



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
**MAR 25 2015**

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Thaddeus R. Lightfoot  
Dorsey & Whitney LLP  
Suite 1500, 50 South Sixth Street  
Minneapolis, Minnesota 55402-1498

Re: Pro Corn, LLC d/b/a POET Biorefining, Preston, Minnesota  
Consent Agreement and Final Order **CERCLA-05-2015-0003**

Dear Mr. Lightfoot:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA filed the original CAFO with the Regional Hearing Clerk on March 25, 2015.

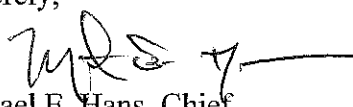
Please have your client pay the CERCLA civil penalty in the amount of \$22,000 in the manner prescribed in paragraph 27 and reference your payment with the CERCLA docket number **CERCLA-05-2015-0003** and the CERCLA billing document number 2751530B003.

The payment is due on April 24, 2015.

Please feel free to contact Ruth McNamara at [mcnamara.ruth@epa.gov](mailto:mcnamara.ruth@epa.gov) or by phone at (312) 353-3193 if you have any questions regarding the enclosed documents.

Please direct any legal questions to Cathleen Martwick, Assistant Regional Counsel, at [martwick.cathleen@epa.gov](mailto:martwick.cathleen@epa.gov) at (312) 886-7166. Thank you for your assistance in resolving this matter.

Sincerely,

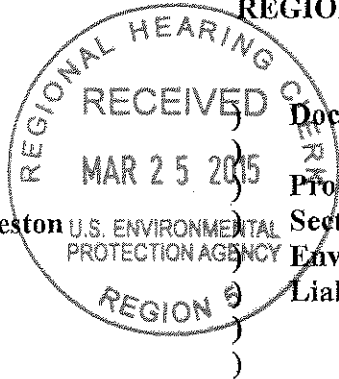
  
Michael E. Hans, Chief  
Chemical Emergency Preparedness  
and Prevention Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Pro Corn, LLC d/b/a  
POET Biorefining-Preston  
Preston, Minnesota

Respondent.



Docket No. CERCLA-05-2015-0003

Proceeding to Assess a Civil Penalty Under  
Section 109(b) of the Comprehensive  
Environmental Response, Compensation and  
Liability Act

Consent Agreement and Final Order  
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), and Sections 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. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Pro Corn d/b/a POET Biorefining-Preston, a corporation doing business in the State of Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

#### **Statutory and Regulatory Background**

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) provides a mechanism to alert federal agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b) authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$32,500 per day of violation

that occurred after March 15, 2004 through January 12, 2009 and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

**Factual Allegations and Alleged Violations**

12. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

13. At all times relevant to this CAFO, Respondent was in charge of the facility located at 701 Industrial Drive North, Preston, Minnesota (facility).

14. Respondent's facility consists of a building, structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

15. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Ammonia CAS# 7664-41-7 is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. Ammonia CAS# 7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. Between February 13, 2011, at or about 4:00 p.m. Central Time, and February 14, 2011, at or about 4:00 p.m. Central Time, a release occurred from Respondent's facility of approximately 201.2 gallons (1,285.86 pounds) of ammonia (the release).

19. In a 24 hour time period, the release of ammonia exceeded 100 pounds.

20. During the release, approximately 1,285.86 pounds spilled, leaked, emitted, emptied, discharged, or escaped into the ambient air.

21. The release is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

22. Respondent had knowledge of the release on February 13, 2011, at approximately 4:00 p.m. Central Time.

23. Respondent notified the NRC of the release on February 14, 2011, at approximately 10:05 a.m. Central Time.

24. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

25. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

#### Civil Penalty

26. Complainant has determined that an appropriate civil penalty to settle this action is \$22,000 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$22,000 civil penalty for the CERCLA violation. Respondent must pay the penalty by ACH electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent 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 the following: Pro Corn LLC, d/b/a POET Biorefining-Preston, the docket number of this CAFO and the billing document number.

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

29. If Respondent does not timely pay 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. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

30. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

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

32. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

33. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

34. This CAFO does not affect Respondent's responsibility to comply with CERCLA and other applicable federal, state and local laws and regulations.

35. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

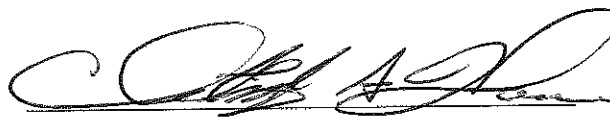
37. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

**Pro Corn, LLC d/b/a POET Biorefining-Preston, Preston, Minnesota, Respondent**

3-2-15  
Date

  
Chris Hanson  
General Manager  
POET Biorefining-Preston

**U.S. Environmental Protection Agency, Complainant**

3-23-2015  
Date



\_\_\_\_\_  
Evette L. Jones, Acting Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

3-23-15  
Date



\_\_\_\_\_  
Richard C. Karl, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5



**In the Matter of: POET Corn, LLC d/b/a POET Biorefining-Preston, Preston, Minnesota  
Docket No. CERCLA-05-2015-0003**

**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.

3-24-2015

Date



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

In the Matter of: Pro Corn, LLC d/b/a POET Biorefining-Preston, Preston, Minnesota  
Docket No. CERCLA-05-2015-0003

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on March 25, 2015, this day in the following manner to the addressees:

Copy by certified mail  
return-receipt requested:

Thaddeus R. Lightfoot  
Dorsey & Whitney LLP  
Suite 1500, 50 South Sixth Street  
Minneapolis, Minnesota 55402-1498

Copy by e-mail to  
Attorney for Complainant:

Cathleen Martwick  
[martwick.cathleen@epa.gov](mailto:martwick.cathleen@epa.gov)

Copy by e-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: March 25, 2015

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

CERTIFIED MAIL RECEIPT NUMBER(S): \_\_\_\_\_

7011 1150 0000 2640 7322

Region 5