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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
Show Me Ethanol, LLC	)	Docket Nos. CAA-07-2014-0002
26530 Highway 24 East	)	EPCRA-07-2014-0001
Carrollton, Missouri 64633,	)	
	)	
Respondent.	)	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Show Me Ethanol, LLC, (Respondent) have agreed to a settlement of this action before 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 312 of the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11022, and 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, where the first date of alleged violation

occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 370; and the provisions governing Chemical Accident Prevention, and specifically the Risk Management Program, under Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and 40 C.F.R. Part 68. Furthermore, this CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

#### Parties

3. The Complainant, by delegation from the Administrator of EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Show Me Ethanol, LLC, located at 26530 Highway 24 East, Carrollton, Missouri 64633. The primary activity at Respondent's facility is the production of ethanol.

#### Statutory and Regulatory Requirements

5. On October 17, 1986, the Superfund Amendments and Reauthorization Act (SARA) became effective. Title III of SARA included the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001-11050 (EPCRA). The purpose of EPCRA is to help local communities protect public health, safety, and the environment from chemical hazards.

6. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a) and the regulations set forth at 40 C.F.R. § 370.25, require an owner or operator of a facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, to submit a completed emergency and hazardous chemical inventory form (Tier I or Tier II report) to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, by March 1, 1988, and annually thereafter.

7. The Tier I or Tier II report must contain the information required by Section 312(d) of EPCRA and 40 C.F.R. Part 370 for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal or greater to 10,000 pounds, per 40 C.F.R. 370.10(a)(2)(i).

8. Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorizes a civil penalty for violations of the requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, of not more than \$25,000 per day for each day during which the violation continues. Section 325 of EPCRA, 42 U.S.C. § 11045, as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of up to \$27,500 per day for each violation that occurs between January 30, 1997, and March 15, 2004; \$32,500 per day for each violation occurring between March 16, 2005, and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

9. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires

the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3) mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

10. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. These regulations require owners and operators of stationary sources to develop and implement a Risk Management Program that includes a hazard assessment, a prevention program and an emergency response program.

11. The regulations at 40 C.F.R. Part 68, set forth the requirements of a Risk Management Program that must be established at each stationary source. The Risk Management Program is described in a RMP that must be submitted to EPA.

12. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999; or the date on which a regulated substance is first present above the threshold quantity in a process.

13. 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 the CAA referenced therein, including Section 112(r)(7). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004, and \$32,500 per day for each violation that occurs after March 15, 2004. For each violation of Section 112(r) of the CAA that occurs after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

#### Definitions

14. The regulations at 40 C.F.R. § 68.3 define “stationary source” in part, as 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.

15. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. The regulations at 40 C.F.R. § 68.115(b)(2) define how “concentrations of a regulated flammable substance in a mixture” shall be treated for purposes of determining whether a threshold quantity is present at the stationary source.

17. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

18. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

#### Alleged Violations

19. EPA alleges that Respondent has violated EPCRA Section 312, 42 U.S.C. § 11022, and the federal regulations promulgated pursuant to EPCRA; and Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and federal regulations promulgated pursuant to the CAA, as follows:

20. Respondent is, and at all times referred to herein, was a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

21. On or about February 12-13, 2013, EPA conducted an inspection of Respondent’s facility to determine compliance with EPCRA and Section 112(r) of the CAA.

#### Count I - EPCRA

22. Paragraphs 1-8 and 19-21 are incorporated by reference as if fully set forth herein.

23. Respondent’s facility, located at 26530 Highway 24 East, Carrollton, Missouri 64633, is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

24. At all times relevant hereto, Respondent was an owner or operator of a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.

25. Respondent stores approximately 924,000 pounds of natural gasoline for use as a denaturant, in excess of the 10,000 pound reporting threshold of 40 C.F.R. 370.10(a)(2)(i).

26. Records collected during the inspection demonstrated that Respondent did not file 2008, 2009, 2010, 2011, and 2012 Tier II reports with the State of Missouri for the denaturant used at Respondent's facility.

27. Each of Respondent's alleged failures to file Tier II reports are violations of Section 312 of EPCRA, 42 U.S.C. § 11022 and 40 C.F.R. § 370.41.

Count II – CAA 112(r)

28. Paragraphs 1-4 and 9-21 are incorporated by reference as if fully set forth herein.

29. Respondent's facility, located at 26530 Highway 24 East, Carrollton, Missouri, is a "stationary source" pursuant to 40 C.F.R. § 68.3.

