



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

JUN 28 2016

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Phil Huffman, Plant Manager
The Andersons Clymers Ethanol, LLC
3389 West County Road 300 South
Logansport, Indiana 46947

Dear Mr. Huffman:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves The Andersons Clymers Ethanol, LLC, docket no. CAA-05-2016-0029. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on June 28, 2016.

Pursuant to paragraph 50 of the CAFO, The Andersons Clymers Ethanol, LLC, must pay the civil penalty within 30 days of July 29, 2016. Your electronic funds transfer must display the case name and case, docket number CAA-05-2016-0029.

Please direct any questions regarding this case to Cynthia A. King, Associate Regional Counsel, at (312) 886-6831.

Sincerely,

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Cynthia King/C-14J
Phil Perry, Branch Chief
Office of Air Quality/Compliance & Enforcement Branch
Indiana Department of Environmental Management

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2016-0029
)	
The Andersons Clymers Ethanol, LLC)	Proceeding to Assess a Civil Penalty
Logansport, Indiana)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 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. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Andersons Clymers Ethanol, LLC (Andersons or Respondent), a limited liability company doing business in Indiana.
4. Under 40 C.F.R. § 22.13(b), 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).
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 to the terms of this 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. On June 28, 1989, 54 Fed. Reg. 27274, EPA issued guidance on federally enforceable state operating permits (FESOP) establishing federally enforceable limits.

10. On October 25, 1994, the Indiana Department of Environmental Management (IDEM) submitted to EPA proposed revisions to the Indiana State Implementation Plan (SIP) to establish a FESOP program (set forth at Ind. Admin. Code tit. 326, r. 2-8).

11. On August 18, 1995, 60 Fed. Reg. 43008, EPA approved the Indiana FESOP program, Ind. Admin. Code tit. 326, r. 2-1-3.2, and Indiana's Enhanced New Source Review regulation, Ind. Admin. Code tit. 326, r. 2-8-4, as part of the federally enforceable Indiana SIP, effective October 17, 1995. *See* 40 C.F.R. § 52.770 (c)(97)-(98).

12. Ind. Admin. Code tit. 326, r. 2-8-4(1) requires that all FESOPs contain emission limitations and standards assuring compliance with all applicable requirements in effect at the time of the FESOP issuance.

13. Ind. Admin. Code tit. 326, r. 2-8-4(5) states that the permittee must comply with all conditions of the FESOP. Noncompliance with any provisions of the FESOP is a grounds for an enforcement action; FESOP termination, revocation and reissuance, or modification; or for denial of a FESOP renewable application.

14. Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to EPA a Title V Operating Permit Program. On December 4, 2001, 66 Fed.

Reg. 62969, EPA granted Indiana final approval of its Title V Permit Program, effective November 30, 2001.

15. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b), provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

16. 40 C.F.R. § 70.3 provides that the requirements of Part 70 apply to any major source located in a state that has received whole or partial approval of its Title V program.

17. On February 20, 2008, 73 Fed. Reg. 9201-9203, EPA approved 326 IAC 8-5-6, fuel grade ethanol production at dry mills, to its volatile organic compounds (VOC) rules as a revision to the Indiana SIP at 40 C.F.R. § 52.770(c)(182).

18. On November 27, 2012, IDEM issued Title V Operating Permit No. T017-31371-00023 to Andersons Clymers. IDEM approved a significant permit modification to the Title V permit on February 8 and 27, 2013, and renumbered Title V Operating Permit as No. T017-32589-00023. Prior to November 27, 2012, the facility operated using the FESOP Permit #F017-29265-00023 issued on December 8, 2010.

19. Part D.1.1 of the Title V permit limits particulate matter less than 10 microns (PM₁₀) emissions to 1.0 lb/hour from baghouse #1 which controls emissions from the grain elevator receiving EP-1, EP-2, and EP-4.

20. Part D.1.1 of the Title V permit limits particulate matter less than 2.50 microns (PM_{2.5}) emissions to 1.0 lb/hour from baghouse #1 which controls emissions from the grain elevator receiving EP-1, EP-2, and EP-4.

