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

AUG 28 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David R. Gloer
General Manager
POET Biorefining - Caro
1551 Empire Drive
Caro, Michigan 48708

Dear Mr. Gloer:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket no. **CAA-05-2015-0054** As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on August 28, 2015.

Pursuant to paragraph 40 of the CAFO, POET Biorefining – Caro must pay the civil penalty within 30 days of the effective date of the CAFO. Your check must display the docket number **CAA-05-2015-0054**.

Please direct any questions regarding this case to Mr. Tom Williams 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
Chris Hare, Michigan Department of Environmental Quality

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No.CAA-05-2015-0054**
	)	
Michigan Biorefining, LLC d/b/a POET Biorefining - Caro Caro, Michigan	)	**Proceeding to Assess a Civil Penalty Under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)**
	)	
Respondent.	)	

REGIONAL HEARING CLERK
RECEIVED
AUG 28 2015
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 (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 Michigan Ethanol, LLC, doing business as POET Biorefining - Caro (POET), a corporation doing business in Michigan. Respondent owns and operates an ethanol production facility located at 1551 Empire Drive, Caro, Michigan (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.

Title V Permit Program

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

13. 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 to be administered by any air pollution control agency. See 57 Fed. Reg. 32295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

14. 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.

15. On December 4, 2001, EPA approved the State of Michigan Title V operating permit program with an effective date of November 30, 2001. See 40 C.F.R. Part 70, Appendix A; 66 Fed. Reg. 62949 (December 4, 2001).

16. 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.

17. 40 C.F.R. § 70.6(b)(1) provides that all terms and conditions in a Title V permit are enforceable by the EPA.

POET Permit Requirements

18. The Michigan Department of Environmental Quality (MDEQ) issued Renewable Operating Permit No. MI-ROP-N6996-2008 to the Facility with an effective date of August 25, 2008 (2008 Title V Permit). MDEQ issued modifications to the permit on June 4, 2009, and April 23, 2012.

19. MDEQ renewed the permit by issuing Renewable Operating Permit No. MI-ROP-N6996-2013 to the Facility with an effective date of September 25, 2013 (2013 Title V Permit).

20. For FG FERMENTERS, Condition IV.1 of the 2008 Title V Permit states that POET shall not operate any equipment in FG FERMENTERS "unless the scrubber (CE004) and chiller are installed, maintained and operated in a satisfactory manner."

21. For FG FERM&DIST, Condition IV.2 of the 2013 Title V Permit states that POET shall not operate any equipment in FG FERM&DIST "unless the scrubber (CE004) is installed, maintained and operated in a satisfactory manner."

22. For FG FERMENTERS, Condition I.1 of the 2008 Title V Permit limits volatile organic compound (VOC) emissions to 12.0 pounds per hour and acetaldehyde emissions to 0.67 pounds per hour.

23. For FG FERM&DIST, Condition I.1 of the 2013 Title V Permit limits VOC emissions to 14.0 pounds per hour and acetaldehyde emissions to 0.67 pounds per hour.

24. General Condition 24 of the 2008 Title V Permit requires POET to report annually the actual emissions of each regulated air pollutant for each emission unit.

25. General Condition 24 of the 2013 Title V Permit requires POET to report annually the actual emissions of each regulated air pollutant for each emission unit.

Factual Allegations and Alleged Violations

26. POET owns and operates an ethanol production plant located at 1551 Empire Drive, Caro, Michigan (the Facility).

27. In the 2008 Title V Permit, the Facility describes FG FERMENTERS as including six fermenters and a beer well.

28. In the 2013 Title V Permit, the Facility describes FG FERM&DIST as "fermentation and distillation operations," including six fermenters, a beer well, a beer stripper, a rectifier, a side stripper, a molecular sieve, a yeast tank, and an evaporator.

29. Emissions from the fermentation and distillation operations are controlled by a packed-bed wet scrubber (CE004). Periods of downtime at the scrubber result in emissions from fermentation and distillation being vented to the atmosphere.

