance Manual (O&MM) for the loadout flare (Operation and Maintenance

Manual for a 16" OD x 35' OAH ELEVATED LH COMBUSTOR SYSTEM). The O&MM has a troubleshooting guide for a smoking flare that Didion Ethanol did not implement.

40. On August 17, 2018, Didion Ethanol provided to EPA information related to its leak detection and repair (LDAR) program. The database provided shows missing and late weekly pump checks.

41. On February 25, 2019, EPA issued Didion Ethanol a Notice of Violation and Finding of Violation (NOV/FOV).

42. On August 1, 2019, and subsequently thereafter, representatives of Didion Ethanol and EPA discussed the February 25, 2019 NOV/FOV. Didion Ethanol worked cooperatively with EPA to address its concerns.

43. Following the February 25, 2019 NOV/FOV, Didion Ethanol submitted additional information to EPA on August 16, 2019 and January 29, 2021, which provided additional evidence to support the allegations in the February 25, 2019 NOV/FOV.

44. On August 16, 2019, Didion Ethanol provided to EPA work orders for repair of equipment on top of the fermenters and beer well which showed several leaks and gaskets that needed to be replaced or bolted.

45. On August 16, 2019, Didion Ethanol provided to EPA email correspondence between Didion Ethanol and the flare's manufacturer showing troubleshooting activities of the flare after the 2018 Inspection. The email states "[o]n 8/20/2018 I spoke with the service technician from John Zink that setup our flare and told him what we saw and asked what the solution would be. He told me that they had setup the flare with the damper on the inlet of the blower fan open about 40% and to open the damper to 100% to eliminate the emissions during loading. On 8/20/2018 we opened the damper to the position they recommended and we kept a

close eye on emissions from the flare during normal and E85 loads with no noticeable emissions.”

46. On August 16, 2019, Didion Ethanol provided to EPA three work orders showing troubleshooting activities of the flare after the 2018 Inspection, including the activities discussed above.

47. On August 16, 2019, Didion Ethanol provided to EPA work orders of pump inspections and records of facility’s preventive maintenance, covering the period from January 2016 to March 2019. From review of these records, EPA discovered numerous missing weekly pump inspections, as follows:

Year	Dates	Count
2016	6/23, 7/1, 7/7, 7/15, 7/20, 7/29, 8/5, 8/12, 8/19, 8/26, 9/1, 9/8, 9/15, 9/23, 9/29, 10/7, 10/14, 10/21, 10/28, 11/4, 11/10, 11/18, 11/25, 12/2, 12/9, 12/16, 12/23	27
2017	12/30, 1/6, 1/13, 1/20, 3/17, 3/24, 7/7, 8/4, 8/11, 8/25, 12/21	11
2018	2/23, 4/6, 5/25, 11/23, 11/30, 12/21	6
2019	1/11, 1/25, 2/1, 2/8, 3/15, 8/2	6
	TOTAL	
		Total: 50

48. On January 29, 2021, Didion Ethanol provided to EPA records of the pressure set points on various components on the fermenters and beer well, and records of pressure drop data for the knockout scrubber from January 2016 to January 2021. Didion Ethanol’s records indicate that when the pressure drop between the fermentation tanks/beer well and the scrubber rises above a certain pressure, the pressure in the fermentation tanks and beer well will exceed the pressure set points of components on top of the tanks, resulting in the opening of these

components on top of the tanks. Didion Ethanol operated its knockout scrubber at a pressure drop that caused the opening of the components on the top of the tanks.

Alleged Violations

Permit Conditions

49. Since February 25, 2017, Didion Ethanol failed to consistently direct all emissions from the fermentation process to the ethanol recovery system, in violation of 2018 Permit conditions I.A.1.b.(1) and I.A.1.b.(2)(b) and 2014 Permit condition I.A.1.b.(1)(a), as set forth in paragraphs 33, 44, and 48, above.

50. Since June 21, 2016, Didion Ethanol has failed to develop a MPAP that contained sufficient requirements to prevent, detect, and correct malfunctions or equipment failures related to the operation of the loadout flare and that contained all the elements in s. NR 439.11(1)(a) - (h), in violation of 2018 Permit condition I.ZZZ.3(a)(1) and (b)(3) and 2014 Permit condition I.ZZZ.3(a)(1) and (b)(3), as set forth in paragraph 36.

51. Since June 21, 2016, Didion Ethanol has failed to develop a MPAP that contained sufficient requirements to prevent, detect, and correct malfunctions or equipment failures related to the routing of emissions from the fermentation process to the ethanol recovery system and from the ethanol recovery systems to the RTOs and that contained all the elements in s. NR 439.11(1)(a) - (h), in violation of 2018 Permit condition I.ZZZ.3(a)(1) and (b)(3) and 2014 Permit condition I.ZZZ.3(a)(1) and (b)(3), as set forth in paragraph 37.

52. Since June 21, 2016, Didion Ethanol has failed to consistently operate and maintain the loadout flare in conformance with good engineering practices, and specifically manufacturer's recommendations, to minimize the possibility for the exceedance of any emission

limitations, in violation of 2018 Permit Condition I.ZZZ.3(a)(2) and 2014 Permit Condition I.ZZZ.3(a)(2), as set forth in paragraphs 34, 36, 39, 45, 46, above.

53. Since February 25, 2017, Didion Ethanol has failed to operate and maintain components on top of its fermenters and beer well, and failed to consistently operate and maintain the system that routes emissions from the fermentation process to the ethanol recovery system and from the ethanol recovery system to the RTOs associated with the fermentation process in conformance with good engineering practices to minimize the possibility for the exceedance of any emission limitations, in violation of 2018 Permit Condition I.ZZZ.3(a)(2) and 2014 Permit Condition I.ZZZ.3(a)(2), as set forth in paragraphs 33, 37, 38, 44, and 48, above.

NSPS Subpart VVa

54. For a duration no less than 2 months (from June 28, 2018 to August, 20, 2018), Didion Ethanol has failed to operate the flare with no visible emissions except for periods not to exceed a total of 5 minutes during any 2 consecutive hours, in violation of 40 C.F.R. § 60.18(c)(1), as set forth in paragraph 34, 45, and 46, above.

55. On 50 occasions, Didion Ethanol has failed to check each pump in light liquid service by visual inspection each calendar week for indications of liquids dripping from the pump seal, in violation of 40 C.F.R. § 60.482-2a(a)(2), as set forth in paragraph 40 and 47, above.

Civil Penalty

56. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and the facts of this case Complainant has determined that an appropriate civil penalty to settle this action is \$170,000.

57. Within 30 days after the effective date of this CAFO, Respondent must pay a \$170,000 civil penalty by an ACH electronic funds transfer payable to “Treasurer, United States of America,” send to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

58. 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:

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

Robert H. Smith
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
smith.roberth@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

60. If Respondent does not pay timely the civil penalty, 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.

61. 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).

General Provisions

62. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: smith.roberth@epa.gov (for Complainant), and tepalmer@michaelbest.com (for Respondent).

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

64. 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.

65. 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 63, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

66. Respondent certifies that it is complying fully with the Wisconsin SIP provisions, the facility air permit terms, and the NSPS Subpart VVa requirements which EPA alleges to have been violated in paragraphs 49 through 55.

67. It is EPA's position that 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).

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

69. 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.

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

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

Didion Ethanol LLC, Respondent

5/24/23

Date



Coral Didion
General Counsel
VP Marketing & Communications
Didion Ethanol LLC

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: Didion Ethanol LLC
Docket No. CAA-05-2023-0030**

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.

Date

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