



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

JUN 07 2010

REPLY TO THE ATTENTION OF:
AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gary Kramer, President
Badger State Ethanol, LLC
820 West 17th Street
Monroe, Wisconsin 53566

Dear Mr. Kramer:

Enclosed are an Administrative Consent Order (ACO) and a filed stamped Consent Agreement and Final Order (CAFO) which resolves Badger State Ethanol, LLC, (Badger) CAA Docket No. CAA-05-2010-0019. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUN 07 2010.

Pursuant to paragraph 30 of the CAFO, Badger must pay the \$51,065 civil penalty within 30 days of the date CAFO was filed, JUL 08 2010. Your check must display the case docket number, CAA-05-2010-0019, and the billing document number, 2751003A020.

Please direct any questions regarding this case to Susan Tennenbaum at 312-886-0273.

Sincerely yours,

Bonnie Bush, Chief
Air Enforcement and Compliance Assurance Section MI/WI

Enclosure

cc: Bill Baumann, Section Chief, Compliance and Enforcement
Wisconsin Department of Natural Resources

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
REGIONAL HEARING CLERK
U.S. EPA REGION 5
2010 JUN -7 PM 12:02

In the Matter of:) **Docket No.** CAA-05-2010-0019
)
Badger State Ethanol LLC) **Proceeding to Assess a Civil Penalty**
Monroe, Wisconsin,) **Under Section 113(d) of the Clean**
) **Air Act, 42 U.S.C. § 7413(d)**
Respondent.)
)

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) 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, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Badger State Ethanol LLC, a corporation doing business in Wisconsin.
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 Rights to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations 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. Section 111(e) of the Act, 42 U.S.C. § 7411(e), provides that after the effective date of a standard of performance promulgated under Section 111, it is unlawful for any owner or operator of any new source to operate such source in violation of the standard.

10. Section 111(a)(2) of the Act, 42 U.S.C. § 7411(a)(2), defines the term "new source" as any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under Section 111 that is applicable to such source.

11. 40 C.F.R. § 60.7 requires, in pertinent part, that any owner or operator subject to the provisions of Part 60 provide written notification of the date of construction, the date of start up, the date of any physical or operational change to a NSPS affected facility, and the startup date of any continuous monitoring systems.

12. On December 16, 1987, EPA promulgated 40 C.F.R. Part 60 Subpart Db - Standards of Performance for Industrial Commercial Steam Generating Units (40 C.F.R. §§ 60.40b - 60.49b). *52 Fed. Reg.* 47842.

13. 40 C.F.R. § 60.40b(a) states that the affected facility to which Subpart Db applies is each steam generating unit that commences construction, modification, or reconstruction after

June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 MW (100 million Btu/hour).

14. 40 C.F.R. § 60.41b defines "steam generating unit" as a device that combusts any fuel or byproduct/waste to produce steam or heat water or any other heat transfer medium.

15. 40 C.F.R. § 60.41b defines "natural gas" as (1) a naturally occurring mixture of hydrocarbon gases found in geological formations beneath the earth's surface, of which the principal constituent is methane; or (2) liquefied petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835 (incorporated by reference).

16. 40 C.F.R. § 60.44b(a) provides that no owner or operator of a Subpart Db affected facility that combusts a natural gas with low heat release rate from a steam generating unit shall cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides (NO_x) (expressed as NO₂) in excess of 43 ng/J (0.10 lb/million Btu) heat input.

17. 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, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

18. 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.

19. 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 violation alleged in this CAFO.

Factual Allegations and Alleged Violations

20. Badger State Ethanol LLC (Badger) is a Wisconsin corporation, authorized to do business in the State of Wisconsin.

21. Badger owns and operates an ethanol manufacturing facility at 820 West 17th Street, Monroe, Wisconsin (the facility).

22. Badger's facility includes a thermal oxidizer with a heat recovery boiler, permitted by the Wisconsin Department of Natural Resources (WDNR) as Process P10.

