

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0040
)	
Alto ICP, LLC)	Proceeding to Assess a Civil Penalty
Pekin, Illinois)	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 Alto ICP, LLC¹, a limited liability company doing business in 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.

¹ Formerly known as Illinois Corn Processing, LLC

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

National Emission Standards for Hazardous Air Pollutants

9. Section 112 of the CAA, 42 U.S.C. § 7412, requires EPA to promulgate a list of all categories and subcategories of major sources and area sources of hazardous air pollutants (HAPs) and establish emissions standards for the categories and subcategories. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (NESHAP).

10. The NESHAPs in 40 C.F.R. Part 63 are national technology-based performance standards for HAP sources in each category that become effective on a specified date. The purpose of these standards is to ensure that all sources achieve the maximum degree of reduction in emissions of HAPs that EPA determines is achievable for each source category.

11. Section 112(a) of the CAA, 42 U.S.C. § 7412(a), defines “major source” as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit (PTE) considering controls, in the

aggregate, 10 tons per year (TPY) or more of any single HAP or 25 TPY or more of any combination of HAPs.

12. Section 112(a)(2) of the CAA, 42 U.S.C. § 7412(a)(2), defines “area source” as any stationary source of HAPs that is not a major source.

13. Section 112(i)(3) of CAA, 42 U.S.C. § 7412(i)(3), and 40 C.F.R. § 63.4 prohibit the owner or operator of any source from operating such source in violation of any NESHAP applicable to such source.

14. The NESHAP, at 40 C.F.R. Part 63, Subpart A, contains general provisions applicable to the owner or operator of any stationary source that contains an affected source subject to the NESHAP at Part 63. These general provisions include definitions at 40 C.F.R. § 63.2.

15. The NESHAP, at 40 C.F.R. § 63.2, defines “affected source” as the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a CAA Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of CAA.

16. The NESHAP, at 40 C.F.R. § 63.2, defines “new source” as any affected source the construction or reconstruction of which is commenced after EPA first proposes a relevant emission standard under 40 C.F.R. Part 63, establishing an emission standard applicable to such source.

17. The NESHAP, at 40 C.F.R. § 63.2, defines “existing source” as any affected source that is not a new source.

18. The NESHAP, at 40 C.F.R. § 63.6(c)(5) states, “Except as provided in paragraph (b)(7) of this section, the owner or operator of an area source that increases its emissions of (or

its potential to emit) hazardous air pollutants such that the source becomes a major source shall be subject to relevant standards for existing sources. Such sources must comply by the date specified in the standards for existing area sources that become major sources. If no such compliance date is specified in the standards, the source shall have a period of time to comply with the relevant emission standard that is equivalent to the compliance period specified in the relevant standard for existing sources in existence at the time the standard becomes effective.”

NESHAP for Miscellaneous Organic Chemical Manufacturing at 40 C.F.R. Part 63, Subpart FFFF

19. On November 10, 2003, EPA promulgated the NESHAP for Miscellaneous Organic Chemical Manufacturing (Miscellaneous Organic NESHAP or MON), codified at 40 C.F.R. Part 63, Subpart FFFF. 68 Fed. Reg. 63888. The MON establishes emission standards, requirements to demonstrate initial and continuous compliance with emission limits, operating limits, work practice standards, and recordkeeping requirements associated with miscellaneous organic chemical manufacturing. *See* 40 C.F.R. § 63.2430.

20. 40 C.F.R. § 63.2445(b) states, “If you have an existing source on November 10, 2003, you must comply with the requirements for existing sources in this subpart no later than May 10, 2008.”²

21. 40 C.F.R. § 63.2540 references Table 12 of Subpart FFFF to determine those parts of the NESHAP General Provisions that apply to facilities subject to the MON.

² When initially promulgated on November 10, 2003, the final rule for the MON required existing sources to comply no later than November 10, 2006. EPA extended the final compliance date for existing sources to May 10, 2008, due to proposed amendments that were “sufficiently far reaching and complex that an amended rule would effectively be a new rule.” *See* 70 Fed. Reg. 73100 (December 8, 2005). Consistent with Section 112(i)(3)(A) of the CAA, existing facilities becoming major sources after May 10, 2008, shall have three years to come into compliance with applicable emission standards (*i.e.*, MON compliance).

22. Table 12 of 40 C.F.R. Part 63, Subpart FFFF, incorporates 40 C.F.R. § 63.6(c)(5) by reference.

23. 40 C.F.R. § 63.2435(a) provides that owners and operators are subject to the MON if they operate miscellaneous organic chemical manufacturing process units (MCPU) that are located at, or are part of, a major source of HAP emissions as defined in Section 112(a) of the CAA.

24. 40 C.F.R. § 63.2550 defines “miscellaneous organic chemical manufacturing process” as all equipment which collectively functions to produce a product or isolated intermediate that is “material” described in 40 C.F.R. § 63.2435(b). Process includes any, all, or a combination of reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment which is used to produce a product or isolated intermediate.

