

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
BEFORE THE ADMINISTRATOR

FILED

Aug 31, 2023

9:14 am

U.S. EPA REGION III  
HEARING CLERK

In the Matter of:  LAKE ERIE BIOFUELS LLC,  Respondent.	Administrative Compliance Order on Consent  Docket No. CAA-03-2023-0127DA
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**ADMINISTRATIVE COMPLIANCE ORDER**

**A. PRELIMINARY STATEMENT**

1. This Administrative Compliance Order (Order) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a).
2. On the EPA's behalf, the Director of EPA Region 3's Enforcement & Compliance Assurance Division, is delegated the authority to issue this Order under Section 113(a) of the CAA.
3. Respondent is Lake Erie Biofuels LLC, a corporation doing business in the Commonwealth of Pennsylvania. Respondent is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
4. Respondent signs this Order on consent.
5. In satisfaction of the notice requirements of Section 113(a)(1) of the CAA, on May 24, 2022, the EPA issued to Respondent a Notice of Violation (NOV) and provided a copy of the NOV to the Pennsylvania Department of Environmental Protection (PADEP), providing notice to both, that the EPA found that Respondent committed the alleged violations described in Section C of this Order and providing Respondent an opportunity to confer with the EPA. Beginning June 27, 2022, representatives of Respondent and the EPA discussed the May 24, 2022 NOV.

**B. STATUTORY AND REGULATORY BACKGROUND**

6. Section 101 of the CAA, 42 U.S.C. § 7401, declares that the purpose of the Clean Air Act is to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population.

## Pennsylvania SIP Approved Regulations and State Operating Permits

7. Section 108(a) of the CAA requires the Administrator of the EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources (criteria pollutants). 42 U.S.C. § 7408(a).
8. For each criteria pollutant, Section 109 of the CAA requires the EPA to promulgate National Ambient Air Quality Standards (NAAQS) requisite to protect the public health and welfare. 42 U.S.C. § 7409.
9. Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each state to adopt and submit to the Administrator of EPA for approval a plan which provides for implementation, maintenance, and enforcement, for each promulgated NAAQS, in each air quality control region (or portion thereof) within the State Implementation Plan (SIP).
10. Each SIP must include enforceable emission limitations, among other control measures, and regulate the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are attained and maintained. 42 U.S.C. § 7410(a)(2)(A).
11. Upon EPA approval, SIP requirements, including permits issued pursuant to SIP regulations approved by EPA, are federally enforceable under Section 113 of the CAA. 42 U.S.C. § 7413(a) and (b). 40 C.F.R. § 52.23.
12. Pursuant to Sections 4 and 5 of the Pennsylvania Air Pollution Control Act (APCA), 35 P.S. §§ 4004 and 4005, and Section 110 of the CAA, 42 U.S.C. § 7410, the Commonwealth of Pennsylvania adopted regulations that comprise the SIP for Pennsylvania (PA SIP), which were approved by EPA as set forth in 40 C.F.R. § 52.2020(c).
13. The PA SIP regulations governing construction, modification, reactivation, and operations permitting of a stationary source are currently codified at 25 Pa. Code § 127. Chapter 127 was initially approved by EPA and included in the PA SIP on July 30, 1996. 61 Fed. Reg. 39,597 (July 30, 1996). Subsequent revisions to the PA SIP regulations governing construction, modification, reactivation, and operation of sources plan approval requirements were approved by EPA on October 5, 2012. 77 Fed. Reg. 60,910 (October 5, 2012).
14. Subchapter F of Chapter 127, 25 Pa. Code §§ 127.401-127.464, prohibits a person from operating a stationary air contamination source unless the PADEP has issued to the person a permit to operate the source in response to a written application for a permit submitted on forms and containing the information PADEP may prescribe (State Only Operating Permit). 25 Pa. Code § 127.402(a); *see* 25 Pa. Code § 127.443(a); 35 P.S. § 4006.1(b). 25 Pa. Code § 127.444 provides no person may cause or permit the operation of a source except in accordance with the specifications and conditions in the operating permit.

## New Source Performance Standards (NSPS)

15. Section 111 of the CAA, 42 U.S.C. § 7411, requires the Administrator of EPA to publish a list of categories of stationary sources that cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public welfare, and to promulgate federal standards of performance, which may consist of design, equipment, work practice, or operational standards, for new sources within such category.

