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

AUG 18 2016

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Nathan Hay
POET Biorefining - Bingham Lake
RR 1
Bingham Lake, Minnesota 56118

Dear Mr. Hay:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves POET Biorefining - Bingham Lake, docket no. **CAA-05-2016-0038**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on August 18, 2016.

Pursuant to paragraph 38 of the CAFO, POET Biorefining - Bingham Lake must pay the civil penalty within 30 days of the filing date. Your check must display the case name and case docket number.

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

Sincerely,

for

Nathan Frank, Section Chief
AECAB (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Tom Williams/C-14J
Sarah Killgriff/MPCA

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2016-0038**
	)	
Ethanol 2000, LLP d/b/a	)	**Proceeding to Assess a Civil Penalty**
POET Biorefining - Bingham Lake	)	**Under Section 113(d) of the Clean Air Act**
Bingham Lake, Minnesota	)	**42 U.S.C. § 7413(d)**
	)	
Respondent.	)	
	)	

REGIONAL HEARING CLERK
RECEIVED
AUG 18 2016
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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 Ethanol 2000 LLP doing business as POET Biorefining - Bingham Lake (POET), a corporation doing business in Minnesota. Respondent owns and operates an ethanol production facility located at RR 1, Bingham Lake, 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. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan (SIP) that provides for the

implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS).

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

14. 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.

15. 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

16. The MPCA issued Air Emission Permit No. 03300025-004 to the Facility with an effective date of November 5, 1999 (1999 Permit). The 1999 Permit was in effect at the Facility through August 13, 2013.

17. For the group of emission units classified as SV 003 and controlled by the fermentation scrubber (CE 003), the 1999 Permit states that the water flow rate at the fermentation scrubber (CE 003) shall be greater than or equal to 30 gallons per minute (gpm)

18. For the group of emission units classified as SV 003 and controlled by the fermentation scrubber (CE 003), the 1999 Permit states that the pressure drop at the fermentation

scrubber (CE 003) shall be greater than or equal to 4 inches of water column (in. W.C.) and less than or equal to 10 in. W.C.

19. For the group of emission units classified as SV 010 and controlled by the distillation scrubber (CE 010), the 1999 Permit states that the pressure drop at the distillation scrubber (CE 010) shall be greater than or equal to 4 in. W.C. and less than or equal to 10 in. W.C.

20. For the fermentation scrubber (CE 003) and distillation scrubber (CE 010), the 1999 Permit states that if the pressure drop and/or water flow rate are outside the ranges specified in the permit, the Permittee shall take corrective action as soon as possible to achieve the required operating values and shall record the type and date of all corrective actions taken.

Title V Permit Program

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

16. 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.

17. 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.

18. 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).

19. 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.

20. 40 C.F.R. § 70.6(b)(1) provides that all terms and conditions in a Title V permit are enforceable by the EPA.

Title V Permit Requirements

21. MPCA issued a Title V Permit, Air Emission Permit No. 03300025-006, to the Facility with an effective date of August 14, 2013 (Title V Permit). This permit remains in effect.

22. For the group of emission units classified as SV 003 and controlled by the fermentation scrubber (CE 003), the Title V Permit states that, "The Permittee shall vent emissions from EU025 - EU028, EU043, EU045, EU064 and EU065 to associated scrubber CE 003 at all times that any emission unit controlled by the scrubber is in operation."

23. For the group of emission units classified as SV 010 and controlled by the distillation scrubber (CE 010), the Title V Permit states that, "The Permittee shall vent emissions from EU009, EU010, EU011, EU012, EU014, EU031, EU034, EU038, EU050, EU054 and EU055 to the associated scrubber (CE 010) all times that any emission unit controlled by the scrubber is in operation."

24. For the fermentation scrubber (CE 003), the Title V Permit states that the minimum water flow rate shall be greater than 35 gpm when the CO2 recovery plant is offline and greater than 20 gpm when the CO2 recovery plant is online.

25. For the fermentation scrubber (CE 003), the Title V Permit states that the pressure drop at the scrubber shall be between 2 in. W.C. and 12 in. W.C.

26. For the fermentation scrubber (CE 003), the Title V Permit states that if the pressure drop and/or water flow rate are outside the range specified in the permit, the Permittee shall take corrective action as soon as possible to achieve the required operating values and shall record the type and date of all corrective actions taken.

27. For the distillation scrubber (CE 010), the Title V Permit states that the pressure drop at the scrubber shall be between 2 in. W.C. and 12 in. W.C.

28. For the distillation scrubber (CE 010), the Title V Permit provides that if the pressure drop is outside the range specified in the permit, the Permittee shall take corrective action as soon as possible to achieve the required operating values and shall record the type and date of all corrective actions taken.

Factual Allegations and Alleged Violations

29. POET owns and operates an ethanol production plant located at RR 1, Bingham Lake, Minnesota (the Facility).

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

31. POET provided a response to the 2015 Information Request in a letter dated July 13, 2015.

32. The fermentation scrubber (CE 003) controls emissions from fermentation operations at the Facility. A portion of the emissions exiting the fermentation scrubber are routed to a CO2 recovery plant (CO2 Plant). Periods of downtime at the scrubber result in emissions from fermentation operations being vented to the atmosphere.

33. A distillation scrubber (CE 010) controls emissions from distillation operations at the Facility. Periods of downtime at the scrubber result in emissions from distillation operations being vented to the atmosphere.

34. From January 1, 2011, through May 31, 2015, POET: intermittently operated fermentation and distillation units during scrubber downtime; intermittently failed to maintain the required differential pressure at the fermentation scrubber (CE 003) and the distillation scrubber (CE 010); intermittently failed to maintain the required water flow at the fermentation scrubber (CE 003); and failed to take and record corrective actions during deviations at the fermentation scrubber (CE 003) and distillation scrubber (CE 010), in violation of conditions of their 1999 Permit and Title V Permit.

35. On December 30, 2015, EPA issued POET a Notice of Violation and Finding of Violation (NOV/FOV) alleging that it violated provisions of the 1999 Permit and the Title V Permit as outlined in paragraph 34, above.

36. On March 10, 2016, representatives of the POET and EPA discussed the NOV/FOV.

Civil Penalty

37. 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 $110,000.

38. Within 30 days after the effective date of this CAFO, Respondent must pay a $110,000 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.

39. 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 and to Tom Williams 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

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

41. 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.

42. 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

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 rights of 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 CAA 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 EPA.

46. 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).

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

48. 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.

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

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

POET Biorefining – Bingham Lake, Respondent

21 July 2016
Date

Nathan Hay
General Manager
POET Biorefining – Bingham Lake

United States Environmental Protection Agency, Complainant

8/4/16
Date

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

Consent Agreement and Final Order
In the Matter of: POET Biorefining - Bingham Lake
Docket No. CAA-05-2016-0038

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.

8/9/15
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 - Bingham Lake
Docket Number: **CAA-05-2016-0038**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number [**CAA-05-2016-0038**], which was filed on 8/18/2016, in the following manner to the following addressees:

Copy by Certified Mail to Respondent:	Nathan Hay Ethanol 2000 LLP d/b/a POET Biorefining - Bingham Lake RR 1 Bingham Lake, Minnesota 56118
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: August 18, 2016 L Whitehead
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 6820