

FILED

November 9, 2023

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**U.S. EPA REGION 7
HEARING CLERK**

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of)
)
POET Biorefining – Menlo, LLC) **Docket No. CAA-07-2023-0106**
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and POET Biorefining – Menlo, LLC (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action and/or the penalty amount is greater than the statutory limitation, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for alleged violations of the Construction Permit and the Title V Operating Permit applicable to Respondent's facility and the Iowa State Implementation Plan (SIP).

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is POET Biorefining – Menlo, LLC, a limited liability company doing business in Iowa.

Statutory and Regulatory Background

5. The CAA was promulgated “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.” 42 U.S.C. § 7401(b)(1).

6. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a state implementation plan (SIP) that provides for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

7. Effective April 6, 2023, EPA approved modifications to IAC Rule 22.1(455B) as part of the Iowa SIP, which contain requirements for Iowa’s construction permit program. 88 *Fed. Reg.* 20408.

8. The Iowa SIP at 527 IAC § 22.1(455B)(1) provides, in relevant part, that no person shall construct, install, reconstruct or alter any equipment or control equipment without first obtaining a construction permit.

9. Failure to comply with any approved regulatory provision of a SIP, or with any permit limitation or condition contained within a permit issued under an EPA approved program that is incorporated into the SIP, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the CAA. 40 C.F.R. § 52.23.

10. Pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), 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.

11. EPA granted interim approval of the Iowa Title V Operating Permits Program on September 1, 1995, 60 *Fed. Reg.* 45671, and fully approved Iowa’s Program on March 4, 2002, 67 *Fed. Reg.* 9594. The Iowa Title V Operating Permits Program is codified at IAC Chapter 22.

12. IAC Chapter 22 requires that a stationary source obtain a Title V operating permit if it is a major source. The permittee must comply with all conditions of the Title V permit. Any permit noncompliance constitutes a violation of the CAA and is grounds for enforcement action; for a permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. *See* 567 IAC 22.108(9)“a”.

13. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” as an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

14. “Stationary source” means any building, structure, facility, or installation which emits or may emit any air pollutant. 42 U.S.C. § 7412(a)(3).

15. Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), defines “major source” as any stationary source or group of stationary sources located in a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, ten (10) tons per year or more of any single HAP or twenty-five (25) tons per year or more of any combination of HAPs.

16. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of an applicable implementation plan or any other requirement or prohibition of Title V of the CAA. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$55,808 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 6, 2023.

General Factual Allegations

17. Respondent is a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. Respondent is the owner or operator of the bioethanol production facility located at 3363 Talon Avenue, in Menlo, Iowa (the Facility).

19. The Facility is a “stationary source,” as that term is defined in Section 112(a)(3) of the CAA, 42 U.S.C. § 7412(a)(3).

20. The Facility contains several emission sources, including nine fermenters and a beerwell. Fermentation of corn sugars to ethanol results in a byproduct of carbon dioxide (CO₂) gas. As the gas is released from the fermenting medium, it carries volatile organic compounds (VOCs) and hazardous air pollutants (HAPs). These emissions are controlled by a packed bed scrubber. The scrubber uses water as a scrubbing medium. Sodium bisulfite (SBS) is added to the water to react with the HAPs to improve removal efficiency.

21. The Iowa Department of Natural Resources (IDNR) issued to Respondent Construction Permit No. 06-A-1185-S6 for operation of the Facility on October 2, 2019 (Construction Permit).

22. Condition 1 of the Construction Permit contains limits on VOCs and total HAPs.

23. Condition 5(A) of the Construction Permit provides that for each month of operation, Respondent shall operate the scrubber according to the parameters (water feed rate, process (make up) water feed rate, and additive feed rate) that it established during the seasonal performance testing required by Permit Condition 2 to demonstrate compliance with the permitted limits of Permit Condition 1.

24. Condition 5(F)(i) of the Construction Permit requires Respondent to maintain the daily (calendar day) average water feed rate (in gallons per minute) into the scrubber at or above the average value observed during the most recent applicable seasonal operating or operating rate compliance test which demonstrated compliance with all applicable emission limits.

25. Condition 5(H)(i) of the Construction Permit requires Respondent to maintain the daily (calendar day) average additive feed rate (in milliliters per minute) into the scrubber at or above the average value observed during the most recent applicable seasonal operating or operating rate compliance test which demonstrated compliance with all applicable emission limits.

26. Respondent is a “major source” subject to Title V of the CAA, 42 U.S.C. § 7661 *et. seq.* IDNR issued to Respondent Title V Operating Permit No. 15-TV-006R1 for operation of the Facility on March 23, 2020 (Operating Permit).