16. Section 114 of the CAA, 42 U.S.C. § 7414, authorizes: the Administrator of EPA to require any person who owns or operates any emission source or who is otherwise subject to the requirements of the CAA to, among other things, provide information as the Administrator might reasonably require or sample emissions for the purpose of determining compliance with CAA requirements including standards of performance under Section 111 of the CAA, 42 U.S.C. § 7411; or the Administrator's authorized representative, among other things, upon the presentation of credentials, to enter, have access to and copy records, inspect monitoring equipment, or sample emissions.

17. Section 116 of the CAA, 42 U.S.C. § 7416, establishes in relevant part that nothing in the CAA precludes or denies the right of any state to adopt or enforce any standard or limitation respecting emissions of air pollutants, or any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under Section 111 of the CAA, 42 U.S.C. § 7411, such state may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such section.

18. Section 301 of the CAA, 42 U.S.C. § 7601, authorizes the Administrator of EPA to prescribe such regulations as are necessary to carry out functions under the CAA, and to delegate to any officer or employee of the EPA powers and duties under the CAA as deemed necessary or expedient.

19. The Administrator of EPA determined that synthetic organic chemical manufacturing industry (SOCMI) sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Pursuant to Sections 101, 111, 114, 116, and 301 of the CAA, 42 U.S.C. §§ 7401, 7411, 7414, 7416, and 7601, EPA promulgated standards of performance for volatile organic compounds (VOC) emissions from SOCMI distillation operations and reactor processes, codified at 40 C.F.R. Part 60, Subparts NNN and RRR, respectively, that include *inter alia* performance standards, as well as provisions for monitoring of emissions and operations, test methods and procedures, and reporting and recordkeeping.

20. Pursuant to Section 111(e) of the CAA, 42 U.S.C. § 7411(e), any owner or operator of any new source must operate such a source in accordance with applicable New Source Performance Standards (NSPS).

21. Pursuant to Section 111(c) of the CAA, 42 U.S.C. § 7411(c), EPA delegated to the Commonwealth of Pennsylvania the authority to implement and enforce NSPS. 50 Fed. Reg. 34,140 (August 23, 1985).

## NSPS 40 C.F.R. Part 60, Subpart NNN

22. Effective June 29, 1990, EPA promulgated the “Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry Distillation Operations,” found at 40 C.F.R. Part 60, Subpart NNN, 55 Fed. Reg. 26,942 (June 29, 1990) (NSPS Subpart NNN).
23. § 60.660 Applicability and designation of affected facility. NSPS Subpart NNN designates an “affected facility” to include each distillation unit not discharging its vent stream into a recovery system that is part of a process unit that produces any of the chemicals listed in § 60.667 as a product, co-product, by-product, or intermediate, except as provided in § 60.660(c), for which construction, modification, or reconstruction commenced after December 30, 1983. 40 C.F.R. § 60.660(b)(1).
24. § 60.661 Definitions. NSPS Subpart NNN defines:
- (a) “[d]istillation unit” to mean a device or vessel in which distillation operations occur, including all associated internals (such as trays or packing), and accessories (such as reboiler, condenser, vacuum pump, steam jet, etc.), plus any associated recovery system;
  - (b) “[p]rocess unit” to mean equipment assembled and connected by pipes or ducts to produce, as intermediates or final products, one or more of the chemicals in § 60.667. A process unit can operate independently if supplied with sufficient fuel or raw materials and sufficient product storage facilities; and
  - (c) “TRE index value” to mean a measure of the supplemental total resource requirement per unit reduction of TOC associated with an individual distillation vent stream, based on vent stream flow rate, emission rate of TOC net heating value, and corrosion properties (whether or not the vent stream is halogenated), as quantified by the equation given under § 60.664(e). 40 C.F.R. § 60.661.
25. § 60.662 Standards. For each vent stream, NSPS Subpart NNN requires owners or operators, on and after the date on which the initial performance test required by §§ 60.8 and 60.664 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first to either:
- (a) Reduce emissions of Total Organic Compounds (TOC) (less methane and ethane) by 98 weight-percent, or to a TOC (less methane and ethane) concentration of 20 parts per million volume (ppmv), on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or
  - (b) Combust the emissions in a flare that meets the requirements of § 60.18; or
  - (c) Maintain a TRE index value greater than 1.0 without use of VOC emission control devices. 40 C.F.R. § 60.662.
26. § 60.663 Monitoring of emissions and operations. NSPS Subpart NNN requires an owner or operator of an affected facility seeking to demonstrate compliance with the

