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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	
Pacific Ethanol Magic Valley, LLC,	)	Docket No. CAA-10-2014-0117
	)	
Burley, Idaho,	)	CONSENT AGREEMENT
	)	AND FINAL ORDER
Respondent.	)	
	)	
	)	

**I. AUTHORITY**

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(d).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10. The Regional Administrator of EPA Region 10 has redelegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Pacific Ethanol

Magic Valley, LLC (“Respondent”) agrees to the issuance of, the Final Order contained in Part V of this CAFO.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment.

2.4. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. Respondent is a corporation formed in the State of Delaware.

3.2. Respondent owns and operates a corn based ethanol production facility located at 2600 Washington Avenue, Burley, Idaho (the “facility”).

3.3. Section 112(r) of the CAA, and its implementing regulations at 40 C.F.R. Part 68, require the owner and operator of a stationary source at which a regulated substance is present in more than a threshold quantity (TQ) to develop and implement a risk management plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

3.4. 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA and 40 C.F.R. § 68.130.

3.5. Ammonia (concentration 20% or greater) with a TQ of 20,000 pounds and pentane with a TQ of 10,000 pounds are regulated substances, as listed in 40 C.F.R. § 68.130.

3.6. Under 40 C.F.R. § 68.150, any facility that uses, stores, manufactures, or handles more than the TQ of a regulated substance must submit an RMP to EPA no later than the date on which the ammonia (concentration 20% or greater) or pentane is first present above the TQ in a single process.

3.7. Respondent has a Program 3 covered process, as defined in 40 C.F.R. § 68.10(d).

3.8. 40 C.F.R. § 68.12(a) and (d) require that, in addition to submitting a single RMP as provided in §§ 68.150 to 68.185, facilities with a Program 3 covered process shall among other things conduct a hazard assessment as provided in §§ 68.20 to 68.42, implement the prevention requirements of §§ 68.65 to 68.87, and develop and implement an emergency response program as required by §§ 68.90-68.95.

3.9. Respondent has been subject to the RMP requirements since

March 1, 2008, the date on which the facility first used, stored, manufactured, or handled more than the TQ of 20,000 pounds of ammonia (concentration 20% or greater) and more than the TQ of 10,000 pounds of pentane in a single process.

3.10. Respondent submitted an RMP to EPA on March 11, 2008.

3.11. Respondent failed to include all the required documentation for the alternative release scenarios for the ammonia (concentration 20% or greater) pipe leak and natural gasoline vapor cloud fire as required by 40 C.F.R. § 68.39(b).

3.12. Respondent failed to include any documentation on the process chemistry for the ammonia (concentration 20% or greater) and natural gasoline processes as required by 40 C.F.R. § 65(c)(1)(ii).

3.13. Respondent failed to include any documentation on the safe upper and lower limits for such items as temperatures, pressures, flows, or compositions for the ammonia (concentration 20% or greater) and natural gasoline processes as required in 40 C.F.R. § 68.65(c)(1)(iv).

3.14. Respondent failed to include documentation of an evaluation of the consequences of deviation on the process and equipment using the upper and lower limits for the ammonia (concentration 20% or greater) and natural gasoline processes as required by 40 C.F.R. § 68.65(c)(1)(v).

3.15. Respondent failed to include documentation pertaining to the relief system design and design basis such as the calculations for the sizing of the pressure safety valves for the ammonia (concentration 20% or greater) process as required by 40 C.F.R. § 68.65(d)(1)(iv).

3.16. Respondent failed to include documentation on the design codes and standards employed for the process equipment of the ammonia (concentration 20% or greater) and natural gasoline processes as required in as required by 40 C.F.R. § 68.65(d)(1)(vi).

3.17. Respondent failed to include documentation for the safety systems (detectors, emergency shutoff valves, interlocks, etc.) for the ammonia (concentration 20% or greater) and natural gasoline processes as required by 40 C.F.R. § 68.65(d)(1)(viii).

3.18. Respondent failed to include documentation that the process equipment for the ammonia (concentration 20% or greater) and natural gasoline processes complies with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.65(d)(2).

3.19. Respondent failed to resolve recommendations of the Process Hazard Analysis team in a timely manner as required by 40 C.F.R. § 68.67(e).

3.20. Respondent failed to consistently certify annually that the operating procedures are current and accurate, and was unable to demonstrate that procedures have been reviewed as often as necessary as required in 40 C.F.R. § 68.69(c).

3.21. Respondent failed to include documentation on written maintenance procedures for the ammonia (concentration 20% or greater) and natural gasoline processes listed in 68.73(a) as required by 40 C.F.R. § 68.73(b).

3.22. Respondent failed to include all the required documentation to demonstrate that the inspection and testing procedures followed recognized and generally

accepted good engineering practices for the ammonia (concentration 20% or greater) and natural gasoline processes as required by 40 C.F.R. § 68.73(d)(2).

3.23. Respondent failed to include documentation of the inspection and testing procedures to ensure that the frequency of inspections and testing for the ammonia (concentration 20% or greater) and natural gasoline process equipment was being implemented properly as required by 40 C.F.R. § 68.73(d)(3).

3.24. Respondent failed to correct the emergency contact information within one month of a change as required by 40 C.F.R. § 68.195(b).

3.25. Respondent's failure to comply with 40 C.F.R. Part 68 is a violation of CAA § 112(r) making it subject to a penalty pursuant to CAA § 113 and 40 C.F.R. Part 19.

#### **IV. CONSENT AGREEMENT**

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into account size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other such factors as justice may require. After considering all of these factors, EPA has determined that an appropriate penalty to settle this action is \$83,497.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3. within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO shall be made by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent shall note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5., on the Regional hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
[Smith.candace@epa.gov](mailto:Smith.candace@epa.gov)

Javier Morales  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-084  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
[morales.javier@epa.gov](mailto:morales.javier@epa.gov)

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to

collect the assessed penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall be responsible for payment of the following amounts:

4.8.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the assessed penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The penalty described in Paragraph 4.3., including any additional costs incurred under Paragraph 4.8., represents an administrative civil penalty assessed by EPA and shall not be deductible of purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8., each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.13. Respondent expressly waives any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V of this CAFO.

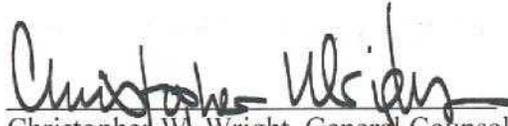
4.14. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

August 26, 2014

FOR RESPONDENT:

  
Christopher W. Wright, General Counsel  
Pacific Ethanol Magic Valley, LLC

DATED

8/28/2014

FOR COMPLAINANT:

  
Edward J. Kowalski, Director  
Office of Compliance and Enforcement  
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 2nd day of September, 2014.

  
M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
EPA Region 10



Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of : Pacific Ethanol Magic Valley, LLC, Docket No.: CAA-10-2014-0117**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

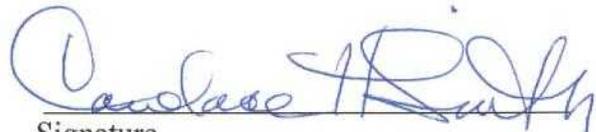
The undersigned certifies that a true and correct copy of the document was delivered to:

Robert Hartman  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Christopher W. Wright  
General Counsel  
Pacific Ethanol, Inc.  
400 Capitol Mall, Suite 2060  
Sacramento, California 98514

DATED this 2<sup>nd</sup> day of September 2014

  
Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10

