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

SEP 13 2016

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David Brooks, General Manager
POET Biorefining – Cloverdale, LLC
2265 East County Road 800 South
Cloverdale, Indiana 46120

Dear Mr. Brooks:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves POET Biorefining-Cloverdale, LLC d/b/a POET-Cloverdale CAA Docket No. **CAA-05-2016-0039**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 13, 2016.

Pursuant to paragraph 56 of the CAFO, POET-Cloverdale must pay $181,000 civil penalty within 30 days of the date CAFO was filed, due by Oct. 13, 2016. Your electronic funds transfer must display the case name POET Biorefining-Cloverdale, LLC, the docket number **CAA-05-2016-0039**.

Please direct any questions regarding this case to Cynthia A. King at (312) 886-6840.

Sincerely,

Sarah Marshall

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance Branch

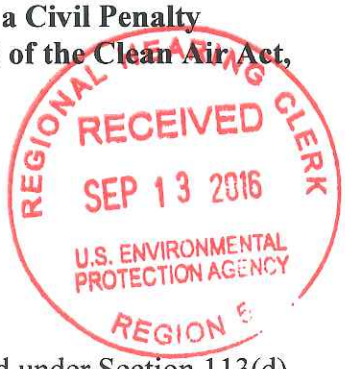
Enclosure

cc: Regional Judicial Officer (C-14J)
Regional Hearing Clerk (E-19J)
Cynthia King (C-14J)
Phil Perry, Chief
Office of Air Quality – Compliance & Enforcement Branch
Indiana Department of Environmental Management

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on 100% Recycled Paper (100% Post-Consumer)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2016-0039**
	)	
POET Biorefining-Cloverdale, LLC	)	**Proceeding to Assess a Civil Penalty**
Cloverdale, Indiana	)	**Under Section 113(d) of the Clean Air Act,**
	)	**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 (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 POET Biorefining-Cloverdale, LLC, (POET-Cloverdale or Respondent), a limited liability company 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 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 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.

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 start-up 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_X) (expressed as NO_2) in excess of 43 ng/J (0.10 lb/million Btu) heat input.

17. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to EPA an operating permit program (Title V Permit Program). On December 4, 2001, 66 Fed. Reg. 62969, EPA granted Indiana final approval of its Title V Permit Program, effective November 30, 2001.

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

19. On February 20, 2008, 73 Fed. Reg. 9201-9203, EPA approved 326 IAC 8-5-6, fuel grade ethanol production at dry mills, to its volatile organic compounds (VOC) rules as a revision to the Indiana State Implementation Plan (SIP) at 40 C.F.R. § 52.770(c)(182).

20. 326 IAC 8-5-6(c)(1) states that the owner or operator of a fuel grade dry mill ethanol production plant shall install and operate a thermal oxidizer with an overall control efficiency of not less than 98% percent or resulting in a VOC concentration of not more than 10 parts per million (ppm).

21. 326 IAC 8-5-6(e)(1) provides that the owner or operator of a fuel grade ethanol dry mill production plant that was constructed or modified after April 1, 2007, that installs and operates a thermal oxidizer as its VOC control device, shall measure the three (3) hour average operating temperature of the oxidizer using a continuous temperature monitor. The 3-hour average temperature must be greater than or equal to the minimum operating temperature established during the plant's most recent compliance demonstration.

22. On June 26, 2012, the Indiana Department of Environmental Management (IDEM) issued Title V Operating Permit No. T133-31145-00003 to POET-Cloverdale. From November 5, 2010 thru June 26, 2012, POET-Cloverdale operated under the Federally Enforceable State Operating Permit (FESOP) with conditions, F133-28725-00003, and its subsequent revisions and amendments.

23. Part D.2.1(b)(1) of the Title V Permit limits fermentation process VOC emissions to 25.64 lbs/hr from scrubber CE012.

24. Part D.2.1(b)(2)-(3) of the Title V Permit limits fermentation process acetaldehyde emissions to 0.70 lb/hr and combined HAP emissions to 0.99 lb/hr from scrubber CE012.

25. Part D.3.2 (b) of the Title V Permit states that the overall efficiency for the regenerative thermal oxidizers (RTOs) CE015 and CE016 (including the capture and destruction efficiency) shall be at least 98%, or the VOC outlet concentration shall not exceed 10 ppmv.

