



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

**MAY 17 2016**

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Jim Lambert  
General Manager  
POET Biorefining – Lake Crystal  
19200 499<sup>th</sup> Avenue  
Lake Crystal, Minnesota 56055

Dear Mr. Lambert:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case POET Biorefining – Lake Crystal docket no. CAA-05-2016-0024. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

May 17, 2016.

Pursuant to paragraph 44 of the CAFO, POET Biorefining – Lake Crystal must pay the civil penalty within 30 days of the effective date of the CAFO. Your check must display the docket number CAA-05-2016-0024.

Please direct any questions regarding this case to Mr. Tom Williams, Associate Regional Counsel, at (312)-886-0814.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Marshall".

Sarah Marshall  
Chief  
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Tom Williams/C-14J  
Katie Koelfgen, MPCA (by email)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



<b>In the Matter of:</b>	)	<b>Docket No.</b>	<b>CAA-05-2016-0024</b>
	)		
<b>Northstar Ethanol, LLC d/b/a</b>	)		
<b>POET Biorefining - Lake Crystal</b>	)	<b>Proceeding to Assess a Civil Penalty</b>	
<b>Lake Crystal, Minnesota</b>	)	<b>Under Section 113(d) of the Clean Air Act</b>	
	)	<b>42 U.S.C. § 7413(d)</b>	
<b>Respondent.</b>	)		
_____	)		

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 Northstar Ethanol, LLC, doing business as POET Biorefining - Lake Crystal (POET), a corporation doing business in Minnesota. Respondent owns and operates an ethanol production facility located at 19200 499th Avenue, Lake Crystal, Minnesota (the Facility).

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 and neither admits nor denies the factual allegations or legal conclusions 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.

**Applicable Statutory and Regulatory Background**

9. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$295,000 for violations that occurred from January 12, 2009, through December 6, 2013, and may assess a civil penalty of up to \$320,000 for violations occurring after December 6, 2013, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

10. 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.

11. 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.

### Federally Enforceable State Operating Permit Program

12. On May 24, 1995, EPA approved Minnesota Administrative Rules (MAR) 7007.0050 through 7007.1850 as part of the federally-enforceable Minnesota State Implementation Plan (Minnesota SIP). 60 Fed. Reg. 27411.

13. MAR 7007.0050 through 7007.1850 authorize the Minnesota Pollution Control Agency (MPCA) to issue federally-enforceable state operating permits (FESOPs) with such terms and conditions as are necessary to ensure compliance with applicable laws and to ensure adequate protection of environmental quality.

14. Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), authorizes the Administrator to initiate an enforcement action whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of an applicable implementation plan or permit.

### FESOP Requirements

15. The MPCA issued Air Emission Permit No. 01300099-001 to the Facility with an effective date of June 22, 2004. MPCA issued modifications to the permit on April 18, 2005, March 28, 2006, and October 6, 2008 (2008 Permit). This 2008 Permit, which is identified as Air Emission Permit No. 01300099-005, was in effect at the Facility through December 12, 2012.

16. For the group of emission units classified as GP 003 – Fermentation and Distillation, the 2008 Permit requires that all emissions are vented to the fermentation scrubber (CE007) and the regenerative thermal oxidizer (RTO, CE008), except as provided under an Alternative Operating Scenario (AOS). The AOS allows for bypass of the thermal oxidizer

(CE008) up to 500 hours per year, but requires that emission be vented to the fermentation scrubber (CE007) at those times.

17. For the group of emission units classified as GP 003 – Fermentation and Distillation, the 2008 Permit further requires that POET daily record the hours of and reasons for by-passing the RTO (CE008) with some or all of the emissions from GP003.

18. For the two emission units included under PG 008 – Dryers, the 2008 Permit limits the beer feed rate to a maximum of 600 gallons per minute (gpm), or to the maximum feed rate measured during the last stack emissions testing that demonstrated compliance.

19. For the wet scrubber (CE 007) controlling emissions from the fermentation and distillation operations, the 2008 Permit requires the water flow rate to be 49.5 gpm or more, or as measured during the most recent stack emissions test that demonstrated compliance.

20. For the wet scrubber (CE 007), the 2008 Permit further requires that, if the water flow rate is not equal to or greater than the minimum value, POET take corrective action as soon as possible to achieve the required operating values and keep a record of the type and date of all corrective actions taken.

21. Among the conditions that apply to the entire Facility, the 2008 Permit requires that the Facility create and follow an Operation and Maintenance Plan (O&M Plan) which, at a minimum, identifies all air pollution control equipment and includes a preventative maintenance program for that equipment and a description of corrective actions to be taken to restore the equipment to proper operation to meet applicable permit conditions.

#### Title V Permit Program

22. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, established an operating permit program for major sources of air pollution.

23. In accordance with Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), the EPA promulgated regulations establishing the minimum elements of a Title V permit program for any air pollution control agency to administer. See 57 Fed. Reg. 32295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

24. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to the EPA a permit program meeting the requirements of Title V.

25. On December 4, 2001, EPA provided full and final approval for the State of Minnesota Title V operating permit program. See 40 C.F.R. Part 70, Appendix A; 66 Fed. Reg. 62967 (December 4, 2001).

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

27. 40 C.F.R. § 70.6(b)(1) provides that EPA may enforce all terms and conditions in a Title V permit.

#### Title V Permit Requirements

28. MPCA issued a Title V Permit, Air Emission Permit No. 01300099-006, to the Facility with an effective date of December 13, 2012 (Title V Permit). This permit remains in effect.