standards specified under § 60.662 with control devices other than incinerator, boiler, process heater, or flare; or recovery device other than an absorber, condenser, or carbon adsorber to provide to the Administrator information describing the operation of the control device or recovery device and the process parameter(s) which would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements. 40 C.F.R. § 60.663(f).

27. § 60.664 Test methods and procedures. For the purposes of demonstrating compliance with the standards under § 60.662(a), NSPS Subpart NNN requires (except as provided under § 60.8(b)) Method 18 in 40 C.F.R. 60, Appendix A to be used to determine the concentration of TOC in the control device outlet and the concentration of TOC in the inlet when the reduction efficiency of the control device is to be determined as specified in § 60.664(b). 40 C.F.R. § 60.664(b)(4). Sections 8.2.2.2. and 8.4.3.1. of Method 18 specify that a test consists of three runs. Appendix A-6 to Part 60 – Test Methods 16 through 18.

28. § 60.665 Reporting and recordkeeping requirements. Where the owner or operator of an affected facility complies with the standards specified under § 60.662 other than as provided under: § 60.663(a) (i.e., use of an incinerator to comply with § 60.662(a)), § 60.663(b) (i.e., use of flare to comply with § 60.662(b)), § 60.663(c) (i.e., use of a boiler or process heater, to comply with § 60.662(a)) or § 60.663(d) (i.e., use of a boiler or process heater with a design heat input capacity of 44 MW (150 million Btu/hr) or greater), NSPS Subpart NNN provides that the Administrator will specify appropriate reporting and recordkeeping requirements. 40 C.F.R. § 60.665(p).

### **NSPS 40 C.F.R. Part 60, Subpart RRR**

29. Effective August 31, 1993, EPA promulgated the “Standards of Performance for Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes, found at 40 C.F.R. Part 60, Subpart RRR, 58 Fed. Reg. 45,962 (August 31, 1993) (NSPS Subpart RRR).

30. § 60.700 Applicability and designation of affected facility. NSPS Subpart RRR designates an “affected facility” to include each reactor process not discharging its vent stream into a recovery system that is part of a process unit that produces any of the chemicals listed in § 60.707 as a product, co-product, by-product, or intermediate, except as provided in § 60.700(c), for which construction, modification, or reconstruction commenced after June 29, 1990. 40 C.F.R. §§ 60.700(a) and (b)(1).

31. § 60.701 Definitions. NSPS Subpart RRR defines:

- (a) “[r]eactor processes” to mean unit operations in which one or more chemicals, or reactants other than air, are combined or decomposed in such a way that their molecular structures are altered, and one or more new organic compounds are formed. 40 C.F.R. § 60.701;
- (b) “[p]rocess unit” to mean equipment assembled and connected by pipes or ducts to produce, as intermediates or final products, one or more of the chemicals in § 60.707. A process unit can operate independently if supplied

with sufficient fuel or raw materials and sufficient product storage facilities;  
and

- (c) “[t]otal resource effectiveness or TRE index value” to mean a measure of the supplemental total resource requirement per unit reduction of TOC associated with a vent stream from an affected reactor process facility, based on vent stream flow rate, emission rate of TOC, net heating value, and corrosion properties (whether or not the vent stream contains halogenated compounds), as quantified by the equation given under § 60.704(e). 40 C.F.R. § 60.701.

32. § 60.702 Standards. For each vent stream, NSPS Subpart RRR requires owners or operators, on and after the date on which the initial performance test required by §§ 60.8 and 60.704 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first, to either:

- (a) Reduce emissions of Total Organic Compounds (TOC) (less methane and ethane) by 98 weight-percent, or to a TOC (less methane and ethane) concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or
- (b) Combust the emissions in a flare that meets the requirements of § 60.18; or
- (c) Maintain a TRE index value greater than 1.0 without use of VOC emission control devices. 40 C.F.R. § 60.702.