23. Badger commenced construction on the steam generating unit (P10) in 2001, at which point it had a heat input capacity of 125 million Btu per hour. Process P10 vents air emissions, including NO_x emissions, out of Stack S10.

24. Badger's thermal oxidizer with a heat recovery boiler, Process P10, is a "steam generating unit" within the meaning of 40 C.F.R. § 60.41b, and is subject to the Standards of Performance for Industrial Commercial Steam Generating Units, 40 C.F.R. Part 60, Subpart Db.

25. On or about November 2006, Badger completed the installation of a front-end corn fractionation project.

26. Badger performed a stack test on Stack S10 on June 26, 2008. The results of that test indicated that Badger was emitting NO_x at the rate of 0.21 lb/mm Btu, exceeding the 0.10 lb/mm Btu limit of 40 C.F.R. § 60.44b(a).

27. Complainant alleges that Badger exceeded the 0.10 NO_x emissions limit required by the NSPS, Subpart Db, in violation of 40 C.F.R. § 60.44b(a) and of Section 111(e) of the Act, 42 U.S.C. § 7411(e).

28. Badger has shut down the front-end corn fractionation project which caused NO_x emissions to exceed 0.10 lb/mmBTU out of Stack S10 and now operates a back-end fractionation process.

Civil Penalty

29. 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 in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$51,065.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$51,065 civil penalty by electronic funds transfer, payable to the "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, NY 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 the case name, In the Matter of Badger State Ethanol LLC., the docket number of this CAFO and the billing document number.

31. Respondent must send notice of the electronics funds transfer, in paragraph 30, above, including Respondent's name, complete address, the case docket number, and the billing document number:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Susan Tennenbaum (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

33. If Respondent does not pay timely the civil penalty, 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)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

34. 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

35. This CAFO settles and resolves only Respondent's liability for federal civil penalties for the facts and violations alleged in this CAFO and the August 12, 2009 Finding of Violation.

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

37. 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 35, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

38. Respondent certifies that it is complying fully with 40 C.F.R. Part 60, Subpart Db, and Section 111 of the Act, 42 U.S.C. § 7411.

39. This CAFO constitutes an "enforcement response" as that term is used in 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).

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

41. 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.

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

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

Badger State Ethanol LLC, Respondent

May 20, 2010
Date

Gary J. Kramer
Gary Kramer, President
Badger State Ethanol LLC.

United States Environmental Protection Agency, Complainant

6/1/10
Date

Cheryl L. Newton
Cheryl L. Newton, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF REGIONAL COUNCILS
MAY 11 2010

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

Badger State Ethanol LLC

Docket No. CAA-05-2010-0019

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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.

June 4, 2010

Date

S. Hedman

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

**U.S. ENVIRONMENTAL
PROTECTION AGENCY**

MAY 21 2010

**OFFICE OF REGIONAL
COUNSEL**

In the Matter of:
Badger State Ethanol, LLC
Docket No. CAA-05-2010-0019

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Certificate of Service

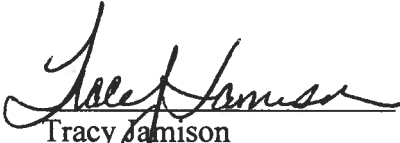
I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-19J), United States Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that mailed by Certified Mail, Receipt No. 7009 1680 0000 7667 3983, the second original to Respondent, addressed as follows:

Gary Kramer, President
Badger State Ethanol, LLC
820 West 17th Street
Monroe, Wisconsin 53566

I also certify that I sent copies of the Consent Agreement and Final Order by first class mail to:

Bill Baumann, Section Chief, Compliance and Enforcement
Wisconsin Department of Natural Resources
Bureau of Air Management
101 S Webster Street
P.O. Box 7921 (AM/7)
Madison, Wisconsin 53702

On this June day of 7, 2010.


Tracy Jamison
Office Automation Assistant
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7667 3983