



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

FEB 24 2010

REPLY TO THE ATTENTION OF:

AE 17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David B. Smith
Safety Health and Environmental Manager
Louis Dreyfus Agricultural Industries LLC
7344 State Road 15 South
Claypool, Indiana 46510

Dear Mr. Smith:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves Louis Dreyfus Agricultural Industries, LLC (Louis Dreyfus) CAA Docket No. **CAA-05-2010-0011**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on ~~_____ FEB 24 2010 _____~~.

Pursuant to paragraph 38 of the CAFO, Louis Dreyfus must pay the \$77,628 civil penalty within 30 days of the date the CAFO was filed, ~~_____ MAR 26 2010 _____~~. The check must display the case docket number, **CAA-05-2010-0011**, and the billing document number, **2751003A012**.

Please direct any questions regarding this case to Cynthia A. King at 312-886-6832.

Sincerely yours,

  For Brent Marable

Brent Marable, Chief
Air Enforcement and Compliance Assurance Section IL/IN

Enclosure

cc: Phil Perry, Chief
Office of Enforcement Air Section
Indiana Department Environmental Management

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Louis Dreyfus Agricultural)
Industries LLC,)
Claypool, Indiana)
)
Respondent.)

Docket No. CAA-05-2010-0011
Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

RECEIVED
FEB 24 2010

Consent Agreement and Final Order
Preliminary Statement

REGIONAL HEARING CLERK
USEPA
REGION 5

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 (U.S. EPA), Region 5.

3. Respondent is Louis Dreyfus Agricultural Industries LLC (Louis Dreyfus), a limited liability corporation 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 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 Right 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. Under Section 111 of the Act, 42 U.S.C. § 7411, the Administrator of U.S. EPA promulgated the New Source Performance Standards (NSPS) “Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or before November 7, 2006,” codified at 40 C.F.R Part 60, Subpart VV. The NSPS Subpart VV is incorporated by reference into the Indiana SIP as 326 Indiana Administrative Code (IAC) 12.

10. The NSPS, Subpart VV, 40 C.F.R § 60.480(a)(1), applies to affected facilities in the synthetic organic chemicals manufacturing industry.

11. Under 40 C.F.R § 60.480(a)(2), the group of all equipment within a process unit is an affected facility.

12. Equipment is defined at 40 C.F.R. § 60.481 as “each pump, pressure relief device, sampling connection system, open-ended valve or line, valve, and flange or other connector in VOC service and any devices or systems required by this subpart.”

13. Process unit is defined at 40 C.F.R. § 60.480(f) as “components assembled to produce, as intermediate or final products, one or more of the chemicals listed in Sec. 60.489 of this

part. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product.”

14. The NSPS, Subpart VV provides at 40 C.F.R § 60.482-1 that each owner or operator subject to the provisions of the subpart shall demonstrate compliance with the requirements of 40 C.F.R. §§ 60.482-1 through 60.482-10 or 40 C.F.R. § 60.480(e) for all equipment within 180 days of initial start-up.

15. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. U.S. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. See 57 Fed. Reg. 32295; 40 C.F.R. Part 70. U.S. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. See 61 Fed. Reg. 34228; 40 C.F.R. Part 71.

16. U.S. EPA promulgated full approval of the Indiana Title V program on December 4, 2001. See 66 Fed. Reg. 629469. Final interim approval was promulgated on November 14, 1995. See 60 Fed. Reg. 57188. Indiana’s Title V program became effective on December 14, 1995. Indiana’s Title V program is codified at 326 IAC 2-7.

17. Section 503 of the Act, 42 U.S.C. § 7661b, sets forth the requirement to timely submit an application for a permit, including information required to be submitted with the application.

18. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan.

19. 40 C.F.R. § 70.1(b) and 326 IAC 2-7-2, provide that: “[a]ll sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.”

20. 40 C.F.R. § 70.2 defines “applicable requirement” to include “(1) [a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter”

21. 40 C.F.R. § 70.7(b) and 326 IAC 2-7-2, provide that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act.

22. Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), the Administrator of EPA may assess civil penalties of up to \$25,000 per day for each violation of the Act. Under the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19, that amount was increased to \$32,500 per day of violation, up to a total of \$270,000, for violations that occurred between March 15, 2004 and January 11, 2009, and up to \$37,500 per day of violation, up to a total of \$295,000, for violations that have occurred on or after January 12, 2009.

23. 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.

