



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

SEP 17 2010

REPLY TO THE ATTENTION OF:
AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas J. Regan, President
PCS Nitrogen Fertilizer Operations, Inc.,
General Partner of PCS Nitrogen Ohio L.P.
1900 Fort Amanda Road
Lima, Ohio 45802

Dear Mr. Regan:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Docket Number CAA-05-2010-0069. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 21 2010.

Pursuant to paragraph 39 of the CAFO, PCS Nitrogen Ohio, L.P., must pay the civil penalty within 30 days of SEP 21 2010. Your check must display the case name, the docket number, CAA-05-2010-0069, and the billing document number, 2751003A068.

Please direct any questions regarding this case to Gaylene Vasaturo, (312) 886-1811.

Sincerely,

William L. Macdowell
Chief,
Air Enforcement and Compliance Assurance Sect. (MN/OH)

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2010-0069
)	
)	
PCS Nitrogen Ohio, L.P.)	Proceeding to Assess a Civil Penalty
Lima, Ohio)	Under Section 113 (d) of the Clean Air
)	Act, 42 U.S.C. § 7413(d)
Respondent.)	
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REGIONAL HEARING CLERK
U.S. EPA REGION 5
2010 SEP 21 AM 11:15

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 Act), 42 U.S.C. 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) *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, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is PCS Nitrogen Ohio, L.P., a limited partnership, doing business in Ohio (hereinafter referred to as PCS Nitrogen or Respondent). PCS Nitrogen Fertilizer Operations, Inc. is the general partner of PCS Nitrogen Ohio L.P.
4. 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). 40 C.F.R. § 22.13(b).
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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegation in the 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. Under Section 111 of the Act, U.S. EPA promulgated the Standards of Performance for Nitric Acid Plants in the Code of Federal Regulations (C.F.R.) at 40 C.F.R. Part 60, Subpart G, §§ 60.70-60.74.

10. The Standards of Performance for Nitric Acid Plants apply to each nitric acid production unit constructed or modified after August 17, 1971. 40 C.F.R. § 60.70(b). Each such nitric acid production unit is an affected facility subject to the standards of performance in Subpart G. 40 C.F.R. § 60.70(b).

11. Nitric acid production is defined at 40 C.F.R. § 60.71(a) as “any facility producing weak nitric acid (30 to 70 percent in strength) by either the pressure or atmospheric pressure process.”

12. The owner or operator of any stationary source that contains an affected facility is also subject to the General Provisions at 40 C.F.R. Part 60, Subpart A. 40 C.F.R. §§ 60.70(a) and 60.1(a).

13. A stationary source is any building, structure, facility or installation which emits or may emit any air pollutant. 40 C.F.R. § 60.2.

14. Title 40 C.F.R. § 60.72(a)(1) prohibits any owner or operator from discharging into the atmosphere from any affected facility any gases which contain, among other things, nitrogen oxides, expressed as NO₂, in excess of 1.5 kilograms per metric ton of acid produced (3.0 lbs. per ton) the production being expressed as 100 percent nitric acid.

15. Under 40 C.F.R. § 60.73(a), an owner or operator of a nitric acid facility is required to install, calibrate, maintain and operate a continuous monitoring system for measuring nitrogen oxides (NO_x).

16. The owner or operator of a nitric acid facility must establish a conversion factor for the purpose of converting monitoring data into units of the applicable standard (kg/metric ton, lb/ton). 40 C.F.R. § 60.73(c).

17. Title 40 C.F.R. § 60.7(c) states “Each owner or operator required to install a continuous monitoring device shall submit excess emissions and monitoring systems performance reports (excess emissions are defined in applicable subparts) and-or summary report form . . . to the Administrator semiannually, except when: more frequent reporting is specifically required by an applicable subpart; or the Administrator, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. . . . Written reports of excess emissions shall include the following information: (1) The magnitude of excess emissions computed in accordance with § 60.13(h), any conversion factor(s) used, and the date and time of commencement and completion of each time period of excess emissions. . . (2) Specific identification of each period of excess emissions that occurred during startups, shutdowns and malfunctions of the affected facility. The nature and cause of any malfunction (if known), the corrective action taken or preventative measure adopted. . . .”

18. Excess emissions that shall be reported in any report required under Section 60.7(c) are defined in 40 C.F.R. § 60.73(e) as “any 3-hour period during which the average nitrogen oxides emissions (arithmetic average of three contiguous 1-hour periods) as measured by a continuous monitoring system exceed the standard under 60.72(a).”

19. On August 4, 1976, EPA delegated authority to implement and enforce EPA’s NSPS, including the nitric acid standard at 40 C.F.R. Part 60, Subpart G, to the state of Ohio. EPA retained concurrent authority to implement and enforce the standard. 41 Fed. Reg. 55575 (Dec. 21, 1976).

20. The state of Ohio directed PCS Nitrogen to submit excess emissions and monitoring systems performance reports on a quarterly basis in lieu of semiannual reports.

21. 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, pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d) and 40 C.F.R. Part 19.

