

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

IN THE MATTER OF:

Green Plains Atkinson, LLC
87590 Hillcrest Road
Atkinson, Nebraska

ADMINISTRATIVE COMPLIANCE
ORDER ON CONSENT
Docket No: CAA-07-2018-0028

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

1. This Administrative Compliance Order on Consent (“Order” or “AOC”) is entered into by the United States Environmental Protection Agency (“EPA”) and the Green Plains Atkinson, LLC (“Green Plains” or “Respondent”). This Order is issued under the authority vested in the Administrator of the EPA by Sections 113(a) and 114(a) of the Clean Air Act (“the Act”), 42 U.S.C. § 7413(a) and § 7414(a), as amended.
2. On the EPA’s behalf, Becky Weber, Director of the Air and Waste Management Division, EPA Region 7, is delegated the authority to issue this Order under Section 113(a) of the Act.
3. Green Plains is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. 7602(e). EPA hereby issues an Order requiring Green Plains to comply with the requirements set forth below. All activities specified below shall be initiated and completed within the maximum time periods for their completion as specified herein. The terms of this AOC shall not be modified except by a subsequent written agreement between the parties.

I. STATUTORY AND REGULATORY FRAMEWORK

4. The Clean Air Act established a regulatory framework designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population 42 U.S.C. 7401.

5. Section 110 of the Act, 42 U.S.C. § 7410, grants the Administrator of EPA authority to approve a state plan which provides for implementation, maintenance, and enforcement of a standard in each air quality control region within the state.

6. Nebraska's synthetic minor permit program is part of the federally-approved state implementation plan. *See* Neb. Admin. Code Title 129, Chapter 5.

7. Section 111 of the CAA, 42 U.S.C. § 7411, authorizes the EPA to develop technology based standards which apply to specific categories of stationary sources. The New Source Performance Standards (NSPS) apply to new, modified and reconstructed affected facilities in specific source categories. The NSPS are developed and implemented by EPA and are delegated to the states. However, even when delegated to the states, EPA retains authority to implement and enforce the NSPS.

8. Pursuant to the authority granted under Section 111 of the CAA, 42 U.S.C. § 7411, the EPA promulgated general regulations applicable to all NSPS source categories in 40 C.F.R. Part 60, Subparts A, B, and C. In addition, the EPA promulgated regulations set forth at 40 C.F.R. Part 60, Subpart VV which applies to affected facilities in the synthetic organic chemicals manufacturing industry that commence construction, reconstruction or modification after January 5, 1981 and before November 7, 2006.

9. Subparts VV was promulgated due to EPA's determination that emissions from synthetic organic chemicals manufacturing facilities cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

10. The Respondent is subject to 40 C.F.R. Part 60, Subpart VV because it owns or operates a synthetic organic chemical manufacturing facility that commenced construction, reconstruction, or modification on or after January 5, 1981 and before November 6, 2006.

11. "Synthetic organic chemicals manufacturing industry" means the industry that produces, as intermediates or final products, one more of the chemicals listed in 40 C.F.R. § 60.489. 40 CFR § 60.481.

12. Pursuant to the authority granted under Section 111 of the CAA, 42 U.S.C. § 7411, the EPA promulgated general regulations applicable to all NSPS source categories in 40 C.F.R. Part 60, Subparts A, B, and C.

13. 40 CFR § 60.485 requires the owner or operator of an affected facility to determine compliance with the standards in 40 CFR §§ 60.482-1 through 60.482-10, 60.483, and § 60.484 by using Method 21 to determine the presence of leaking sources.

14. Method 21 requires that components should be monitored for a time period of approximately two times the calculated response time for the equipment used.

II. FACTUAL BACKGROUND

15. At all times pertinent to this action, Green Plains was the "owner" or "operator" of the Green Plains Facility ("Facility"), a synthetic organic chemical manufacturer, located at 87590 Hillcrest Road, Atkinson, Nebraska, within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5).

16. At all times pertinent to this action, the Facility was a "stationary source" as that

term is defined in Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3).

17. At all times pertinent to this action, the Facility produced as an intermediate or final product, ethanol, a chemical listed in 40 C.F.R. § 60.489, thus making it a synthetic organic chemical manufacturer.

18. The Facility is operating as a synthetic minor source and has two construction permits, CP09-029 and CP14-309 issued by the Nebraska Department of Environmental Quality (NDEQ).

19. EPA conducted an inspection of the Green Plains Facility on July 18, 2017. The inspector issued a Notice of Potential Finding outlining the following issues: (1) inspector noted during the leak detection and repair quarterly precision testing that the first and second quarter of 2017, components were monitored for an elapsed time of less than the calculated instrument response time; (2) the EPA inspector also noted the magnehelic gauges on two of the baghouses were not functioning properly; and (3) the EPA inspector noted fugitive emissions from a vent of Denatured Ethanol Tank #2 and the Denaturant Tank.

III. FINDINGS

20. EPA finds that Green Plains has not maintained the pressure indicator as required by construction permit CP09-029, Section XIII (b)(2)(c).

21. EPA finds that Green Plains has failed to properly monitor components with leak detection and repair equipment in accordance with EPA Method 21 as required by 40 CFR Part 60 Subpart VV. EPA finds that Green Plains has failed to conduct monitoring for the required time.

