



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

DEC 23 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeff Painter, President
Cardinal Ethanol, LLC
1554 North County Road 800 East
Union City, Indiana 47390

Dear Mr. Painter:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Cardinal Ethanol, LLC (Cardinal), CAA Docket No. CAA-05-2016-0010. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

December 23, 2015.

Pursuant to paragraph 29 of the CAFO, Cardinal must pay the civil penalty within 30 days of *January 25, 2016*. Your electronic funds transfer must display the case name and case, docket number CAA-05-2016-0010.

Please direct any questions regarding this case to Cynthia A. King at (312) 886-6840.

Sincerely,

Sarah Marshall, Chief
Air Enforcement and Compliance assurance Branch (MI/WI)

Enclosure

cc: Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Cynthia A. 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:

Cardinal Ethanol, LLC
Union City, Indiana

Respondent.



Docket No. CAA-05-2016-0010

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air Act,
42 U.S.C. § 7413(d)

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 Cardinal Ethanol, LLC, an Indiana 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.

A handwritten signature in the bottom right corner of the page.

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. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to EPA an operating permit program (Title V 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.

10. Section 502(a) of the Act, 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 Act, no source subject to Title V may operate except in compliance with a Title V permit.

11. 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 State Implementation Plan at 40 C.F.R. § 52.770(c)(182).

12. Cardinal's Federally Enforceable State Operating Permit (FESOP) No. F135-23226-00033 was issued on February 26, 2007. The FESOP included compliance with 326 IAC 8-1-6 for individual VOC BACT at the enclosed flare.

13. On February 20, 2007, the Indiana Air Pollution Control Board published a final rule in the Indiana Register amending 326 IAC 8-5-1 and adding 326 IAC 8-5-6. The final rule stated that the rule would be "effective 30 days after filing with the Publisher." 326 IAC 8-5-6(c)(3) states that the owner or operator of a fuel grade dry mill ethanol production plant shall install and operate an enclosed flare with an overall control efficiency of not less than 98 percent.

326 IAC 8-5-6(d) provides that the owner or operator of a fuel grade ethanol dry mill production plant that was constructed or modified after April 1, 2007, that installs and operates an enclosed flare as its VOC control device, shall determine initial compliance with the control efficiency requirement within sixty (60) days after achieving maximum production levels but no later than one hundred and eighty (180) days after startup. On March 30, 2007, the Indiana Department of Environmental Management submitted a requested rule revision (amending 326 IAC 8-5-1 and adding 326 IAC 8-5-6) to the EPA. On September 13, 2007, the EPA published the final rule in the Federal Register. See, 72 Fed. Reg. 52286. On February 20, 2008, the EPA approved the March 30, 2007, request from IDEM to revise the Indiana SIP with an effective date of March 21, 2008. (73 Fed. Reg. 9201).

14. On August 5, 2010, the Indiana Department of Environmental Management (IDEM) issued Title V Operating Permit No. T135-28921-00033 to Cardinal. Prior to August 5, 2010, the facility operated under Federally Enforceable State Operating Permit #F135-23226-00033 which was issued on January 26, 2007.

15. Part D.5.2(b) of its Title V Permit requires Cardinal to install and operate an enclosed flare with an overall control efficiency of not less than 98 percent. IDEM modified the previous 326 IAC 8-1-6 requirements to the new 326 IAC 8-5-6 but the Title V Permit did not state that Cardinal was required to determine initial compliance.

16. The Administrator of EPA (the Administrator) 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.

17. Section 113(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.

18. 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

19. Cardinal owns and operates a fuel grade ethanol production dry mill facility at 1554 North County Road 600 East, Union City, Indiana (the facility).

20. The facility was constructed or modified after April 1, 2007, and uses the dry milling process. It contains one ethanol loading rack for trucks or rail cars identified as P64 and it exhausts to stack S50.