26. Part D.3.1(a) of the Title V Permit limits carbon monoxide (CO) emissions from RTOs CE015 and CE016 to 24.40 lbs/hour.

27. Part D.3.10(c) of the Title V Permit requires POET-Cloverdale to operate both RTOs CE015 and CE016 at or above the 3-hour average temperature as observed during the latest compliant stack test.

28. 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 Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

29. 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.

30. 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

31. POET –Cloverdale owns and operates a fuel grade ethanol production dry mill facility at 2265 East County Road 800 South, Cloverdale, Indiana (the facility).

32. POET-Cloverdale is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

33. On May 1, 2014, EPA issued a Request for Information under Section 114 of the Act, 42 U.S.C. § 7414, to the POET-Cloverdale facility. On June 9 and July 9, 2014, POET-Cloverdale responded to EPA's Request for Information.

34. Emissions from the fermentation processes at the facility are controlled by a packed-bed wet scrubber (CE012). Periods of downtime at the scrubber result in VOC emissions from fermentation being vented to the atmosphere.

35. The following table summarizes scrubber downtime when emissions from fermentation were directly vented to the atmosphere.

Date	**Scrubber Downtime (Hours)**
6/17/2011	72 hours
6/26-27/2011	15 hours
6/28-7/1/2011	108 hours
9/1/2011	11.50 hours

36. On August 30, 2011, POET-Cloverdale performed compliance emissions testing at the outlet of the scrubber CE012. The testing identified an emission rate of 6.10 pounds of VOC per hour, and 0.37 pounds of acetaldehyde per hour. Based on scrubber CE012's actual control efficiency of 99.42%, the uncontrolled emissions from fermentation processes are at least 1058.22 pounds of VOC per hour and 63.79 pounds of acetaldehyde per hour.

37. The information provided by POET-Cloverdale demonstrated that on October 25, 2012, RTOs CE015 and CE016 achieved the 3-hour average temperature of 1675^0 F during a compliance stack test.

38. On August 17, 2011, and from November 15 through November 17, 2011, POET-Cloverdale performed several stack tests on RTOs CE015 and CE016.

39. The August 17, 2011 stack test results indicated that at RTOs CE015 and CE016, the facility had an overall VOC control efficiency of 96.28%, and a VOC concentration of 36.0 ppmv.

40. The November 15, 2011 test results indicated that at RTOs CE015 and CE016, the facility had an overall VOC control efficiency of 96.64%, and a VOC concentration of 26.30 ppmv.

41. The November 16, 2011 test results indicated that at RTOs CE015 and CE016, the facility had an overall VOC control efficiency of 97.40%, and a VOC concentration of 35.60 ppmv.

42. The November 17, 2011 test results indicated that at RTOs CE015 and CE016, the facility had an overall VOC control efficiency of 95.60%, and a VOC concentration of 42.90 ppmv.

43. The November 16, 2011 test results indicated that at RTOs CE015 and CE016, the facility emitted CO emissions of 26.50 lbs/hr. The November 17, 2011 test results indicated that at RTOs CE015 and CE016, the facility emitted CO emissions of 105.00 lbs/hr.

44. POET-Cloverdale submitted combustion chamber temperature records for RTOs CE015 and CE016 which showed that 3-hour average temperature from June 27, 2013 through April 30, 2014 were below 1675^0 F.

45. On July 9, 2014, POET-Cloverdale submitted monthly continuous emissions monitor (CEMS) reports from May 2011 through April 2014.

46. The CEMS report showed that NOx emissions from boiler 1 (EU036) were 0.20 lb per million BTU heat input based on the 30-day rolling averages from March 1 through April 30, 2014.

47. The CEMS report showed that NOx emissions from boiler 2 (EU037) were 0.122 lb per million BTU heat input based on the 30-day rolling averages from April 1 through April 30, 2014.

Alleged Violations

48. From June 17 through September 1, 2011, POET-Cloverdale operated fermentation operations during scrubber downtime and emitted VOC emissions in excess of the permitted limit of 25.64 lbs/hr as required by Title V Permit No. T133-31145-00003, Emission Limit D.2.1(b), which constitutes a violation of the Indiana SIP, Section 502(a) of the Act, 42 U.S.C. § 7661(a), and 40 C.F.R. § 70.7(b).

