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

SEP 2 3 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steven R. McNinch
General Manager
POET Biorefining – Glenville
15300 780th Avenue
Albert Lea, Minnesota 56007

Dear Mr. McNinch:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves the case against POET Biorefining – Glenville Docket no. **CAA-05-2016-0043**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 23, 2016.

Pursuant to paragraph 33 of the CAFO, POET Biorefining – Glenville must pay the civil penalty within 30 days of the effective date of the CAFO. Your check must display the docket number **CAA-05-2016-0043**.

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

Sincerely,

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)

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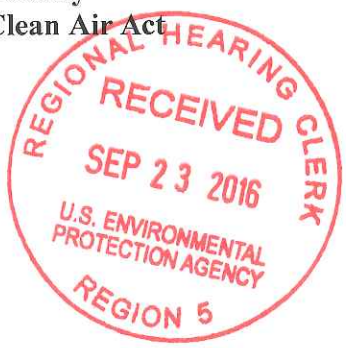
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2016-0043**
	)	
Agra Resources, LLC d/b/a	)	**Proceeding to Assess a Civil Penalty**
POET Biorefining - Glenville	)	**Under Section 113(d) of the Clean Air Act**
Albert Lea, Minnesota	)	**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 (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 Agra Resources, LLC, doing business as POET Biorefining - Glenville (POET), a corporation doing business in Minnesota. Respondent owns and operates an ethanol production facility located at 15300 780th Avenue, Albert Lea, 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.

POET FESOP Requirements

15. The MPCA issued Air Emission Permit No. 04700055-001 to the Facility with an effective date of July 31, 1996. MPCA issued modifications to the permit on March 16, 1999; December 23, 1999; November 9, 2000; May 11, 2005 (2005 Permit); and May 4, 2012 (Current Permit).

16. For the emission control unit classified as CE 006 – Packed Gas Adsorption Column (Distillation Scrubber), which controls emissions from a number of process units associated with distillation, the 2005 Permit required that the pressure drop be maintained between 2.0 and 10.0 inches of water column, and that the pressure drop be recorded once each day of operation.

17. For the Distillation Scrubber, the 2005 Permit required the water flow rate be maintained above 2 gallons per minute, unless a new range was set based on the most recent performance test where compliance was demonstrated, and that the water flow rate be recorded once each day of operation.

18. For the emission control unit classified as CE 019 – Packed Gas Adsorption Column (Fermentation Scrubber), which controls emissions from fermentation tanks and the beer well, the 2005 Permit required that the pressure drop be maintained between 0.5 and 10.0 inches of water column, and that the pressure drop be recorded once each day of operation.

19. For the Fermentation Scrubber, the 2005 Permit required the water flow rate be maintained above 30.0 gallons per minute when emissions were vented through SV005 (when the Carbon Dioxide Plant is not operating), unless a new range was set based on the most recent performance test where compliance was demonstrated, and that the water flow rate be recorded once each day of operation.

20. For the Fermentation Scrubber, the 2005 Permit required that POET operate the pollution control equipment whenever the corresponding process units were operated.

21. For the emission control unit classified as CE 006 – Packed Gas Adsorption Column (Distillation Scrubber), the Current Permit requires that the pressure drop be maintained between 2.0 and 12.0 inches of water column, and that the pressure drop be recorded once each day of operation.

22. For the Distillation Scrubber, the Current Permit requires the water flow rate be maintained above 2.0 gallons per minute, unless a new range in set based on the most recent performance test where compliance was demonstrated, and that the water flow rate be recorded once each day of operation.

23. For the emission control unit classified as CE 019 – Packed Gas Adsorption Column (Fermentation Scrubber), the Current Permit requires that the pressure drop be maintained between 0.5 and 10.0 inches of water column, and that the pressure drop be recorded once each day of operation.

24. For the Fermentation Scrubber, the Current Permit requires the water flow rate be maintained above 30.0 gallons per minute when emissions are vented through SV005 (when the carbon dioxide plant is not operating), unless a new range in set based on the most recent performance test where compliance was demonstrated, and that the water flow rate be recorded once each day of operation.

25. For the Fermentation Scrubber, the Current Permit requires that POET operate the pollution control equipment whenever the corresponding process units are operated.

Factual Allegations and Alleged Violations

26. EPA issued an information request to the Facility under Section 114 of the CAA, dated May 4, 2015 (2015 Information Request).

27. POET provided responses to the 2015 Information Request dated June 11, 2015, and July 10, 2015.

28. Emissions from the distillation and fermentation operations at the Facility are controlled by two separated packed gas adsorption columns (the Distillation Scrubber and the Fermentation Scrubber).

29. Based on the record submitted by POET in response to the 2015 Information Request, from January 1, 2011, through June 16, 2015, POET intermittently: operated the Distillation and Fermentation Scrubbers outside of the permitted differential pressure range; operated the Distillation and Fermentation Scrubbers below the required water flow rate; failed

to daily record operating parameters the for Distillation and Fermentation Scrubbers; and operated fermentation units during Fermentation Scrubber downtime in violation of conditions of the 2005 Permit and Current Permit.

30. On March 9, 2016, EPA issued the Respondent a Notice of Violation (NOV) alleging that it violated provisions of the 2005 Permit and the Current permit as outlined in Paragraph 29, above.

31. On April 26, 2016, representatives of the Respondent and EPA discussed the NOV.

Civil Penalty

32. 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 $120,000.

33. Within 30 days after the effective date of this CAFO, Respondent must pay a $120,000 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.

34. 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

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

36. 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.

37. 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

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

39. 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.

40. 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 38, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

41. 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).

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

43. 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.

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

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

POET Biorefining – Glenville, Respondent

8-24-2016
Date

Steve McNinch
General Manager
POET Biorefining – Glenville

United States Environmental Protection Agency, Complainant

9/16/16
Date

Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: POET Biorefining - Glenville
Docket No. CAA-05-2016-0043

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.

9/22/16
Date

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

Consent Agreement and Final Order
In the matter of: POET Biorefining – Glenville
Docket Number: **CAA-05-2016-0043**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order,** docket number [**CAA-05-2016-0043**], which was filed on [September 23, 2016], in the following manner to the following addressees::

Copy by Certified Mail
to Respondent:

Steve McNinch
General Manager
POET Biorefining - Glenville
15300 780th Avenue
Albert Lea, Minnesota 56007

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: September 23, 2016 LaDawn Whitehead

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

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 6950