25. 40 C.F.R. § 63.2435(b)(1)(ii) provides the relevant North American Industry Classification System (NAICS) code for MON applicability as code 325.

26. 40 C.F.R. § 63.2450(a) states that, “You must be in compliance with the emission limits and work practice standards in tables 1 through 7 to this subpart at all times, except during periods of startup, shutdown, and malfunction (SSM), and you must meet the requirements specified in §§63.2455 through 63.2490 (or the alternative means of compliance in §63.2495, §63.2500, or §63.2505), except as specified in paragraphs (b) through (s) of this section. You must meet the notification, reporting, and recordkeeping requirements specified in §§63.2515, 63.2520, and 63.2525.”

27. Table 11 of 40 C.F.R. Part 63, Subpart FFFF, lists reporting requirements for sources subject to the MON. These include the Precompliance Report, due 6 months prior to the

compliance date; the Notification of Compliance Status Report, due 150 after the compliance date; and Compliance Reports (semiannual reporting), due semiannually.

Federal Title V Requirements

28. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that it is unlawful for any person to, among other things, operate a major source subject to Title V except in compliance with a Title V permit after the effective date of any permit program approved or promulgated under Title V of the CAA.

29. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), EPA promulgated regulations establishing the minimum elements of a Title V permit program to be administered by any air pollution control agency. *See* 57 Fed. Reg. 32295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

30. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to EPA a permit program meeting the requirements of Title V.

31. On December 4, 2001, EPA granted full approval to Illinois' Title V operating permit program. *See* 66 Fed. Reg. 62946. The approved Illinois Title V program is known as the Illinois Clean Air Act Permit Program (CAAPP).

32. On March 24, 2015, the Illinois EPA issued a Title V permit (2015 Title V Permit) to Alto ICP, LLC's dry mill ethanol plant at 1301 South Front Street in Pekin, Illinois ("the Facility").

33. Section 4.3.2.d.ii.B of the 2015 Title V Permit, describes the monitoring requirements to demonstrate compliance with volatile organic material (VOM) limits at two dryers controlled by thermal oxidizers, Eco Dryer System BUR6000 (Dryer 6000) and Feed

Dryer System 6500 (Dryer 6500), and states in part, “Pursuant to 40 CFR Part 64, Compliance Assurance Monitoring (CAM) for Major Stationary Sources, the Dryer 6500 and Eco-Dryer system are subject to 40 CFR Part 64. The Permittee shall comply with the monitoring requirements of the CAM Plan described in Condition 7.8 and Table 7.8.4 [sic], pursuant to 40 CFR Part 64 as submitted in the Permittee's CAM plan application.”

34. Table 7.8.3 of the 2015 Title V Permit (Table 7.8.3 of the CAM Plan) sets forth an “Indicator Range Which Provides a Reasonable Assurance of Compliance.” The Indicator Range for thermal oxidizers is a “minimum of 1500 degrees F.”

35. Section 7.8.d.i.A of the 2015 Title V Permit states that semiannual monitoring reports shall include a CAM report with “Summary information on the number, duration, and cause of excursions or exceedances [of the Indicator Range] and the corrective actions taken pursuant to 40 CFR 64.6(c)(3) and 64.9(a) (2)(i).”

36. Section 7.8.c. of the 2015 Title V Permit states, “Pursuant to 40 CFR 64.9(b)(1), the source shall maintain records of the monitoring data, monitor performance data, corrective actions taken, monitoring equipment maintenance, and other supporting information related to the monitoring requirements established for CAM.”

37. Section 4.3.2.g.ii.E.I.2 of the 2015 Title V Permit provides the records that ICP shall maintain at Dryer 6000 and Dryer 6500 and states, “These records shall include the cause for pollution control equipment [*i.e.* the thermal oxidizers] not operating properly or being out of normal service, for incidents when control equipment failed to operate properly and shall identify the corrective actions that were taken, the repairs that were made, and the steps that were taken to prevent any such reoccurrence”.

38. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation with a maximum of \$320,000 for violations that occurred after December 6, 2013, and before November 2, 2015; and \$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.

39. 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.

40. 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

41. Respondent owns and operates the Facility at 1301 South Front Street in Pekin, Illinois.

42. EPA conducted a CAA inspection of the Facility on August 29, 2017 (2017 Inspection).

43. EPA issued a CAA Section 114 Information Request to Respondent on November 14, 2017 (Information Request).

44. Respondent has processed corn to produce fuel-grade ethanol (ethyl alcohol), amongst other products. Ethanol production results in the production and emission of acetaldehyde, a HAP, as a by-product.

45. Ethyl alcohol manufacturing is classified under NAICS Code 325 as 325193.

46. In response to the Information Request, Respondent provided an annual acetaldehyde PTE of 10.4 TPY.

47. Respondent submitted a Construction Permit Application to Illinois EPA, dated January 11, 2016, for the installation of a new methanol stripper system (2016 Permit Application).