22. Section 113(d) of the Act 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

23. 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 and Alleged Violation

24. PCS Nitrogen has owned a nitric acid production facility located at 1900 Fort Amanda Road in Lima, Ohio since March 1997 and is the current owner of the facility.

25. Respondent's facility referenced in Paragraph 24 is a stationary source.

26. Respondent's facility referenced in Paragraph 24 was constructed in 1991-92.

27. Respondent produces 50 to 68% nitric acid at its Lima, Ohio facility.

28. The nitric acid production facility referenced in Paragraph 24 is an affected facility subject to the requirements of 40 C.F.R. Part 60, Subpart G.

29. Respondent is required by 40 C.F.R. § 60.73(a) to install, calibrate, maintain and operate a continuous monitoring system for measuring NO_x.

30. Respondent is required to establish a conversion factor for the purpose of converting monitoring data into units of pounds NO_x per ton of acid produced.

31. Respondent is required to submit excess emissions and monitoring systems performance and/or summary reports to the state of Ohio.

32. Respondent submits excess emissions reports to the state of Ohio on a quarterly basis.

33. Respondent's excess emission reports for 2006 and 2007 all reported zero hours during which emissions exceeded 3.0 lbs. NO_x/ton acid produced during startup and shutdown.

34. Respondent experienced at least one startup and/or shutdown event during each quarter in calendar years 2006 and 2007 where emissions exceeded 3.0 lbs. NO_x/ton acid produced.

35. On April 1, 2008, EPA issued a Finding of Violation to PCS Nitrogen stating, among other things, that PCS Nitrogen failed to report emissions which exceeded applicable limits as required by 40 C.F.R. § 60.73(e).

36.. Respondent failed to identify each period of excess emissions that occurred during startups and shutdowns in each excess emissions and monitoring system performance report during the 2006 and 2007 calendar years.

37. Respondent's failure to comply with the reporting requirement at 40 C.F.R. § 60.7(c) and 40 C.F.R. § 60.73(e) are violations of 40 C.F.R. § 60.7(c), 40 C.F.R. § 60.73(e) and Section 111(e) of the Act.

38. In June 2008 Respondent submitted revised quarterly excess emissions and monitoring system performance reports for 2006 and 2007 to the state of Ohio and EPA, which identified periods where emissions exceeded 3.0 lbs. NOx/ton acid produced during startup and shutdown.

Civil Penalty

39. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. §7413(e), the facts of this case and Respondent's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$18,053.

40. Within 30 days after the effective date of this CAFO, Respondent must pay a \$18,053 civil penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America," (for a check sent by regular U.S. Postal Service mail) to:

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

(For checks sent by express mail) to:

U.S. Bank
Government Lockbox 97077 U.S. EPA Fines and Penalties
Contact: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Respondent must include the case name, docket number and billing document number on the check

41. A transmittal letter stating Respondent's name, complete address, the case docket number and the billing document number must accompany the payment. Respondent must send copies of the check and transmittal letter to:

Attn: Regional hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

and

Gaylene Vasaturo (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Blvd.
Chicago, IL 60604

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

43. If Respondent does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

44. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

General Provisions

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

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

47. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in Paragraph 45 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

48. Respondent certifies that it is complying fully with 40 C.F.R. §§ 60.73(e) and 60.7(c).

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

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

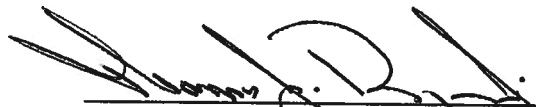
51. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

52. Each party agrees to bear its own costs and attorneys' fees in this action.

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


**PCS Nitrogen Ohio, L.P.
Respondent**

9/08/10
Date


Thomas J. Regan, President
PCS Nitrogen Fertilizer Operations, Inc.
General Partner of PCS Nitrogen Ohio L.P.

U.S. Environmental Protection Agency, Complainant

9/14/10
Date


Cheryl Newton, Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5 (A-18J)

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PROTECTION AGENCY

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of:
PCS Nitrogen Ohio, L.P.

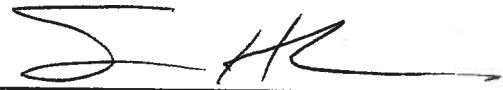
Docket No. CAA-05-2010-0069

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.

9-17-10

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of:
PCS Nitrogen Ohio, L.P.
Docket No. CAA-05-2010-0069

Certificate of Service

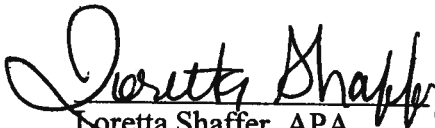
I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-19J), U. S. Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that mailed by Certified Mail, Receipt No. _____, the second original to Respondent, addressed as follows:

Thomas J. Regan, President
PCS Nitrogen Ohio, L.P.
Suite 400
1101 Skokie Boulevard
Northbrook, Illinois 60062

and that I delivered a correct copy by intra-office mail, addressed as follows:

Marcy Toney, Regional Judicial Officer (C-14J)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

On this 21 day of September, 2010.


Loretta Shaffer, APA
PAS

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CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0192 0393