33. § 60.703 Monitoring of emissions and operations. NSPS Subpart RRR requires an owner or operator of an affected facility seeking to demonstrate compliance with the standards specified under § 60.702 with control devices other than incinerator, boiler, process heater, or flare; or recovery device other than an absorber, condenser, or carbon adsorber shall provide to the Administrator information describing the operation of the control device or recovery device and the process parameter(s) which would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements. 40 C.F.R. § 60.703(e).

34. § 60.704 Test methods and procedures. For the purposes of demonstrating compliance with the standards under § 60.702(a), NSPS Subpart RRR requires (except as provided under § 60.8(b)) Method 18 in 40 C.F.R. 60, Appendix A to be used to determine the concentration of TOC in the control device outlet and the concentration of TOC in the inlet when the reduction efficiency of the control device is to be determined as specified in § 60.704(b). 40 C.F.R. § 60.704(b)(4). Sections 8.2.2.2. and 8.4.3.1. of Method 18 specify that a test consists of three runs. Appendix A-6 to Part 60 – Test Methods 16 through 18.

35. § 60.705 Reporting and recordkeeping requirements. Where the owner or operator of an affected facility complies with the standards specified under § 60.702 other than as provided under: § 60.703(a) (i.e., use of an incinerator to comply with § 60.702(a)), § 60.703(b) (i.e., use of flare to comply with § 60.702(b)), § 60.703(c) (i.e., use of a boiler or process heater to comply with § 60.702(a)) and § 60.703(d) (i.e., use of absorber, condenser or carbon adsorber as a final recovery device to comply with § 60.702(c)), NSPS Subpart RRR provides that the Administrator will specify appropriate reporting and recordkeeping

requirements. 40 C.F.R. § 60.705(q).

### C. FINDINGS

36. At all times relevant to the violations identified herein, Lake Erie Biofuels was a limited liability company registered in the State of Delaware. Lake Erie Biofuels has a principal place of business located at 1540 East Lake Road in Erie, Pennsylvania.

37. At all times relevant to the violations identified herein, Lake Erie Biofuels owned and operated a biodiesel production facility located at 1670 East Lake Road in Erie, Pennsylvania (Erie Facility). The Erie Facility began operations in 2007.

38. Lake Erie Biofuels conducted a performance test on or about July 2, 2008. According to the corresponding August 7, 2008 Scrubber Efficiency Testing on Methanol Scrubber Test Report (2008 Performance Test Report), the objective of the test program was to “quantify the methanol removal efficiency from the methanol scrubber.”

39. According to the 2008 Performance Test Report, the reduction of methanol emissions from the scrubber at the Erie Facility was 99.7%. based on three test runs, during which scrubber parameters including steam flow (lbs/hr), steam pressure (psi), flue gas temperature (F), fuel oil pressure (psi) and fuel oil meter (gallons) were recorded. The 2008 Performance Test Report indicates that Lake Erie Biofuels used Method 308 to determine the concentration of methanol in the scrubber inlet and outlet as well as the methanol removal efficiency of the scrubber for comparing test results with the standards under §§ 60.662(a) and 60.702(a)<sup>1</sup>.

40. On or about September 30, 2008, Lake Erie Biofuels submitted an application for a Pennsylvania State Only Operating Permit for its Erie Facility that represented that the biodiesel production operations are subject to both NSPS NNN and NSPS RRR, and that it would meet the standards set forth at 40 C.F.R. §§ 60.662(a) and 60.702(a) by reducing emissions of TOC (less methane and ethane) by 98% with the use of a vent gas scrubber (scrubber).

41. On or about May 14, 2009, PADEP issued Lake Erie Biofuels a State Only Operating Permit for the Erie Facility (2014 State Only Permit No: 25-01006) with provisions implementing requirements of NSPS NNN and NSPS RRR, including the standards set forth in 40 C.F.R. §§ 60.662(a) and 60.702(a) at 2014 State Only Permit No: 25-01006, Section D.I.- Source ID 101, permit conditions #004 and #005. On or about May 7, 2014 and April 3, 2019, PADEP issued renewals to State Only Permit No: 25-01006 (2019 State Only Permit No: 25-01006) which similarly includes provisions implementing NSPS NNN and NSPS RRR standards set forth in 40 C.F.R. §§ 60.662(a) and 60.702(a) at 2019 State Only Permit No: 25-01006, Section D.I. - Source ID 101, permit conditions #004 and #005.