IV. COMPLIANCE ORDER

Pursuant to Section 113(a)(3)(B) of the Act, 42 U.S.C. 7413(a)(3)(B), EPA hereby issues an order requiring Green Plains to comply with the requirements set forth below:

22. Standard Operating Procedures to Improve Monitoring Activities:

a. As of the effective date of this Order, Green Plains shall devise and submit a work plan outlining the Standard Operating Procedures (“SOP”) for the following areas:

i. Component Monitoring: SOP shall outline steps to ensure that the components are monitored for a time period of approximately two times the calculated instrument response time. The SOP shall outline steps to ensure any third party vendors comply with the SOP.

ii. Baghouse Gauges: SOP shall outline procedures to ensure that the pressure readings inclusive of acceptable pressure drops for each piece of equipment as appropriate, and include a list of possible actions to reestablish acceptable pressure drops if readings are outside acceptance limits. The SOP shall outline steps to ensure any third party vendors comply with the SOP.

23. Documentation of Violation Correction and Continued Compliance. Green Plains shall provide the following documentation within 60 days of the effective date of this Order to demonstrate correction of the above violations and continued compliance with the monitoring requirements of construction permit CP09-029, and 40 CFR Subpart VV. A copy of SOPs shall be submitted to EPA incorporating the requirements of above Paragraph 22. Copies of tank

inspections and any subsequent repair work orders shall be submitted to EPA. The submissions required by the above paragraphs and subparagraphs shall be sent to EPA in accordance with Section V. (Submittals) of this Order.

24. Review and Approval Procedures: EPA will review any document that is specifically required to be submitted by Respondent according to the procedures outlined in this paragraph. EPA will review such document and may approve, approve with comments, or disapprove and provide comments. If the document is approved with comments, Respondent may proceed with any actions required by the document but must incorporate EPA's comments and resubmit the document within twenty (20) days of receipt of comments. If the document is disapproved, Respondent shall incorporate any comments within twenty (20) days of Respondent's receipt of such comments and resubmit the document. The EPA shall review the revised document and shall approve, approve with comments, or disapprove the document.

V. SUBMITTALS

25. After Respondent has implemented the Standard Operating Procedures as described in the Work Plan in accordance with paragraph 22, Respondent shall submit a Certified Completion report. The Certified Completion report shall be submitted to the EPA within 30 days of the completion of the requirements of paragraphs 22 and 23 above.

26. All documents required to be submitted to EPA by this Order shall contain the following certification, signed by an officer of Green Plains:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment. I certify

that I am authorized to enter into the terms and conditions of this Order to execute and bind legally the Respondent to this document.

The submissions required by the above paragraphs and subparagraphs shall be made in electronic format to:

Karen T. Johnson
Air Permitting & Compliance Branch
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Email: *Johnson.Karent@epa.gov*

27. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

VI. OTHER TERMS AND CONDITIONS

28. Respondent admits the jurisdictional allegations contained in this Order.
29. Respondent neither admits nor denies the findings in Section III (Findings) of this Order.

VII. GENERAL PROVISIONS

30. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$45,268 per day per violation, or both, as provided in Sections 113(b)(2) and 113(d)(1) of the Act, 42 U.S.C. § 7413(b)(2) and § 7413(d)(1), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may

use any information submitted under this Order in an administrative, civil judicial, or criminal action.

31. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

32. Nothing herein shall be construed to limit the power and authority of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

33. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Order until the Termination Date as set forth in paragraph 38 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in Green Plains. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

34. Unless this Order states otherwise, whenever under the terms of this Order, written notice or other document is required to be given, it shall be directed to the individuals

specified at the address below unless those individuals or their successors give notice of a change of address to the other party in writing:

Karen T. Johnson
Air Permitting & Compliance Branch
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Email: *Johnson.Karent@epa.gov*

35. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally the parties to this document.

VIII. EFFECTIVE DATE: OPPORTUNITY FOR A CONFERENCE

36. Pursuant to Section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

37. Any inquiries regarding this Order shall be addressed to:

Jonathan Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Phone: (913) 551-7140
Fax: (913) 551-7925

IX. TERMINATION

38. This Order shall terminate on the earlier of the following (the “Termination Date”) at which point Respondent shall operate in compliance with the Act:

- a. One year after the Effective Date of this Order;
- b. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of this Order; or
- c. Immediately upon receipt by Respondent of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

4-26-18

Date

Becky Weber

Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

FOR THE RESPONDENT:

**Green Plains Atkinson, LLC
Atkinson, Nebraska**

April 9, 2018
Date

JSB Briggs
Signature

JEFF BRIGGS
Printed Name

Chief operations officer
Title

1811 Akarben Dr. Omaha NE 68106
Address

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Administrative Compliance Order on Consent" in the Matter of Green Plains Atkinson, LLC, Order CAA-07-2018-0028, were mailed to the parties as indicated below.

Via Certified Mail, Return Receipt Requested to:

Green Plains Atkinson, LLC
87590 Hillcrest Road
Atkinson, Nebraska 68713

Via First Class Mail:

Attn: Todd Ellis
Air Quality Division / NDEQ
1200 N Street, Suite 400
PO Box 98922
Lincoln, NE 68509-8922

5/3/18
Date


Signature
Paralegal
Title