21. Part D.1.1 of the Title V permit limits particulate matter less than 10 microns (PM₁₀) emissions to 0.86 lb/hour from baghouse #2 which controls emissions from the grain elevator and grain transfer to Day Bin EP-20A, EP-5, EP-7, EP-8A, and EP-8B.

22. Part D.1.1 of the Title V permit limits particulate matter less than 2.50 microns (PM_{2.5}) emissions to 0.86 lb/hour from baghouse #2 which controls emissions from the grain elevator and grain transfer to Day Bin EP-20A, EP-5, EP-7, EP-8A, and EP-8B.

23. Part D.2.1 of the Title V permit limits VOC emissions to 9.42 lbs/hour from wet scrubber S-40 which controls emissions from the fermenters EP-40 through EP-46, and two liquefaction tanks EP-47 and EP-48.

24. Part D.2.2(a) of the Title V permit limits acetaldehyde emissions to 1.05 lbs/hour from wet scrubber S-40 which controls emissions from the fermenters EP-40 through EP-46, and two liquefaction tanks EP-47 and EP-48.

25. Part D.2.2(b) of the Title V permit limits total hazardous air pollutants (HAP) emissions to 1.20 lbs/hour from wet scrubber S-40 which controls emissions from the fermenters EP-40 through EP-46, and two liquefaction tanks EP-47 and EP-48.

26. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

27. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General

of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

28. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations

29. Andersons owns and operates a fuel grade ethanol production dry mill facility at 3389 West County Road 300 South, Logansport, Indiana (the facility).

30. Andersons is a "person" as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

31. On August 16, 2013, EPA issued a Request for Information to Andersons under Section 114 of the CAA, 42 U.S.C. § 7414.

32. On September 27, 2013, Andersons responded to EPA's Request for Information.

33. The information provided by Andersons showed that from November 4 through 10, 2011, and June 4 through 5, 2012, Andersons performed several stack tests on its wet scrubber.

34. The November 4, 2011, stack test results show that the facility emitted 2.30 lbs acetaldehyde/hr and total HAP emissions/hr from the wet scrubber.

35. The November 9, 2011, stack test results show that the facility emitted 1.37 lbs acetaldehyde/hr and total HAP emissions/hr from the wet scrubber.

36. The November 9 to November 10, 2011, stack test results show that the facility emitted 1.36 lbs acetaldehyde/hr and total HAP emissions/hr from the wet scrubber.

37. The November 10, 2011, stack test results show that the facility emitted 1.12 lbs acetaldehyde/hr from the wet scrubber.

38. The June 4, 2012, stack test results show that the facility emitted 3.41 lbs acetaldehyde/hr and total HAP emissions/hr from the wet scrubber. The June 4, 2012, stack test results show that the facility emitted 12.53 lbs/hour VOC from the wet scrubber.

39. The June 4 to June 5, 2012, stack test show that the facility emitted 2.26 lbs acetaldehyde/hr and total HAP emissions/hr from wet scrubber. The June 5, 2012, stack test results show that the facility emitted 1.10 lbs acetaldehyde/hr from the wet scrubber.

40. The information provided by Andersons showed that from May 7 through May 16, 2013, Andersons performed several stack tests on baghouse #1 and baghouse #2.

41. The May 14, 2013, stack test results show that the facility emitted 1.50 lbs/hour of both PM₁₀ and PM_{2.50} from baghouse #2.

42. The May 15, 2013, stack test results show that the facility emitted 1.50 lbs/hour of both PM₁₀ and PM_{2.50} from baghouse #1.

43. On September 29, 2014, EPA issued a Notice of Violation and Finding of Violation to Andersons.

Alleged Violations

44. The November, 2011, stack test results demonstrate that at wet scrubber S-40, the facility emitted acetaldehyde in excess of the permitted limit of 1.05 lbs/hr, as required by 326 IAC 2-8-4 and Title V Permit No. 017-32589-00023, Emission Limit D.2.1(a), which constitutes a violation of the Indiana SIP, Sections 110 and 502(a) of the CAA, 42 U.S.C. §§ 7410, 7661a(a), and the implementing regulations at 40 C.F.R. § 70.7(b).

