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

SEP 16 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David M. Hudak, General Manager
Ultimate Ethanol, LLC
D/b/a/ POET Biorefining - Alexandria
13179 North 100 East
Alexandria, Indiana 46001

Dear Mr. Hudak:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Ultimate Ethanol, LLC d/b/a POET Biorefining- Alexandria (POET) CAA Docket No. **CAA-05-2015-0058**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 16, 2015.

Pursuant to paragraph 38 of the CAFO, POET must pay $89,200 civil penalty within 30 days of the date CAFO was filed, September 16, 2015. Your electronic funds transfer must display the case name Ultimate Ethanol, LLC, the docket number **CAA-05-2015-0058**, and the billing document number N/A.

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, Branch Chief
Office of Air Quality/Compliance & Enforcement Branch
Indiana Department of Environmental Management

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2015-0058**
Ultimate Ethanol, LLC **Alexandria, Indiana**	)	**Proceeding to Assess a Civil Penalty 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 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 Ultimate Ethanol, LLC, d/b/a/ POET Biorefining – Alexandria (POET-Alexandria), 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 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.

10. 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.

11. 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).

12. 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).

13. 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.

14. On January 6, 2012, the Indiana Department of Environmental Management (IDEM) issued Title V Operating Permit No. T095-30443-00127 to POET-Alexandria. IDEM approved a significant permit modification to the Title V permit on January 23, 2013, and renumbered Title V Operating Permit as No. T095-31614-00127.

15. Part D.2.1(a) of the Title V Permit limits VOC emissions to 30.80 lbs/hour from scrubber CE008 and regenerative thermal oxidizer (RTO) CE009 unless operating under condition D.2.1(b) or D.2.1(c).

16. Part D.2.1(b) of the Title V permit limits VOC emissions when scrubber CE008 is not operating to 30.80 lbs/hour from RTO CE009.

17. Part D.2.1(c) of the Title V permit limits VOC emissions when RTO CE009 is not operating to 75.95 lbs/hour from scrubber CE008.

18. 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.

19. 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.

20. 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

21. POET-Alexandria owns and operates a fuel grade ethanol production dry mill facility at 13179 North 100 East, Alexandria, Indiana (the Facility).

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

23. On December 20, 2013, EPA issued a Request for Information to the POET-Alexandria under Section 114 of the Act, 42 U.S.C. § 7414. On February 27 and March 27, 2014, POET-Alexandria responded to EPA's Request for Information.

24. The information provided by POET-Alexandria showed that from April 17 through June 26, 2012, POET-Alexandria performed several stack tests on RTO CE009 and scrubber CE008.

25. The April 17, 2012 stack test results showed VOC emissions of 32.27 lbs/hr, an overall VOC control efficiency of 97.63%, and a VOC concentration of 18.14 ppmv at RTO CE009.

26. The April 18, 2012 test results showed VOC emissions of 31.53 lbs/hr, an overall VOC control efficiency of 96.47%, and a VOC concentration of 18.35 ppmv at RTO CE009.

27. The May 15, 2012 test results showed VOC emissions of 43.42 lbs/hr, an overall VOC control efficiency of 94.34%, and a VOC concentration of 32.63 ppmv at RTO CE009.

28. The May 16, 2012 test results showed VOC emissions of 30.92 lbs /hr, an overall VOC control efficiency of 95.59%, and a VOC concentration of 19.67 ppmv at RTO CE009.

29. The June 5, 2012 test results showed VOC emissions of 35.29 lbs/hr, an overall VOC control efficiency of 95.91%, and a VOC concentration of 57.03 ppmv at RTO CE009.

30. The June 6, 2012 test results showed an overall VOC control efficiency of 97.23%, and a VOC concentration of 19.38 ppmv at RTO CE009.

31. The June 26, 2012 test results showed an overall VOC control efficiency of 97.88% and a VOC concentration of 25.17 ppmv at RTO CE009.

32. On June 26, 2014, EPA issued a Notice of Violation and Finding of Violation to POET-Alexandria.

Alleged Violations

33. The April 17, 2012, April 18, 2012, May 15, 2012, May 16, 2012, and June 5, 2012, stack test results demonstrate that at RTO CE009, the facility emitted VOCs in excess of the permitted limit of 30.80 lbs/hr as required by Title V Permit No. 095-31614-00127, Emission Limit D.2.1(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).

34. The April 17, 2012, April 18, 2012, May 15, 2012, May 16, 2012, June 5, 2012, June 6, 2012, and June 26, 2012, stack test results demonstrate that at RTO CE009, the facility did not achieve a VOC control efficiency of 98%, as required by Title V Permit No. 095-31614-00127, Emission Limit D.2.2, 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).

35. The April 17, 2012, April 18, 2012, May 15, 2012, May 16, 2012, June 5, 2012, June 6, 2012, and June 26, 2012, stack test results demonstrate that at RTO CE009, the facility

exceeded a VOC concentration of 10 ppmv as required by Title V Permit No. 095-31614-00127, Emission Limit D.2.2, 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).

Civil Penalty

36. 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, Respondent's cooperation, and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is $89,200.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a $89,200 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.

38. Respondent must send a notice of payment that states Respondent's name, 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

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

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

41. 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 attorneys 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

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

43. 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.

44. 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 42, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

45. Respondent certifies that it is complying with the above-referenced provisions of its Title V Operating Permit No. T095-30443-00127.

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 attorneys fees in this action.

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

51. This CAFO shall become effective immediately upon filing with the Regional Hearing Clerk.

Ultimate Ethanol, LLC, Respondent

8/31/15
Date

David M. Hudak, General Manager
Ultimate Ethanol, LLC

United States Environmental Protection Agency, Complainant

9/11/15
Date

George T. Czerniak
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.

14 September 2015
Date

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

In the Matter of: Ultimate Ethanol, LLC
Docket Number: **CAA-05-2015-0058**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on September 16, 2015, this day in the following manner to the addressees:

Copy by Certified Mail
Return-Receipt Requested:

David M. Hudak, General Manager
Ultimate Ethanol, LLC
d/b/a/ POET Biorefining – Alexandria
13179 North 100 East
Alexandria, Indiana 46001

Copy by E-mail to
Complainant:

Cynthia King
king.cynthia@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: September 16, 2015

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

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 4840