



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

November 30, 2020
2:32 PM

Received by

EPA Region VIII

Hearing Clerk

DOCKET NO.: CAA-08-2021-0001

IN THE MATTER OF:

RED TRAIL ENERGY, LLC

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Expedited Settlement Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Expedited Settlement Agreement, effective immediately upon filing this Expedited Settlement Agreement and Final Order.

SO ORDERED THIS 30th DAY OF November, 2020.

KATHERIN
HALL

Digitally signed by
KATHERIN HALL
Date: 2020.11.30
14:13:32 -07'00'

Katherin E. Hall
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

November 30, 2020
2:32 PM

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EPA Region VIII

Hearing Clerk

IN THE MATTER OF:)
)
Red Trail Energy, LLC)
3682 Highway 8 South)
Richardton, North Dakota 58652)
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Respondent.)
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Docket No.: CAA-08-2021-0001

**EXPEDITED SETTLEMENT AGREEMENT
(CONSENT AGREEMENT and FINAL
ORDER)**

AUTHORITY

1. This Expedited Settlement Agreement (also known as a Consent Agreement and Final Order, hereafter ESA), intended to simultaneously commence and conclude this matter, is being entered into by the United States Environmental Protection Agency (EPA), Region 8, by its duly delegated official, the division director of the Enforcement and Compliance Assurance Division, and Red Trail Energy, LLC (Respondent). This matter is authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. EPA and Respondent agree that EPA has jurisdiction over this matter pursuant to sections 113(a)(3) and (d) of the Clean Air Act (the Act), 42 U.S.C. §§ 7413(a)(3) and (d).
3. The EPA and the U.S. Department of Justice have determined, pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that the EPA may pursue this type of case through administrative enforcement.

RESPONDENT

4. The Respondent is a “person” under section 302(e) of the Act. 42 U.S.C. § 7602(e).
5. The Respondent is a North Dakota limited liability company that is authorized to do business in the state of North Dakota.
6. Respondent is the owner or operator of Red Trail Energy, an ethanol production facility, a stationary source, located at 3682 Highway 8 South, Richardton, North Dakota 58652 (facility).

ALLEGED VIOLATIONS

7. On July 30, 2019, an authorized representative of the EPA conducted a compliance inspection of Respondent’s facility to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under section 112(r)(7) of the Act. Based on the July 30, 2019, inspection, the EPA has determined that Respondent violated those regulations as stated in paragraphs 8 through 16.

8. Respondent failed to include the maximum intended inventory in the RMP as required by 40 C.F.R. § 68.65(c)(1)(iii).
9. Respondent failed to establish a system to properly address the team's findings and recommendations in a process hazard analysis as required by 40 C.F.R. § 68.67(e).
10. Respondent failed to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process; procedures did not include steps for emergency shutdown as required by 40 C.F.R. § 68.69(a)(1)(iv).
11. Respondent failed to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process; procedures did not include steps for startup after emergency shutdown as required by 40 C.F.R. § 68.69(a)(1)(vii).
12. Respondent failed to certify annually that the operating procedures are current and accurate as required by 40 C.F.R. § 68.69(c).
13. Respondent failed to provide refresher training at least every three years or more often if necessary as required by 40 C.F.R. § 68.71(b).
14. Respondent failed to document results of inspections performed on process equipment as required by 40 C.F.R. § 68.73(d)(4).
15. Respondent failed to document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected as required by 40 C.F.R. § 68.79(d).
16. Respondent failed to update emergency contact information within one month of any change in the emergency contact information as required by 40 C.F.R. § 68.195(b).

SETTLEMENT

17. In consideration of the factors contained in section 113(d)(1) of the Act and the entire record, the parties enter into this ESA in order to settle the violations referenced above for the total penalty amount of \$9,400.00.
18. This settlement is subject to the following terms and conditions with respect to the violations referenced above:
 - a. Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained in this ESA, and consents to the assessment of the penalty as stated above.
 - b. Respondent waives its rights to a hearing afforded by section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA.
 - c. Each party to this action shall bear its own costs and attorney fees, if any.
 - d. Respondent waives any and all available rights to judicial or administrative review or other remedies that the Respondent may have with respect to any issue of fact or law or any terms

and conditions set forth in this ESA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

19. By signing this ESA Respondent certifies that (1) the alleged violations listed in paragraphs 8 through 16 have been corrected, and (2) Respondent is submitting payment of the civil penalty as described below

Within 20 days of receipt of this ESA, Respondent must send a cashier's check or certified check (payable to "Treasurer, United States of America") in the amount of \$9,400.00 in payment of the full penalty amount to the following address:

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

**The following payment tracking number for this ESA must be included on the check:
ESA-R8-CAA-2021-001**

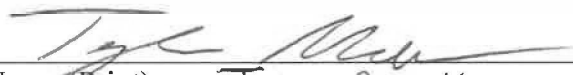
The signed ESA and a copy of the check must be sent by certified mail to

Dan Webster, 8ENF-AT-P
US EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

20. Respondent agrees that the penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.
21. Once the Respondent receives a copy of the final order and pays in full the penalty assessment described above, the EPA agrees not to take any further civil administrative penalty action against Respondent for the violations alleged in this ESA.
22. This ESA does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this ESA is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to, the following:
- a. Claims based on a failure by Respondent to meet a requirement of this ESA including any claims for costs that are caused by the Respondent's failure to comply with this Agreement
 - b. Claims based on criminal liability
 - c. Claims based on any other violations of the Act or federal or state law
23. If the signed original ESA with an attached copy of the check is not returned to the EPA Region 8 office at the above address in correct form by Respondent within 20 days of the date of Respondent's receipt of this ESA, the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified in this ESA.

- 24. This ESA, upon incorporation into the final order, applies to and is binding upon the EPA and Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this ESA. This ESA contains all terms of the settlement agreed to by the parties.
- 25. Nothing in this ESA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
- 26. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind Respondent to the terms and conditions of this ESA.
- 27. The parties consent to service of this ESA and final order by email at the following valid email addresses: weiner.marc@epa.gov (for Complainant), and tyler@redtrailenergy.com (for Respondent).
- 28. The parties agree to submit this ESA to the regional judicial officer with a request that it be incorporated into a final order.

For Respondent, Red Trail Energy, Inc.:


 Name (Print) Tyler Mock
 Title (Print) Environmental Manager

Date: 11-5-20

For Complainant, United States Environmental Protection Agency, Region 8:

SUZANNE BOHAN
 Digitally signed by SUZANNE BOHAN
 Date: 2020.11.25 08:03:36 -07'00'

Date: _____

Suzanne J. Bohan, Director
 Enforcement and Compliance Assurance Division

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **EXPEDITED SETTLEMENT AGREEMENT** and the **FINAL ORDER** in the matter of **RED TRAIL ENERGY, LLC; DOCKET NO.: CAA-08-2021-0001** was filed with the Regional Hearing Clerk on November 30, 2020.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney, and sent via certified receipt email on November 30, 2020, to:

Respondent

Tyler Mock, Lab & Environmental Manager – Safety Director
Red Trail Energy, LLC
tyler@redtrailenergy.com

EPA Financial Center

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
Chalifoux.Jessica@epa.gov

November 30, 2020

MELISSA
HANIEWICZ

Digitally signed by
MELISSA HANIEWICZ
Date: 2020.11.30
14:26:04 -07'00'

Melissa Haniewicz
Regional Hearing Clerk