27. Section III of the Operating Permit incorporates the terms and requirements of the Construction Permit.

28. On July 12, 2022, the EPA issued an information request pursuant to CAA § 114 to evaluate Respondent’s compliance with the CAA. On September 26, 2022, Respondent submitted a response, including compliance test reports and operating data for the scrubber.

29. On June 21, 2023, the EPA issued a Notice of Violation pursuant to CAA § 113 to Respondent for alleged violations of the Construction Permit for the Facility, the Iowa SIP, and Title V of the CAA.

Allegations of Violation

30. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1

31. The facts stated in Paragraphs 17 through 29 above are herein incorporated.

32. On April 14, 2020, Respondent conducted a summer half-rate compliance test on the scrubber, which established an average water feed rate operating parameter of 46 gallons per minute. Respondent’s scrubber operating data showed that from April 18, 2020 through May 3, 2020, the daily average water feed rate was below 46 gallons per minute.

33. Respondent failed to maintain the daily average water feed rate into the scrubber at or above the average value observed during the most recent compliance test on sixteen days, or from April 18, 2020 through May 3, 2020, in violation of Condition 5(F)(i) of the Construction Permit, the Iowa SIP, and Section III of the Operating Permit.

Count 2

34. The facts stated in Paragraphs 17 through 29 above are herein incorporated.

35. On June 4, 2021, Respondent conducted a summer compliance test on the scrubber, which established an average SBS feed rate operating parameter of 405 milliliters per minute. Respondent's operating data showed that from August 13, 2021 through August 22, 2021, the daily average SBS feed rate was below 405 milliliters per minute, and from May 29, 2022 through August 5, 2022, the daily average SBS feed rate was below 405 milliliters per minute.

36. Respondent failed to maintain the daily average additive feed rate into the scrubber at or above the average value observed during the most recent compliance test on seventy-two days, or from August 13, 2021 through August 22, 2021; and May 29, 2022 through August 5, 2022, in violation of Condition 5(H)(i) of the Construction Permit, the Iowa SIP, and Section III of the Operating Permit.

Count 3

37. The facts stated in Paragraphs 17 through 29 above are herein incorporated.

38. Because Respondent failed to operate the scrubber according to the parameters established during the most recent performance test as set forth in Counts 1 and 2, Respondent failed to demonstrate compliance with the permitted limits for VOC and HAPs, in violation of Condition 5(A) of the Construction Permit, the Iowa SIP, and Section III of the Operating Permit.

CONSENT AGREEMENT

39. For the purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- i. admits the jurisdictional allegations set forth herein;
- ii. neither admits nor denies the specific factual allegations stated herein;
- iii. consents to the assessment of a civil penalty, as stated herein;
- iv. consents to the issuance of any specified compliance or corrective action order;

- v. consents to any conditions specified herein;
- vi. consents to any stated Permit Action;
- vii. waives any right to contest the allegations set forth herein; and
- viii. waives its rights to appeal the Final Order accompanying this Consent Agreement.

40. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

41. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

42. The parties consent to service of this Consent Agreement and Final Order electronically at the following e-mail addresses: barton.kasey@epa.gov (for Complainant) and terri.czajka@icemiller.com (for Respondent). Respondent understands that the Consent Agreement and Final Order will become publicly available upon filing.

Penalty Payment

43. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of \$89,860.

44. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

45. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Kasey Barton, Attorney
barton.kasey@epa.gov.

46. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

47. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

48. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in the paragraph directly below.

49. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations.

50. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

51. The allegations in this Consent Agreement and Final Order constitute "prior violations" as that term is used in EPA's Clean Air Act Stationary Source Civil Penalty Policy to determine Respondent's "history of noncompliance" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

52. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

53. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and have the legal capacity to bind the party they represent to this Consent Agreement.

54. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

55. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

56. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Kasey Barton
Assistant Regional Counsel

Date

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

(to be completed by EPA)

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of POET Biorefining – Menlo, LLC, EPA Docket No. CAA-07-2023-0106, was sent this day in the following manner to the addressees:

Copy via E-mail to Complainant:

Kasey Barton
Office of Regional Counsel
barton.kasey@epa.gov

Christopher Appier
Enforcement and Compliance Assurance Division
appier.christopher@epa.gov

Milady Peters
EPA Region 7
peters.milady@epa.gov

Copy via E-mail to Attorney for Respondent:

Terri Czajka
Ice Miller LLP
One American Square
Suite 2900
Indianapolis, IN 46282
terri.czajka@icemiller.com

Dated this _____ day of _____, 2023.

Signed