29. For the group of emission units classified as GP 003 – Fermentation and Distillation, the Title V Permit requires that all emissions are vented to the fermentation scrubber (CE007) and the RTO (CE008), except as provided under an Alternative Operating Scenario

(AOS). The AOS allows for bypass of the thermal oxidizer (CE008) up to 500 hours per year, but requires that emissions be vented to the fermentation scrubber (CE007) at those times.

30. For the group of emission units classified as GP 003 – Fermentation and Distillation, the 2008 Permit further requires that POET daily record the hours of and reasons for by-passing the RTO (CE008) with some or all of the emissions from GP003.

31. For the two emission units included under PG 008 – Dryers, the Title V Permit limits the beer feed rate to a maximum of 641 gallons per minute (gpm), or to the maximum feed rate measured during the last stack emissions testing that demonstrated compliance.

32. For the wet scrubber (CE 007), the Title V Permit requires the water flow rate to be 35 gpm or more during normal operations when emissions are vented to the RTO, or as measured during the most recent stack emissions test that demonstrated compliance.

33. For the wet scrubber (CE 007), the Title V Permit also requires the water flow rate to be 49.5 gpm or more when emissions are bypassing the RTO (CE 008), or as measured during the most recent stack emissions test that demonstrated compliance.

34. For the wet scrubber (CE 007), the Title V Permit further requires that, if the water flow rate is not equal to or greater than the minimum value, POET take corrective action as soon as possible to achieve the required operating values and keep a record of the type and date of all corrective actions taken.

35. Among the conditions that apply to the entire Facility, the Title V Permit requires that the Facility create and follow an Operation and Maintenance Plan (O&M Plan) which, at a minimum, identifies all air pollution control equipment and includes a preventative maintenance program for that equipment and a description of corrective actions to be taken to restore the equipment to proper operation to meet applicable permit conditions.

### **Factual Allegations and Alleged Violations**

36. POET owns and operates an ethanol production plant located at 19200 499th Avenue, Lake Crystal, Minnesota.
37. EPA issued an information request to the Facility under Section 114 of the CAA, dated May 4, 2015 (2015 Information Request).
38. POET provided responses to the 2015 Information Request received on June 16, 2015, and July 20, 2015.
39. Emissions from the fermentation and distillation operations at the Facility are controlled by a packed-bed, high efficiency wet scrubber (CE 007) and an RTO (CE 008) operated in series. Periods of downtime at the scrubber result in emissions from fermentation and distillation being vented to the atmosphere.
40. From March 1, 2010, through May 12, 2015, POET: intermittently operated fermentation and distillation units during scrubber downtime; failed to maintain a daily record of the reason for bypassing the RTO (CE 008) while operating under the AOS; intermittently exceeded the permitted beer feed rate; intermittently failed to maintain the required water flow at the wet scrubber (CE 007); failed to take and record corrective actions during deviations at the wet scrubber (CE 007); and failed to operate according to an O&M Plan, in violation of conditions of their 2008 Permit and Title V Permit.
41. On September 30, 2015, EPA issued the Respondent a Notice of Violation and Finding of Violation (NOV/FOV) alleging that it violated provisions of the 2008 Permit and the Title V Permit as outlined in paragraph 40, above.
42. On December 2, 2015, representatives of the Respondent and EPA discussed the NOV/FOV.



**Civil Penalty**

43. 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, and the Respondent's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$150,000.

44. Within 30 days after the effective date of this CAFO, Respondent must pay a \$150,000 civil penalty by: 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

Or, for checks sent by express mail (non-U.S. Postal Service will not deliver mail to P.O. Boxes), sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

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

45. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch, to Tom Williams of the Office of Regional Counsel and the Regional Hearing Clerk 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

Tom M. Williams (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

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

47. If Respondent does not timely pay 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.

48. 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

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

50. 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.

51. 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 49, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

52. 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).

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


54. 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.

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

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

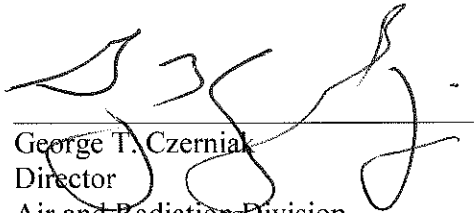
**POET Biorefining – Lake Crystal, Respondent**

4-24-2014  
Date

  
\_\_\_\_\_  
Jim Lambert  
General Manager  
POET Biorefining – Lake Crystal

**United States Environmental Protection Agency, Complainant**

5/10/16  
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: POET Biorefining - Lake Crystal**  
**Docket No. CAA-05-2016-0024**



**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.

May 12, 2016  
Date

Robert A. Kaplan  
Robert A. Kaplan  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the matter of: POET Biorefining – Lake Crystal  
Docket Number: CAA-05-2016-0024



CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number [ CAA-05-2016-0024 ], which was filed on [ May 17, 2016 ], in the following manner to the following addressees::

Copy by Certified Mail  
to Respondent:

Jim Lambert  
General Manager  
POET Biorefining - Lake Crystal  
19200 499th Avenue  
Lake Crystal, Minnesota 56055

Copy by e-mail to  
Attorney for Complainant:

Tom Williams  
williams.tom@epa.gov

Copy by e-mail to  
Attorney for Respondent:

Terri Czajka  
Terri.Czajka@icemiller.com

Copy by e-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated: May 17, 2016

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

CERTIFIED MAIL RECEIPT NUMBER(S):

7011 1150 0000 2640 6752