



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2013 MAR -5 AM 10:11

1595 WYNKOOP STREET
DENVER, CO 80202-1129

Phone 800-227-8917

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FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2013-0007

IN THE MATTER OF:

WYOMING ETHANOL, LLC
4739 West State Highway 156
Torrington, WY

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of EPA's Consolidated Rules of Practice, the Consent 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 Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 5th DAY OF March, 2013.

Elyana R. Sutin
Regional Judicial Officer

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ENVIRONMENTAL PROTECTION AGENCY 2013 MAR -5 AM 10:11
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HEARING CLERK

IN THE MATTER OF:)
)
Wyoming Ethanol, LLC)
4739 West State Highway 156)
Torrington, Wyoming)
)
Respondent)

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

DOCKET NO. : CAA-2013-0007

1. This civil administrative enforcement action is issued to Wyoming Ethanol, LLC (Respondent) pursuant to section 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(B), for alleged violations of the implementing regulations associated with the "Prevention of Accidental Releases" requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r). This proceeding is subject to the Environmental Protection Agency's (EPA) *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Rules of Practice), 40 C.F.R. part 22. Pursuant to section 113(d)(1)(C) of the CAA, 42 U.S.C. § 7413(d)(1)(C), the Department of Justice and the EPA have jointly determined that this matter is appropriate for handling as an administrative penalty action.
2. The undersigned EPA official has been properly delegated the authority to issue this action.
3. 40 C.F.R. § 22.13(b) provides that where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a Combined Complaint and Consent Agreement (CCCA).

4. The parties agree that the settling of this action and refraining from the adjudication of any issue of fact or law, with regard to the issues herein, is in their interest and in the public interest.

5. Respondent consents to the terms of this CCCA, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

6. Respondent admits the jurisdictional allegations in this CCCA and neither admits nor denies all remaining allegations herein.

7. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

STATUTORY AND REGULATORY FRAMEWORK

8. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), authorizes the Administrator to promulgate regulations regarding the prevention and detection of accidental releases of designated chemicals. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan to prevent or minimize risks of accidental releases of those designated substances. The regulations promulgated by EPA pursuant to CAA § 112(r)(7), are set forth in 40 C.F.R. part 68.

9. Under 40 C.F.R. § 68.3, the following definitions apply:

- a. "Stationary source" means "any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group which are located on one or more contiguous properties, which are under the control

- of the same person (or persons under common control) and from which an accidental release may occur.”
- b. “Regulated substance” means “any substance listed (pursuant to section 112(r)(3) of the Clean Air Act) in 40 C.F.R. § 68.130.” Threshold quantities for the regulated substances are included in 40 C.F.R. § 68.130.
10. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines the term “person” to include in relevant part, an individual, corporation, or partnership.
11. Respondent is a person and subject to regulation under section 112(r) of the CAA.
12. Respondent is the owner and/or operator of Wyoming Ethanol, LLC, a stationary source, located at 4739 West State Highway 156, Torrington, Wyoming (the Facility).
13. The Facility uses, handles and/or stores more than a threshold quantity of a regulated flammable mixture (CAS # 00-11-11).
14. Pursuant to section 112(r) of the CAA, 42 U.S.C. § 7412(r)(7), the Respondent is required to prepare and implement an RMP to detect and prevent or minimize accidental releases of such substances.

SPECIFIC ALLEGATIONS

15. On May 17, 2012, authorized representatives of the EPA conducted an inspection of the Respondent’s facility located at 4739 West State Highway 156, Torrington, Wyoming, with the consent of the Respondent, to determine compliance with CAA section 112(r)(7). During the EPA inspection, the EPA representatives observed alleged violations of the CAA section 112(r)(7). The alleged violations are described in paragraphs 16 - 19.
16. 40 C.F.R. § 68.48 provides that the owner or operator shall compile and maintain up-to-date safety information related to the regulated substances, processes, and equipment. The following required safety information was not available during the EPA inspection:

- a. Safe upper and lower limits had not been compiled for the covered process (denaturant). This is a violation of 40 C.F.R. § 68.48(a)(3).
- b. Equipment specifications had not been compiled and maintained for the denaturant process vessels, TK-7 and TK-8. This is a violation of 40 C.F.R. § 68.48(a)(4).
- c. The required National Fire Protection Association (NFPA) labels were not installed on vessels TK-7 and TK-8. This is a violation of 40 C.F.R. § 68.48(b).

17. 40 C.F.R. § 68.50 provides that the owner or operator shall conduct a review of the hazards associated with the regulated substances, process, and procedures. This review shall include the hazards associated with process and regulated substances; safeguards used or needed to control the hazards or prevent equipment malfunction or human error, and; for processes designed to meet industry standards, a determination, by inspecting all equipment, whether the process is designed, fabricated, and operated in accordance with the applicable standards or rules.

- a. The required Hazard Review did not include hazards associated with fire, did not identify safeguards, and did not address if the process is designed, fabricated, and operated in accordance with the applicable standards or rules. This is a violation of 40 C.F.R. § 68.50.

