



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

SEP 30 2011

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Manouch Daneshvar, Vice President and General Manager
Marysville Ethanol, LLC
2510 Busha Highway
Marysville, Michigan 48040

Dear Mr. Daneshvar:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Marysville Ethanol, LLC, (Marysville) CAA Docket No. CAA-05-2011-0064. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 30, 2011.

Pursuant to paragraph 25 of the CAFO, Marysville must pay the civil penalty within 60 days of the date CAFO was filed, November 30, 2011. Your check must display the case name Marysville Ethanol, LLC, the docket number, CAA-05-2011-0064, and the billing document number, 2751103A062.

Please direct any questions regarding this case to Louise Gross, Associate Regional Counsel, at (312) 886-6844.

Sincerely,

Sara Breneman

Sara Breneman, Chief
Air Enforcement and Compliance Assurance Section MI/WI

Enclosure

cc: Marcy Toney, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Louise Gross/C-14J
Tom Hess, Enforcement Unit Chief
Michigan Department of Environmental Quality

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2011-0064
)	
Marysville Ethanol, LLC)	Proceeding to Assess a Civil Penalty
Marysville, Michigan,)	Under Section 113(d) of the Clean Air Act
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

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Consent Agreement and Final Order

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Marysville Ethanol, LLC, a limited liability company doing business in Michigan.

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 the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO, neither admits nor denies the facts alleged by Complainant in this CAFO and in its September 23, 2010 Notice of Violation, and denies violating the Clean Air Act (CAA).

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. On May 6, 1980, pursuant to Section 110(a) of the CAA, 42 U.S.C. § 7410(a), the EPA approved R336.1201 (Permits to Install) as part of the federally enforceable Michigan State Implementation Plan (SIP); the rule became effective on that same date. 45 Fed. Reg. 29790.

10. The Michigan SIP at R336.1201 provides, in relevant part: "A person shall not install, construct, reconstruct, relocate, or alter any process, fuel-burning equipment, or control equipment pertaining thereto, which may be a source of an air contaminant, until a permit is issued... This shall be known as a permit to install and shall cover construction, reconstruction, relocation, and alteration of equipment where such is involved."

11. 40 C.F.R. § 52.23 provides, among other things, that a person who fails to comply with any permit condition issued in accordance with a SIP-approved installation permit or with any approved regulatory provision of a SIP is in violation of and subject to an enforcement action under Section 113 of the Act.

12. 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 through January 12, 2009, and 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 Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

13. 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.

14. 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 Violations

15. Marysville Ethanol is a Michigan Limited Liability Company authorized to do business in the State of Michigan.

16. Marysville Ethanol owns and operates an ethanol manufacturing facility at 2510 Busha Highway, Marysville, Michigan (the facility).

17. The facility includes a recuperative thermal oxidizer (RTO) with a heat recovery steam generator (Emission Unit# EU-RTOA&HRSG) and distiller's grain with solubles (DDGS) cooling baghouse C70 (Emission Unit #EU-DDGSCOOLINGA).

18. On July 12, 2007, the Michigan Department of Environmental Quality (MDEQ) issued to Marysville Ethanol a Permit to Install (PTI) with conditions, PTI #175-05B.

Marysville Ethanol's PTI #175-05B establishes the following permit conditions, among others:

- (a) The RTOA&HRSG Emission Unit (Emission Limit 12.1d, FG-RTOA) shall not emit more than 10.75 pounds of nitrogen oxides (NO_x) per hour; and
- (b) The EU-COOLINGA Emission Unit (Emission Limit 2.1a, EU-DDGSCOOLINGA, Cooling Baghouse C70) shall not emit more than 1.20 pounds of particulate matter particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers, or PM₁₀) per hour.

19. On or about March 17, 2010, Complainant inspected the facility. During the inspection, Complainant requested copies of stack tests performed by Marysville Ethanol in 2008, records of hourly NO_x from the RTOA&HRSG, and records of RTOA combustion chamber temperatures. On or about April 12, 2010, Marysville Ethanol submitted the information requested during the March 17, 2010 inspection.

20. The information provided by Marysville Ethanol included a stack test performed on its DDGSCOOLINGA Baghouse C70 on January 31, 2010. The results of that test indicated that Marysville Ethanol was emitting PM₁₀ at the rate of 10.99 pounds per hour.

21. Marysville Ethanol has a predictive emissions monitoring system (PEMS) that records information, including but not limited to, average hourly NO_x emissions from the RTO in units of lb NO_x per MMBtu, and hourly natural gas flow rate in units of MMBtu. Based upon calculations performed by Complainant using the hourly NO_x emissions in lb/MMBtu and hourly natural gas flow in MMBtu recorded by the PEMS, Complainant determined that Marysville Ethanol exceeded its permitted limit of 10.75 pounds NO_x per hour from December 3, 2009 through April 1, 2010 at the EU-RTO&HRSGA emission unit.

22. Complainant alleges that Marysville Ethanol has exceeded the emission limit specified in PTI #175-05B, Emission Limit 12.1d, FG-RTOA, NOx emissions limit of 10.75 pounds per hour, which violates Michigan Administrative Code R336.1201 and 40 C.F.R. § 52.23.

23. Complainant alleges that Marysville Ethanol has exceeded the emission limit specified in PTI #175-05B, Emission Limit 2.1a, EU-DDGSCOOLINGA, Cooling Baghouse C70, PM₁₀ emission limit of 1.20 pounds per hour, which violates the Michigan Administrative Code R336.1201 and 40 C.F.R. § 52.23.

Civil Penalty

24. 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 other factors such as cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$50,000.

25. Within 60 days after the effective date of this CAFO, Respondent must pay a \$50,000 civil penalty sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note Respondent's name, the docket number of this CAFO, and the billing document number.

26. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO, and the billing document number to the Compliance Tracker, Air

Enforcement and Compliance Assurance Branch, and to Louise Gross, Office of Regional Counsel, 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

Louise Gross, Associate Regional Counsel (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

28. If Respondent does not pay timely the civil penalty, EPA may 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 Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

29. 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 under 26 U.S.C. § 6621(a)(2). 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

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

31. 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.

32. 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 30, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

33. Respondent certifies that it is complying fully with PTI #175-05C.

34. 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 Act, 42 U.S.C. § 7413(e).

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

36. 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.

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

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

39. This CAFO shall terminate when Respondent has paid in full all penalties due and owing under this CAFO.


Marysville Ethanol, LLC, Respondent

9/26/11 SB
Date


Manouch Daneshvar, Vice President
Marysville Ethanol, LLC

United States Environmental Protection Agency, Complainant

9/27/11
Date


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

Consent Agreement and Final Order
In the Matter of: Marysville Ethanol, LLC
Docket No. CAA-05-2011-0064

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.

9-30-11

Date



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



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PROTECTION AGENCY

Consent Agreement and Final Order
In the Matter of: Marysville Ethanol, LLC
Docket No. CAA-05-2011-0064

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2011-0064 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Manouch Daneshvar, Vice President and General Manager
Marysville Ethanol, LLC
2510 Busha Highway
Marysville, Michigan 48040

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency
77 W. Jackson Boulevard / Mail Code C-14J
Chicago, Illinois 60604

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Tom Hess, Enforcement Unit Chief
Air Quality Division
Michigan Department of Natural Resources & Environment
P.O. Box 30242
Lansing, Michigan 48909

On the 30th day of September 2011.

William L. MacDowell
Tracy Jamison
Office Automation Assistant
PAS Section

CERTIFIED MAIL RECEIPT NUMBER: _____