49. From June 17 through September 1, 2011, POET-Cloverdale operated fermentation operations during scrubber downtime and emitted acetaldehyde and total HAP emissions in excess of the permitted limit of 0.70 and 0.99 lb/hr, respectively, as required by Title V Permit No. T133-31145-00003, Emission Limit D.2.1(b), which constitutes a violation of the Indiana SIP, Section 502(a) of the Act, 42 U.S.C. § 7661(a), and 40 C.F.R. § 70.7(b).

50. The August 17, 2011, November 15, 2011, November 16, 2011, and November 17, 2011, stack test results demonstrate that at RTOs CE015 and CE016, the facility did not achieve a VOC control efficiency of 98%, as required by Title V Permit No. T133-31145-00003, Emission Limit D.3.2(b), which constitutes violation of the Indiana SIP, Section 502(a) of the Act, 42 U.S.C. § 7661(a), and 40 C.F.R. § 70.7(b).

51. The November 16 and November 17, 2011, stack test results demonstrate that at RTOs CE015 and CE016, the facility emitted CO in excess of the permitted limit of 24.40 lbs/hr as required by Title V Permit No. T133-31145-00003, Emission Limit D.3.1(a), which constitutes a violation of the Indiana SIP, Section 502(a) of the Act, 42 U.S.C. § 7661(a), and 40 C.F.R. § 70.7(b).

52. From June 27, 2013 through April 30, 2014, POET-Cloverdale operated RTOs CE015 and CE016 below the required 3-hour average temperature as specified in Title V Permit No. T133-31145-00003, Emission Limit of D.3.10(c), which constitutes a violation of the Indiana SIP, Section 502(a) of the Act, 42 U.S.C. § 7661(a), and 40 C.F.R. § 70.7(b).

53. From March 1, 2014 through April 30, 2014, at boiler 1, POET-Cloverdale emitted NOx in excess of the permitted limit of 0.10 /b/million Btu as required by 40 C.F.R. § 60.44b(a) and Section 111(e) of the Act, 42 U.S.C. § 7411(e).

54. From April 1, 2014 through April 30, 2014, at boiler 2, POET-Cloverdale emitted NOx in excess of the permitted limit of 0.10 /b/million Btu as required by 40 C.F.R. § 60.44b(a) and Section 111(e) of the Act, 42 U.S.C. § 7411(e).

Civil Penalty

55. 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 respondent's cooperation, prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is $181,000.

56. Within 30 days after the effective date of this CAFO, Respondent must pay a $181,000 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

For checks sent by regular U.S. Postal Service mail. For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes) by sending a casher'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.

57. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO 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

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

59. If Respondent 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.

60. 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

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

62. 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.

63. 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 61, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

64. Respondent certifies that it is complying fully with its Title V Operating Permit No. T133-31145-00003.

65. 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).

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

67. 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.

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

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

70. This Consent Agreement and Final Order, shall become effective immediately upon filing with the Regional Hearing Clerk.

POET Biorefining-Cloverdale, LLC, Respondent

08 July 2016
Date

Luke Logan, General Manager
POET Biorefining-Cloverdale, LLC

United States Environmental Protection Agency, Complainant

8/26/16
Date

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

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.

6/31/16
Date

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

Consent Agreement and Final Order
In the matter of: POET Biorefining-Cloverdale, LLC
Docket Number: **CAA-05-2016-0039**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order,** docket number **CAA-05-2016-0039**, which was filed on September 13, 2016, in the following manner to the following addresses:

Copy by Certified Mail to Respondent:	POET Biorefining-Cloverdale, LLC 2265 East County Road 800 South Cloverdale, Indiana 46120
Copy by E-mail to Attorney for Complainant:	Cynthia A. King, Esq. Cynthia.King@epa.gov
Copy by E-mail to Attorney for Respondent:	Terri Czajka, Esq Terri.Czajka@icemiller.com
Copy by E-mail to Regional Judicial Officer:	Ann Coyle Coyle.ann@epa.gov

Dated: September 13, 2016

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

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 6899