30. Anhydrous ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

31. Pursuant to 40 C.F.R. § 68.115(b)(2), the entire weight of a mixture shall be treated as a regulated substance, unless the owner or operator can demonstrate that the mixture itself does not have a National Fire Protection Association (NFPA) rating of 4.

32. Records collected during the inspection showed that Respondent has exceeded the threshold quantity for anhydrous ammonia, storing approximately 97,200 pounds.

33. Respondent's denaturant process contains a mixture containing greater than one percent of pentane, isopentane, and/or butane with a NFPA rating of 4, and is therefore a flammable mixture as specified in 40 C.F.R. § 68.115(b)(2).

34. Records collected during the inspection showed that Respondent's denaturant process stores approximately 924,000 pounds, with the entire weight of the mixture being treated as a regulated substance.

35. Respondent is subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

36. Respondent was required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a Risk Management Program that includes a hazard assessment, a prevention program, an emergency response program, and to file a Risk Management Plan.

37. Records collected during the inspection showed that Respondent failed to comply with portions of 40 C.F.R. Part 68, specifically:

- (i) failure to estimate the population based on the point of release in the Risk Management plan, as required by 40 C.F.R. § 68.30(a);
- (ii) failure to maintain records of the offsite consequence analysis date used to estimate population and environmental receptors, as required by 40 C.F.R. § 68.39(e);
- (iii) failure to include in its compilation of process safety information the design codes and standard employed and the material and energy balances, as required by 40 C.F.R. § 68.65(d)(1)(vi) and (vii);



- (iv) failure to document that an ammonia storage tank complies with recognized and accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2);
- (v) failure to fully document operating procedures that address the consequences of deviating from operating limits, as requirement by 40 C.F.R. § 68.69(a)(2)(i); and
- (vi) failure to certify the compliance audit or document the appropriate response to and correction of each of the findings, as required by 40 C.F.R. § 68.79(a) and (d).

38. Each of Respondent's alleged failures to comply with 40 C.F.R. Part 68, as set forth above, are violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

#### CONSENT AGREEMENT

39. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

40. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

41. Respondent neither admits nor denies the factual allegations and alleged violations set forth above.

42. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CAFO.

43. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

44. This CAFO addresses all civil and administrative claims for the EPCRA and CAA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of EPCRA or the CAA or other applicable law.

45. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's facility is in compliance with the requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

46. The effect of settlement described in paragraph 44 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 45, above, of this CAFO.

47. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

48. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

49. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CAFO and to legally bind Respondent to it.

#### **FINAL ORDER**

Pursuant to the provisions of EPCRA, 42 U.S.C. § 11045 *et seq.*, and CAA, 42 U.S.C. § 7401 *et seq.*, and based upon the information set forth in this Consent Agreement, IT IS  
HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Forty-One Thousand Three Hundred and Ninety-Three Dollars (\$41,393) within 30 days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

United State Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000.

The payments shall reference docket numbers CAA-07-2014-0002 and EPCRA-07-2014-0001.

2. Copies of the check should be sent to:

Regional Hearing Clerk  
United States Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219


and to:

Kristen Nazar  
Assistant Regional Counsel  
United States Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:  
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date 3/25/14


By   
Becky Weber  
Director  
Air and Waste Management Division

Date 3/24/2014

By   
Kristen Nazar  
Assistant Regional Counsel

RESPONDENT:  
SHOW ME ETHANOL, LLC

By

  
\_\_\_\_\_

Title

General Manager  
\_\_\_\_\_

Date

3-14-14  
\_\_\_\_\_

IT IS SO ORDERED. This Final Order shall become effective immediately.

Date April 3, 2014 By Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

IN THE MATTER OF Show Me Ethanol, LLC, Respondent  
Docket Nos. CAA-07-2014-0002 and EPCRA-07-2014-0001

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

nazar.kristen@epa.gov

Copy by email to Respondent:

Richard Hanson, General Manager  
Show Me Ethanol, LLC  
26530 Highway 24 East  
Carrollton, Missouri 64633

Dated: 4/4/14

Handwritten signature of Kathy Robinson in black ink, with a horizontal line underneath the signature.

Kathy Robinson  
Hearing Clerk, Region 7