45. The June 4, 2012, stack test results demonstrate that at wet scrubber S-40, the facility emitted VOC emissions in excess of the permitted limit of 9.42 lbs/hr, as required by 326 IAC 2-8-4 and Title V Permit No. 017-32589-00023, Emission Limit D.2.1(a), which constitutes

a violation of the Indiana SIP, Sections 110 and 502(a) of the CAA, 42 U.S.C. §§ 7410, 7661a(a), and the implementing regulations at 40 C.F.R. § 70.7(b).

46. The June, 2012, stack tests results demonstrate that at wet scrubber S-40, the facility emitted acetaldehyde in excess of the permitted limit of 1.05 lbs/hr, as required by 326 IAC and Title V Permit No. 017-32589-00023, Emission Limit D.2.1(a), which constitutes violation of the Indiana SIP, Sections 110 and 502(a) of the CAA, 42 U.S.C. §§ 7410, 7661a(a), and the implementing regulations at 40 C.F.R. § 70.7(b).

47. The November 2011, and June 2012, stack tests results demonstrate that at wet scrubber S-40, the facility emitted total HAP emissions in excess of the permitted limit of 1.20 lbs/hr, as required by 326 IAC 2-8-4 and Title V Permit No. 017-32589-00023, Emission Limit D.2.1(a), which constitutes a violation of the Indiana SIP, Sections 110 and 502(a) of the CAA, 42 U.S.C. §§ 7410, 7661a(a), and the implementing regulations at 40 C.F.R. § 70.7(b).

48. The May 14, 2013, stack test results demonstrate that at baghouse #2, the facility emitted PM₁₀ and PM_{2.50} in excess of 0.86 lb/hr, as required by Title V Permit No. 017-32589-00023, Emission Limit D.1.1(a), which constitutes a violation of the Indiana SIP, Sections 110 and 502(a) of the CAA, 42 U.S.C. §§ 7410, 7661a(a), and the implementing regulations at 40 C.F.R. § 70.7(b).

49. The May 15, 2013, stack test results demonstrate that at baghouse #1, the facility emitted PM₁₀ and PM_{2.50} in excess of 1.00 lb/hr, as required by Title V Permit No. 017-32589-00023, Emission Limit D.1.1(a), which constitutes a violation of the Indiana SIP, Sections 110 and 502(a) of the CAA, 42 U.S.C. §§ 7410, 7661a(a), and the implementing regulations at 40 C.F.R. § 70.7(b).

Civil Penalty

50. Within 30 days after the effective date of this CAFO, Respondent must pay a \$99,100 civil penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

51. Respondent must send a notice of payment that states Respondent’s name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Cynthia A. King (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

53. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the

penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

54. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

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

56. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

57. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 55, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

58. Respondent certifies that it is complying with the above-referenced provisions of its Title V Operating Permit No. T017-32589-00023.

59. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

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

61. 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.


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

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

64. This Consent Agreement and Final Order shall become effective immediately upon filing with the Regional Hearing Clerk.


The Andersons Clymers Ethanol, LLC, Respondent

6/7/16
Date


Naran Burchinow, Sr. VP,
The Andersons, Inc., manager of
The Andersons Clymers Ethanol, LLC

United States Environmental Protection Agency, Complainant

6/25/16
Date

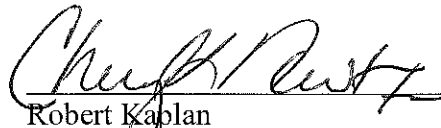
Acting

George T. Czerniak *Edward Nam*
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: The Andersons Clymers Ethanol, LLC
Docket No. CAA-05-2016-0029

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.

6/24/16
Date


Robert Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the matter of: The Andersons Clymers Ethanol, LLC
Docket Number: CAA-05-2016-0029

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 June 28, 2016, this day in the following manner to the addressees:

Copy by certified mail
return-receipt requested:

Phil Huffman, Plant Manager
The Andersons Clymers Ethanol, LLC
3389 West County Road 300 South
Logansport, Indiana 46947

Copy by e-mail to
Complainant:

Cynthia A. King
king.cynthia@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

June 28, 2016



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

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 7162