42. On or about July 10-11, 2017, authorized representatives from EPA’s National Enforcement Investigations Center (NEIC) conducted a CAA inspection of the Erie Facility under the authority of Section 114 of the CAA, 42 U.S.C. § 7414 (2017 Inspection).

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<sup>1</sup> By using Method 308 instead of Method 18, Lake Erie Biofuels failed to comply with NSPS NNN and NSPS RRR test methods and procedures set forth at 40 C.F.R. §§ 60.664(b) and 60.704(b).

43. During the 2017 Inspection, the NEIC inspectors observed that the Erie Facility uses a scrubber (analogous to absorber) as a final control device, and that no material is recovered from the scrubber.

44. During the 2017 Inspection, the NEIC inspectors learned that Lake Erie Biofuels' (then) most recent stack test had been conducted on or about April 1, 2015. According to the corresponding May 6, 2015 Scrubber Efficiency Test Report (2015 Maintenance Test Report), the objective of the test was to "quantify the methanol removal efficiency from the methanol scrubber."

45. The 2015 Maintenance Test report evaluated methanol removal with the plant operating at 97% of capacity under three different scenarios: (1) only production emissions emitted to the scrubber; (2) production and truck unloading emissions simultaneously emitted to the scrubber; and (3) a failure/malfunction scenario where a hatch is left open increasing system flow.

46. According to the 2015 Maintenance Test Report, the reduction of methanol emissions from the scrubber at the Erie Facility was 98.85% based on two test runs performed under different production scenarios, during which scrubber parameters including steam flow (lbs/hr), steam pressure (psi), flue gas temperature (F), fuel oil pressure (psi), and fuel oil meter (gallons) were recorded. If the results of a third test run were included, performed during production with a truck unloading methanol into a holding tank and with an open tank hatch to induce unusually high maximum system flowrates (simulating a condition that could exist in the event of equipment failure), the reduction of methanol emissions from the scrubber would have been 95.3%<sup>2</sup>. The 2015 Maintenance Test Report indicates that Lake Erie Biofuels used Method 308 to determine the concentration of methanol in the scrubber inlet and outlet as well as the methanol removal efficiency of the scrubber for comparing test results with the standards under §§ 60.662(a) and 60.702(a)<sup>3</sup>.

47. Lake Erie Biofuels was not required to perform a stack test in 2015. Because of the design and nature of the stack test as indicated in the 2015 Maintenance Test Report, it was not intended to constitute an official Performance Test and it did not qualify to demonstrate compliance with the standards under §§ 60.662(a) and 60.702(a).

48. On July 2, 2019, EPA issued an information request letter pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a), requiring Lake Erie Biofuels to, among other things, submit a testing protocol and conduct a performance test to determine the TOC (less methane and ethane) removal efficiency of the scrubber. EPA's June 2, 2019 letter specified that the

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<sup>2</sup> The NSPS General Provisions permit compliance to be determined based on two test runs, but only under certain specified circumstances and only upon approval of the Administrator. *See* 40 C.F.R. § 60.8(f)(1).

<sup>3</sup> By using Method 308 instead of Method 18, testing for the scrubber removal efficiency of methanol only instead of TOC (less methane and ethane), and relying on two instead of three test runs, Lake Erie Biofuels failed to comply with NSPS NNN and NSPS RRR test methods and procedures set forth at 40 C.F.R. §§ 60.664(b) and 60.704(b) and Section D.II. – Source ID 101 permit conditions #007 and #008 of the 2014 State Only Permit No: 25-01006.

performance testing must use EPA Reference Methods 1-4 and 18 and must include compounds identified during presurvey sampling pursuant to Section 16 of Method 18.

49. On or about September 10, 2020, Lake Erie Biofuels submitted a performance testing protocol that, based on presurvey sampling, identified methanol and hexane as the primary organic compounds in the gas stream. This performance testing protocol was approved by EPA on or about September 14, 2020.

50. Lake Erie Biofuels conducted a performance test on or about October 7, 2020. According to the corresponding November 4, 2020 Scrubber System VOC Efficiency Test Report (2020 Performance Test Report), the objective of the test program was to “quantify the VOC emissions and removal efficiency from the Biodiesel Production Vent Gas Scrubber system associated with the biodiesel production unit.”