48. The 2016 Permit Application states on page one of the cover letter, “The new methanol stripper system will be similar in size and capacity to the existing methanol stripper. However, the new methanol stripper will be operated under vacuum which will result in significantly lower emissions.”

49. The 2016 Permit Application states in Attachment D, page 3, “The source is subject to the requirements of 40 CFR 63, Subpart FFFF because it operates miscellaneous organic chemical manufacturing process units (MCPU) at a major source of HAP...”

50. Illinois EPA issued a Construction Permit, dated March 24, 2016, for the installation of the new methanol stripper system (2016 Construction Permit).

51. Condition 2-1a. of the 2016 Construction Permit, states that that the methanol stripper system is subject to the MON.

52. In response to the Information Request, Respondent provided three construction permits issued by Illinois EPA preceding the 2016 Construction Permit. These construction permits were dated November 14, 2013, August 28, 2014, and April 1, 2015. Consistent with the

2016 Construction Permit, none of these three construction permits documented any project causing an increase in either VOC or HAP emissions.

53. The Facility has been a major source of HAP and subject to the requirements of the MON since at least November 14, 2013, the date of its first construction permit.

54. The Facility was required to be in compliance with the requirements of the MON no later than November 14, 2016.

55. In response to the Information Request, Respondent provided semi-annual reports submitted to the Illinois EPA. Respondent did not include MON compliance documentation in any semi-annual reports.

56. Respondent failed to maintain documents required by the MON, which indicate both the applicability of MON and Respondent's compliance with the MON (*i.e.* the Precompliance Report and Notification of Compliance Status Report).

57. Thermal oxidizer temperature data provided by Respondent indicate that Dryer 6000 failed to maintain a minimum temperature of 1500 °F for 2,900 one-hour excursion blocks³ from March 31, 2015 through February 28, 2018.

58. Thermal oxidizer temperature data provided by Respondent indicate that Dryer 6500 failed to maintain a minimum temperature of 1500 °F for 15,055 one-hour excursion blocks⁴ from March 31, 2015 through February 28, 2018.

59. Respondent failed to include temperature excursion and corrective action data for Dryer 6000 and Dryer 6500 in semiannual monitoring reports submitted to Illinois EPA.

³ EPA excluded temperature data below 200 °F

⁴ EPA excluded temperature data below 200 °F

60. Respondent failed to provide corrective action records for temperature excursions at Dryer 6000 and Dryer 6500.

Violations

61. On September 20, 2018, EPA issued to Respondent a Finding of Violation. EPA met with Respondent on November 13, 2018.

62. By failing to comply with the reporting requirements set forth in Table 11 of 40 C.F.R. Part 63, Subpart FFFF (i.e., Precompliance Report and Notification of Compliance Status Reports), Respondent failed to demonstrate compliance with the MON at the Facility, in violation of 40 C.F.R. § 63.2450(a).

63. By failing to include temperature excursion and corrective action data for the thermal oxidizers controlling VOC emissions at Dryer 6000 and Dryer 6500 in its semiannual monitoring reports, Respondent violated Section 7.8.d.i.A of its 2015 Title V Permit.

64. By failing to maintain corrective action records for temperature excursions at the thermal oxidizers controlling VOC emissions at Dryer 6000 and Dryer 6500, Respondent violated Sections 4.3.2.g.ii.E.I.2 and 7.8.c of its 2015 Title V Permit.

65. Respondent has stated that it ceased production of fuel-grade ethanol in July 2020 and currently only produces beverage-grade ethanol; therefore, the Facility is no longer subject to the MON.

Civil Penalty

66. 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 cooperation, prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$193,516.

67. Penalty Payment. Respondent agrees to:

- a. Pay the civil penalty of \$193,516 within 30 days after the effective date of this CAFO.
- b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
Automated Clearinghouse (ACH) payments made through the US Treasury	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
Wire transfers made through Fedwire	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery: U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency Government Lockbox 979078 U.S. EPA Fines and Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, Missouri 63101</p>

68. Within 24 hours of the payment of the civil penalty Respondent must send a notice of payment and states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Susan Tennenbaum
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
tennenbaum.susan@epa.gov

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

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

70. 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.

71. 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 attorneys 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

72. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: tennenbaum.susan@epa.gov (for Complainant), and KDesharnais@dickinson-wright.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

74. The effect of the settlement described in paragraph 73, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 65 of this CAFO.

75. 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.

76. 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 73, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

77. Respondent certifies that it is complying fully with applicable requirements of the Title V Permit issued to the Facility on July 29, 2022. 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).

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

79. 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.

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

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

Alto ICP, LLC, Respondent

Date 8/31/2023



Todd Benton, Vice President, Operations
Alto ICP, LLC

27-1067590
Tax Identification Number

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: ALTO ICP, LLC
Docket No. CAA-05-2023-0040**

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