21. Cardinal has chosen to operate an enclosed flare as its VOC control device at the ethanol loading rack.

22. On or about August 5, 2010, IDEM approved and issued a new source review and Part 70 operating permit to Cardinal to modify facility operations to increase the production capacity from 110 million gallons of denatured ethanol per year (MMGPY) to 135 MMGPY.

23. On June 13, 2012, EPA performed an unannounced inspection of the facility. EPA observed that the initial compliance test for VOC control efficiency and that the overall VOC control efficiency demonstration for the flare had not been performed. EPA verbally indicated the facility may perform the testing to determine the overall VOC control efficiency at the flare.

24. On September 12, 2013, EPA issued a Request for Information to Cardinal facility under Section 114 of the CAA, 42 U.S.C. § 7414. On October 7, 2013 and January 10, 2014, Cardinal responded to EPA's Request for Information.

25. On September 29, 2014, EPA issued a Notice of Violation and Finding of Violation to Cardinal.

Alleged Violations

26. At its VOC control device (an enclosed flare), Cardinal failed to determine initial compliance with the control efficiency requirement within sixty (60) days after achieving maximum production levels, but no later than one hundred and eighty (180) days after startup, in violation of the Indiana SIP, 326 IAC 8-5-6(d), and 40 C.F.R. § 52.23.

27. Cardinal failed to demonstrate that it operated its enclosed flare with an overall control efficiency of not less than 98% percent in violation of Part D.5.2(b) of its Title V Permit, Section 502(a) of the CAA, 42 U.S.C. § 7661(a), 40 C.F.R. § 70.7(b), and 40 C.F.R. § 52.23.

Civil Penalty

28. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation in resolving this matter, and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$29,743.

29. Within 30 days after the effective date of this CAFO, Respondent must pay a \$29,743 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.

30. 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

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

32. 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.

33. 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

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

35. 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.

36. 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 34, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

37. Respondent certifies that it is complying fully with the above-referenced provisions of Title V Operating Permit No. T135-28921-00033.

38. 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).

39. The terms of this CAFO bind Respondent, its successors and assignees.

40. 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.

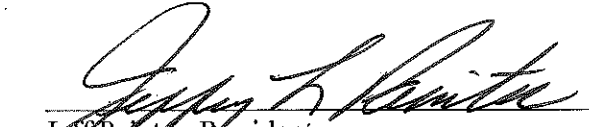
41. Each party agrees to bear its own costs and attorney's fees in this action.

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

43. This CAFO shall become effective immediately upon filing with the Regional Hearing Clerk.

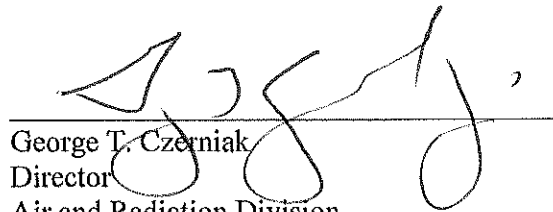
Cardinal Ethanol, LLC, Respondent

November 12, 2015
Date


Jeff Painter, President
Cardinal Ethanol, LLC

United States Environmental Protection Agency, Complainant

12/11/15
Date


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

Consent Agreement and Final Order
In the Matter of: Cardinal Ethanol, LLC

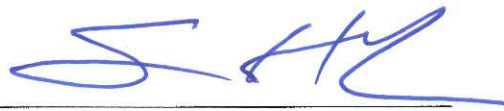
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Final Order

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.

12/17/15

Date



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



In the Matter of: **Cardinal Ethanol, LLC**
Docket Number: **CAA-05-2016-0010**

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 December 23, 2015, this day in the following manner to the addressees:

Copy by Certified Mail
Return-Receipt Requested:

Jeff Painter, President
Cardinal Ethanol, LLC
1554 North County Road 800 East
Union City, Indiana 47390

Copy by E-mail to
Respondent's Attorney:

James L. Pray
pray@brownwinick.com

Copy by E-mail to
Complainant:

Cynthia King
King.Cynthia@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: December 23, 2015



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

CERTIFIED MAIL RECEIPT NUMBER(S): _____

7011 1150 0000 2640 6448