51. According to the 2020 Performance Test Report, Lake Erie Biofuels used Method 18 to determine the concentration of TOC (less methane and ethane) in the scrubber inlet and outlet, and TOC (less methane and ethane) removal efficiency of the scrubber, for purposes of demonstrating compliance with the standards under §§ 60.662(a) and 60.702(a).

52. The 2020 Performance Test Report states that “[d]ue to the known chemistry of the process, and the results of the pre-test survey, the USEPA has agreed that the Total Organic Compounds (TOCs) are limited to methanol and hexane.”

53. According to the 2020 Performance Test Report, the reduction of TOC (less methane and ethane) emissions from the scrubber at the Erie Facility was 97.99%<sup>4</sup> based on three test runs, during which scrubber parameters including plant production (lbs/hr), scrubber water recirculation flow (gpm), scrubber differential pressure, scrubber water specific gravity, vent condenser inlet and outlet temperatures, and vent gas temperature were recorded.

54. The 2020 Performance Test Report results included gas chromatography data which showed peaks within the chromatograms suggesting that additional organic compounds were present in the gas stream other than methanol and hexane. After additional analysis, Lake Erie Biofuels subsequently reported the identity of the additional organic compounds to be n-butane and n-pentane.

55. On or about May 4, 2021, the data from the October 7, 2020 performance test was reprocessed for n-butane and n-pentane. Even though it was noted that n-butane and n-pentane were both outside the calibrated range of the instrument for a number of injections from the performance test runs, the results provided by Respondent showed that the reduction of TOC (less methane and ethane) emissions from the scrubber at the Erie Facility - when n-butane and n-pentane are included as part of the outlet gas stream in addition to methanol and hexane - was as low as 96.25%. (The concentration of hexane, n-pentane, and n-butane was not measured in the inlet sampling data.)

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<sup>4</sup> Though 2020 Performance Test Report states the average to be 98.0%, the average combined control efficiency for the three runs was actually 97.99%.

56. On May 24, 2022, the EPA issued Lake Erie Biofuels an NOV for the failure of the scrubber associated with the biodiesel production operations at its Erie Facility to reduce emissions of TOC (less methane and ethane) by 98%, as required by NSPS NNN and NSPS RRR standards set forth in 40 C.F.R. §§ 60.662(a) and 60.702(a) and by 2019 State Only Permit No: 25- 01006, Section D.I. – Source ID 101 permit conditions #004 and #005.

57. In addition to a June 27, 2022 NOV conference, the EPA and Lake Erie Biofuels met on September 13, 2023, March 8, 2023, and July 5, 2023 and have been regularly communicating about the process changes, additional controls, presurvey testing, testing protocols, and other actions necessary for the Erie Facility to be able to demonstrate compliance with NSPS NNN and NSPS RRR standards set forth in 40 C.F.R. §§ 60.662(a) and 60.702(a) and corresponding provisions of the 2019 State Only Permit No: 25- 01006.

58. By only achieving a scrubber TOC removal efficiency of 96.25% (or a scrubber methanol and hexane control efficiency of 97.99%) for its biodiesel production operations at its Erie Facility, Lake Erie Biofuels failed to comply with the NSPS NNN and NSPS RRR standards set forth at 40 C.F.R. §§ 60.662(a) and 60.702(a) and Section D.I. – Source ID 101 permit conditions #004 and #005 of the 2019 State Only Permit No: 25- 01006 from at least October 7, 2020 to the present in violation of Section 111 of the CAA, 42 U.S.C. § 7411, and 40 C.F.R. §§ 60.662(a) and 60.702(a), as well as the PA SIP, 25 Pa. Code § 127.444, 40 C.F.R. § 52.23, and 2019 State Only Permit No: 25-01006.

#### **D. ORDER**

59. Respondent is ordered to conduct the compliance program described in this Section of this Order.

60. By no later than 7 days from the Effective Date of this Order, Respondent shall submit to the EPA a proposed testing protocol that describes the methods and procedures for testing the TOC (less methane and ethane) control efficiency of the scrubber, and that identifies all relevant operating parameters and conditions effecting TOC emissions. The proposed testing protocol shall follow Methods 1-4 and Method 18 (40 C.F.R. Part 60, Appendix A) and shall include the results of a Method 18 presurvey (see Section 16 of Method 18) to determine the compounds to be sampled during the testing, which must include at a minimum methanol, hexane, butane, and pentane.