18. 40 C.F.R. § 68.56 provides that the owner or operator shall prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. This includes preparing and implementing written procedures, performing inspections and tests on process equipment, and training each employee involved in the on-going mechanical integrity of the process in the procedures applicable to the employee's job tasks.

- a. The maintenance program did not include updated records for the calibration of the multi-gas monitor and did not ensure that inspections and tests on process equipment

were in accordance with recognized and generally accepted good engineering practices. Respondent also did not have written mechanical integrity procedures in place to be used by employees involved in the inspection and maintenance of process vessels. This is a violation of 40 C.F.R. § 68.56.

19. 40 C.F.R. § 68.58 provides that the operator or owner shall certify that compliance audits are conducted at least every three years to verify that the procedures and practices are adequate and are being followed.

- a. Respondent did not have the required compliance audits documented and available for review during the EPA inspection. This is a violation of 40 C.F.R. § 68.58.

PENALTY

20. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation for each violation of the implementing regulations associated with the “Prevention of Accidental Releases” requirements of 42 U.S.C. § 7412r. For purposes of determining the amount of any civil penalty to be assessed, section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), requires EPA to take into account, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator’s full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

21. Respondent consents and agrees to pay a civil penalty in the amount of **thirty thousand dollars (\$30,000)**.

22. Attachment A (Collection Information) provides terms for payment including the assessment of fees and interest charges for late payments.

CERTIFICATION OF COMPLIANCE

23. On or before ninety days after the date of the Final Order approving this CCCA, the Respondent shall submit to EPA a Certification of Compliance, establishing Respondent's completion of the items described in subparagraphs a-d below. In the Certification of Compliance, Respondent shall demonstrate the following:

- a. Safety information is current and available in accordance with 40 C.F.R. § 68.48 including: safe upper and lower limits are compiled for the covered process (denaturant), specifications are compiled and maintained for the denaturant tanks, TK-7 and TK-8, nameplates on process vessels TK-7 and TK-8 are legible and complete, specifications are compiled for the pressure relief valves on vessels TK-7 and TK-8, and the required NFPA labels are installed on vessels TK-7 and TK-8;
- b. The Hazard Review is completed in accordance with C.F.R. § 68.50 and includes a review of the hazards associated with fire, identifying the safeguards associated with the process, and addressing if the process is designed, fabricated, and operated in accordance with the applicable standards or rules;
- c. The maintenance program is operated in accordance with 40 C.F.R. § 68.56 and includes updated records for the calibration of multi-gas monitor, that inspections and tests on process equipment, piping, and vessels are in accordance with recognized and generally accepted good engineering practices, and written maintenance procedures to be used by employees involved in the inspection and maintenance of process vessels are documented and current; and,

d. Compliance audits are completed, and all findings are resolved, in accordance with 40 C.F.R. § 68.58.

24. The Certification of Compliance shall contain the date, printed name, and signature of a representative of the Respondent, as well as the following statement:

I certify that I am authorized to verify the completion of work on behalf of Wyoming Ethanol, LLC. I certify under penalty of perjury that the foregoing is true and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

25. The Certification of Compliance shall be mailed or emailed to the following name and address:

U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
ATTN: David Cobb, 8ENF-AT
E-mail: cobb.david@epa.gov

OTHER TERMS

26. This CCCA contains all terms of the settlement agreed to by the parties.

27. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA, Respondent, and Respondent's successors or assigns.

28. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.

29. Failure of Respondent to comply with any terms of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.

30. 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 agreement.

31. Nothing in the CCCA shall be construed as a waiver by the United States of its authority to seek costs or any appropriate penalty associated with any action instituted as a result of

Respondent's failure to perform pursuant to the terms of this CCCA.

32. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into and legally bind Respondent to the terms and conditions of the CCCA.

33. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.

34. Each party shall bear its own costs and attorney fees in connection with this administrative matter.

35. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

36. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in this CCCA.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Complainant

Date:

3/4/2013

By:

Edu A Sierra
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Wyoming Ethanol, LLC

Representative of Respondent

Date:

2-13-2013

By:

Victor Smith

Title:

Plant manager

COLLECTION INFORMATION

Payment shall be due on or before **180 calendar days** after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed on day 211 after the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, on day 271 after the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

CHECK PAYMENTS:

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

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental
Protection Agency "

OVERNIGHT MAIL:

US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **WYOMING ETHANOL, LLC.; DOCKET NO.: CAA-08-2013-0007**. The documents were filed with the Regional Hearing Clerk on March 5, 2013.

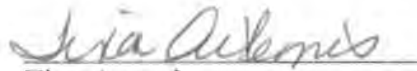
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were resent and placed in the United States mail certified/return receipt on March 5, 2013 to:

Victor Tomek, Plant Manager
Wyoming Ethanol, LLC
P.O. Box 178
4739 West State Highway 156
Torrington, WY 82240

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

March 5, 2013


Tina Artemis
Paralegal/Regional Hearing Clerk



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