



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

**MAY 30 2013**

REPLY TO THE ATTENTION OF:

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

Erik Huschitt, General Manager & VP Operations  
Badger State Ethanol, LLC  
820 West 17<sup>th</sup> Street  
Monroe, Wisconsin 53566

Dear Mr. Huschitt:

Enclosed is a filed stamped Consent Agreement and Final Order (CAFO) which resolves Badger State Ethanol, LLC, (Badger) CAA Docket No. CAA-05-2013-0027. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on MAY 30 2013.

Pursuant to paragraph 27 of the CAFO, Badger must pay the \$39,650 civil penalty within 30 days of the date CAFO was filed, MAY 30 2013. Your check must display the case docket number, CAA-05-2013-0027

Please direct any questions regarding this case to Cynthia King at 312-886-6810.

Sincerely,

A handwritten signature in cursive script that reads "Sara Breneman".

Sara Breneman  
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**

<b>In the Matter of:</b>	)	<b>Docket No.</b> CAA-05-2013-0027
	)	
<b>Badger State Ethanol LLC</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Monroe, Wisconsin</b>	)	<b>Under Section 113(d) of the Clean Air Act,</b>
	)	<b>42 U.S.C. § 7413(d)</b>
<b>Respondent.</b>	)	
_____	)	

RECEIVED  
REGIONAL HEARING OFFICE  
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REGIONAL HEARING OFFICE  
2013 MAY 30 PM 2:23

**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, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Badger State Ethanol LLC (Badger or Respondent), a limited liability corporation doing business in Wisconsin.
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. Badger 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. Badger admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Badger 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 which will be 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 of the new source performance standards (NSPS) 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, 52 Fed. Reg. 47842, EPA promulgated 40 C.F.R. Part 60 Subpart Db – Standards of Performance for Industrial Commercial Steam Generating Units at 40 C.F.R. §§ 60.40b – 60.49b..

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” to mean 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” to mean (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<sub>x</sub>) (expressed as NO<sub>2</sub>) 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 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 CAA, 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 violations alleged in this CAFO.

**Factual Allegations and Alleged Violations**

20. Badger owns and operates a fuel grade ethanol manufacturing facility at 820 West 17<sup>th</sup> Street, Monroe, Wisconsin (the facility).

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

22. 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<sub>x</sub> emissions, out of Stack S10.

23. On January 5, 2005, the WDNR issued Air Pollution Control Operation Permit No. #123038080-F01 (FESOP) to Badger for the facility. This FESOP expired on January 5, 2010. Badger applied for a renewal on June 24, 2009, and FESOP No. 123038080-F01 is active as WDNR has not acted upon the renewal permit application.

24. Part I.A.5. of the FESOP Permit No. # 123038080-F01 prohibits Process P10 from emitting NO<sub>x</sub> in excess of 0.10 pound per million Btu heat input.

25. On October 27, 2011, Badger submitted a quarterly CEMS report for July 1 through September 30, 2011.

26. EPA alleges that Badger exceeded the 0.10 pound per million Btu heat input 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).

**Civil Penalty**

27. 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 Badger's cooperation and prompt return to compliance in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$39,650.

28. Within 30 days after the effective date of this CAFO, Badger must pay the \$39,650 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and send 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, the docket number of this CAFO and the billing document number.

29. Badger must send a notice of payment, including Badger's name, complete address, the case docket number of this CAFO and the billing document number 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

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

31. If Badger 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 Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. Badger 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). Badger must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Badger 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**

33. This CAFO resolves only Badger's liability for federal civil penalties for the violations alleged in this CAFO and the September 18, 2012 Notice and Finding of Violation.

34. 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.

35. This CAFO does not affect Badger's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in paragraph 33, above,

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

36. Badger 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.

37. 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).

38. The terms of this CAFO bind Badger, its successors and assigns.

39. 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.

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

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

42. This CAFO is effective on the date that the Final Order is filed with the Regional Hearing Clerk.

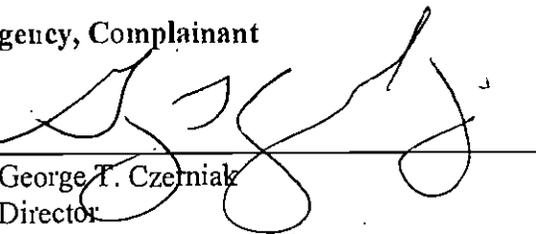
**Badger State Ethanol LLC, Respondent**

4-23-13  
Date

  
Erik Huschitt  
General Manager & VP Operations  
Badger State Ethanol

**United States Environmental Protection Agency, Complainant**

5/23/13  
Date

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

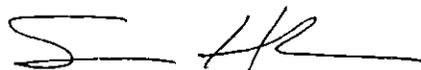
**Consent Agreement and Final Order**  
**In the Matter of: Badger State Ethanol LLC**  
Docket No. CAA-05-2013-0027

**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.

5-28-13

Date



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

In the Matter of:  
Badger State Ethanol, LLC  
Docket No. CAA-05-2013-0027

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 I mailed by Certified Mail, Receipt No. 7009 1680 0000 7667 5734, the second original to Respondent, addressed as follows:

Erik Huschitt, General Manager & VP Operations  
Badger State Ethanol, LLC  
820 West 17<sup>th</sup> 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

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On this 31 day of May, 2013.



Office Automation Assistant  
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7667 5734