61. Within 14 days of receipt of written notification from the EPA that the testing protocol described in Paragraph 60 is unacceptable, Respondent shall submit a revised proposed testing protocol to the EPA addressing the issues or concerns described in the EPA's written notification.

62. Within 60 days of the EPA's acceptance of the testing protocol described in Paragraph 60, Respondent shall perform a test in accordance with the approved protocol to determine TOC (less methane and ethane) control efficiency of the scrubber.

- a. At a minimum, the test shall include sampling for the following compounds: methanol, butane, pentane, and hexane.
- b. The test shall involve three (3) runs that are conducted under full operating conditions and flow rates (greater than 95% capacity). No run shall be conducted

during a malfunction or a simulated equipment failure. Respondent shall ensure that tank hatches at the facility's tanks are not actively venting to the atmosphere during the testing.

- c. During the test, Respondent shall monitor and record all the operating parameters and conditions effecting TOC emissions identified in its approved testing protocol.
- d. The calibrated ranges of the instrumentation used to analyze the samples must bracket the measured concentration for each sample and for each of the target analytes.

63. At least 14 days prior to the planned start date for the test, Respondent shall submit a written notification to the EPA of its intent to conduct the performance test.

64. Within 30 days after completion of the test, Respondent shall submit a complete test report which shall include the following:

- a. Summary of Results
  - i. Results of the above specified emission tests:
    - 1. TOC results in ppmv, on a dry basis corrected to 3 percent oxygen; and,
    - 2. Control efficiency of TOC for the scrubber in weight percent.
  - ii. Process and control equipment data related to determining compliance;
  - iii. Discussion of test errors;
  - iv. Discussion of any deviations from the reference methods; and
  - v. Production data.
- b. Facility Operations
  - i. Description of the process and control equipment in operation;
  - ii. Operating parameters of the process units and scrubber at the time of the test, including all parameters identified in the EPA accepted testing protocol; and
  - iii. Ranges of operating parameters that demonstrate that the process units were operated at the required production rates in accordance with 40 C.F.R. §§ 60.664 and 60.704, including those identified in the EPA accepted testing protocol.
- c. Sampling and Analytical Procedures
  - i. Sampling port location(s) and dimensions of cross-section;
  - ii. Sampling point description, including labeling system;
  - iii. Brief description of sampling procedures, including equipment and diagram;
  - iv. Description of sampling procedures (planned and accidental) that deviated from any standard method;
  - v. Brief description of analytical procedures, including calibration;
  - vi. Description of analytical procedures (planned or accidental) that deviated from any standard method; and
  - vii. Quality control/ quality assurance procedures, tests, and results.
- d. Appendix
  - i. Complete results with example calculations;
  - ii. Raw field data (original, not computer printouts);

- iii. Laboratory report, with signed chain-of-custody forms;
- iv. Calibration procedures and results;
- v. Raw process and control equipment data signed by plant representative;
- vi. Test log;
- vii. Project participants and titles; and
- viii. Related correspondence.

65. If the results of the test show a TOC (less methane and ethane) removal efficiency of the scrubber to be 98% or greater, Respondent shall, within 30 calendar days of submitting its test report to the EPA, submit an application for a modification to 2019 State Only Permit No: 25-01006 to include the parameters and parameter ranges recorded during the performance test and associated provisions for monitoring, recordkeeping, and reporting for demonstrating continuous compliance with the standards set forth at 40 C.F.R. §§ 60.662(a) and 60.702(a). Concurrent with its submission to PADEP, Respondent shall send its application for a permit modification to the EPA.

66. If the results of the test show a TOC (less methane and ethane) removal efficiency of the scrubber to be less than 98%, Respondent shall apply to PADEP for a plan approval for the installation of additional controls that, in combination with or as an alternative to the existing scrubber, will reduce emissions of TOC (less methane and ethane) at the Erie Facility by 98% no later than one hundred twenty (120) days after the Effective Date of this Order.