24. 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

25. Louis Dreyfus is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
26. The Louis Dreyfus facility in Claypool, Indiana includes a biodiesel plant which is a “process unit” as that term is defined at 40 C.F.R. § 60.480(f).
27. Louis Dreyfus applied for a Title V Operating Permit on May 18, 2005.
28. The Indiana Department of Environmental Management (IDEM) issued a Title V permit to Louis Dreyfus on January 24, 2006, that includes requirements applicable to the biodiesel plant. The Title V permit has been amended on several occasions.
29. At the biodiesel plant, Louis Dreyfus has pumps, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, and flanges or other connectors in VOC service.
30. The pumps, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, and flanges or other connectors in VOC service at the biodiesel plant is equipment as defined in NSPS, Subpart VV, 40 C.F.R. § 60.481.
31. The group of all equipment within a process unit is an affected facility and, as such, the pumps, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, and flanges or other connectors in VOC service at the biodiesel plant are subject to the requirements of the NSPS, Subpart VV.
32. Condition D.4.13 of Louis Dreyfus’ Title V Operating Permit states:

[p]ursuant to [40] CFR Part 60, Subpart VV, the Permittee shall comply with the provisions of 40 CFR Part 60, Subpart VV, which are incorporated by reference as 326 IAC 12, for the biodiesel process as follows:

§ 60.480 Applicability and designation of affected facility.

(a)(1) The provisions of this subpart apply to affected facilities in the synthetic organic chemicals manufacturing industries.

(2) The group of all equipment (defined in § 60.481) with a process unit is an affected facility.

(b) Any affected facility under paragraph (a) of this section that commences construction or modification after January 5, 1981, shall be subject to the requirements of this subpart.

§ 60.482-1 Standards: General

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of §§ 60.482-1 through 60.482-10 or § 60.480(e) for all equipment within 180 days of initial start-up.

33. Louis Dreyfus was required to demonstrate compliance with the requirements of the NSPS, Subpart VV, within 180 days of initial start-up, or by August 5, 2008.

34. As of August 18, 2008, Louis Dreyfus had not demonstrated compliance with the requirements of the NSPS, Subpart VV, 40 C.F.R. §§ 60.482-1 through 60.482-10 or § 60.480(e) for all equipment.

35. Louis Dreyfus failure to demonstrate compliance with the provisions of 40 C.F.R. Part 60, Subpart VV, is in violation of Section 111 of the Act, 42 U.S.C. § 7411.

36. Louis Dreyfus' failure to comply with Condition D.4.13 of the facility's Title V Permit is in violation of Section 502 of the Act, 42 U.S.C. § 7661a.

37. On October 10, 2008, Louis Dreyfus submitted their initial notification regarding NSPS, Subpart VV applicability to U.S. EPA.

Civil Penalty

38. 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 Louis Dreyfus's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is

\$77,628.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$77,628 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, the docket number of this CAFO and the billing document number.

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

41. If Respondent does not pay timely the civil penalty, U.S. 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.

42. 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

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

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

45. 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 43, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

46. Respondent certifies that it is complying fully with the NSPS, Subpart VV.

47. This CAFO constitutes an "enforcement response" as that term is used in U.S. 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).

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

49. 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.

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

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

52. The requirements of this CAFO shall be considered satisfied when the civil penalty has been paid.

53. This CAFO is effective immediately upon filing with the Regional Hearing Clerk.

Louis Dreyfus Agricultural Industries LLC, Respondent

February 13, 2010

Date



H. Thomas Hayden Jr.
Vice President

United States Environmental Protection Agency, Complainant

2/22/10

Date



Cheryl Newton, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: Louis Dreyfus Agricultural Industries LLC
Docket No. CAA-05-2010-0011

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.

2/23/10
Date

Walter W. Karalick
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5

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FEB 24 2010
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USEPA
REGION 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY
FEB 19 2010
OFFICE OF REGIONAL
COUNSEL

In the Matter of:
Louis Dreyfus Agricultural Industries, LLC
Docket No. CAA-05-2010-0011

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-13J), United States Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that mailed by Certified Mail, Receipt No. _____, the second original to Respondent, addressed as follows:

David B. Smith
Safety Health and Environmental Manager
Louis Dreyfus Agricultural Industries LLC
7344 State Road 15 South
Claypool, Indiana 46510

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

Phil Perry, Chief
Office of Enforcement Air Section
Indiana Department Environmental Management
100 North Senate Avenue, Room 1001
Indianapolis, Indiana 46206-6015

On this 24th day of February, 2010.



Betty Williams, Administrative
Program Assistant

Certified Mail Receipt Number: 7001 0320 0005 89160170

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