67. On the one-month anniversary of submitting the test report described in Paragraph 64 to the EPA, and each thirty (30) days thereafter until the Termination Date of this Order, Respondent shall submit to the EPA a written monthly progress report detailing steps taken during the preceding month to comply with the requirements of Paragraphs 65 and 66.

68. Any notice, report, protocol, certification, data presentation or other document submitted by Respondent under or pursuant to this Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement(s) of this Order shall be signed by a responsible official and include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

69. Respondent shall provide the EPA and its representatives, including contractors and grantees, with access to the Erie Facility for the purpose of assessing Respondent's compliance with this Order and with the Act. Respondent shall also provide the EPA and its representatives, including contractors and grantees, with access to all non-privileged records relating to Respondent's implementation of this Order, and shall comply with all requests for information pertaining to this Order.

## **E. OTHER TERMS AND CONDITIONS**

70. Respondent admits the jurisdictional allegations contained in this Order.
71. Respondent neither admits nor denies the findings of fact in Section C (Findings) of this Order.

## **F. GENERAL PROVISIONS**

72. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$55,808 per day per violation, or both, as provided in Sections 113(b)(2) and 113(d)(1) of the Act, 42 U.S.C. §§ 7413(b)(2) and 7413(d)(1), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

73. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

74. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

75. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of compliance program described in Section D of the Order above is required to come into compliance with the law.

76. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Order until the Termination Date as set out in Paragraph 82 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Erie Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

77. Unless this Order states otherwise, whenever, under the terms of this Order, written notice or other document is required to be given, it shall be directed to the individuals specified at the addresses below unless those individuals or their successors give notice of a change of address to the other party in writing:

For EPA:

Jennifer M. Abramson, Senior Assistant Regional Counsel  
Office of Regional Counsel, Region 3  
[Abramson.Jennifer@epa.gov](mailto:Abramson.Jennifer@epa.gov)

Kim Laufenberg, Air Inspector & Compliance Officer  
Office of Enforcement & Compliance Assurance, Region 3  
[Laufenberg.Kim@epa.gov](mailto:Laufenberg.Kim@epa.gov)

For Respondent:

Chris Peterson, President  
Lake Erie Biofuels LLC  
[CPeterson@herobx.com](mailto:CPeterson@herobx.com)

Scott Newell, Environmental, Health & Safety Manager  
Lake Erie Biofuels LLC  
[SNewell@herobx.com](mailto:SNewell@herobx.com)

All notices and submissions shall be considered effective upon receipt.

78. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

79. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally the Parties to this document.

#### **G. EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE**

80. Pursuant to Section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA (Effective Date of Order).

#### **H. JUDICIAL REVIEW**

81. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

## I. TERMINATION

82. This Order shall terminate on the earlier of the following (the “Termination Date”) at which point Respondent shall operate in compliance with the Act:

- a. One year after the Effective Date of the Order;
- b. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of the Order; or
- c. Immediately upon receipt by Respondent of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
BEFORE THE ADMINISTRATOR

In the Matter of:  LAKE ERIE BIOFUELS LLC,  Respondent.	Administrative Compliance Order on Consent  Docket No. CAA-03-2023-0127DA
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For United States Environmental Protection Agency, Region 3:

\_\_\_\_\_  
[Digital Signature and Date]  
Karen Melvin, Director  
Enforcement & Compliance Assurance Division

For Respondent:

  
\_\_\_\_\_  
Signature

8/22/23  
\_\_\_\_\_  
Date

Printed Name: CHRIS PETERSON

Title: PRESIDENT

Address: 1540 EAST LAKE RD. EME PA 16511

## CERTIFICATE OF SERVICE

I certify that the foregoing “Administrative Compliance Order on Consent” in the matter of Lake Erie Biofuels LLC, Docket No. CAA-03-2023-0127DA, was filed and copies of the same were mailed to the parties as indicated below.

Chris Peterson, President  
Lake Erie Biofuels LLC  
[CPeterson@herobx.com](mailto:CPeterson@herobx.com)

Jennifer Abramson, Senior Assistant Regional Counsel  
Office of Regional Counsel, Region 3  
[Abramson.Jennifer@epa.gov](mailto:Abramson.Jennifer@epa.gov)

\_\_\_\_\_  
[Digital Signature and Date]  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 3