30. In January 2013, POET performed emissions testing at the outlet of the FG FERM&DIST scrubber. The testing identified an emission rate of 8.95 pounds of VOC per hour, and 0.53 pounds of acetaldehyde per hour. Based on an estimated control efficiency of 97%, as required by the 2013 Title V Permit, the uncontrolled emissions from FG FERM & DIST are at least 298 pounds of VOC per hour and 17.67 pounds of acetaldehyde per hour.

31. In February 2006, POET performed emissions testing at the Fluidized Bed Cooler (EU FBCOOLER). The testing identified an average emission rate of 0.58 pounds VOC "as carbon" per hour. Using a conversion factor of 1.92 pounds of VOC per pound of carbon, the total emission rate for the unit is estimated to be 1.11 pounds of VOC per hour. In January 2013, POET performed additional emissions testing at the EU FBCOOLER. The testing identified an emission rate of 2.36 pounds of VOC per hour.

32. In the Michigan Annual Emission Reporting System (MAERS) Reports for 2009, 2010, 2011, 2012, and 2013, POET reports operating the EU FBCOOLER for 8760 hours in each year.

33. The VOC emissions for EU FBCOOLER were 4.9 tons per year in 2009, 2010, 2011, and 2012, and were 10.3 tons per year in 2013. POET reported zero emissions of VOCs for the unit in each of these years.

34. In February 2006, POET performed emissions testing at the thermal oxidizer (TO) and the regenerative thermal oxidizer (RTO) serving the dried distiller's grains with solubles (DDGS) dryers and centrifugation (FG DDGSDRYERS). During the testing, both the TO and

the RTO were operating and sampled at the same time. The testing identified an emission rate of 0.37 pounds of VOC per hour from the TO and an emission rate of 1.91 pounds of VOC per hour from the RTO. In January 2013, additional testing identified an emission rate of 0.94 pounds of VOC per hour from the TO and an emission rate of 1.40 pounds of VOC per hour from the RTO.

35. Based on TO and RTO operating data submitted to EPA by POET, during 2012, the TO and the RTO operated for 7975 hours. During the remaining 785 hours of the year, the dryers were reportedly down. In 2013, the TO and the RTO operated for 8220 hours. During the remaining 540 hours of the year, the dryers were reportedly down.

36. Using the operational data and established emissions factors, combined actual VOC emissions from the TO and RTO were 9.3 tons in 2012 and 9.6 tons in 2013. In the MAERS Reports, POET reported combined VOC emissions of 4.7 tons from the TO and RTO controlling the DDGSDRYERS in 2012 and 2013.

37. On February 5, 2015, EPA issued POET a Finding of Violation (FOV) alleging that it violated provisions of its Title V Permit by operating FG FERMENTERS and FG FERM&DIST during scrubber downtime from January 1, 2010, through May 12, 2014, and by exceeding the emission limits for VOC and for acetaldehyde established for these units during scrubber downtime. In addition, the FOV alleged that, from 2009 through 2013, POET failed to accurately report annual VOC emissions for the DDGS DRYERS and EU FBCOOLER, in violation of Title V permit conditions.

38. On March 5, 2015, representatives of POET and the EPA discussed the February 5, 2015, FOV.

Civil Penalty

39. 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 $130,000.

40. Within 30 days after the effective date of this CAFO, Respondent must pay a $130,000 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 the Respondent's name and the docket number of this CAFO.

41. Respondent must send a notice of payment that states the Respondent's name and the docket number of this CAFO to the Air Enforcement and Compliance Assurance Branch, to Tom Williams, and to 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

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

43. 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.

44. 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

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

46. 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.

47. 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 45, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

48. 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).

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

50. 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.

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

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

POET Biorefining – Caro, Respondent

8/12/15
Date

David Gloer
General Manager
POET Biorefining – Caro

United States Environmental Protection Agency, Complainant

8/25/15
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: POET Biorefining - Caro
Docket No. CAA-05-2015-0054

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.

8-27-2015
Date

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

In the matter of: POET Biorefining - Caro
Docket Number: **CAA-05-2015-0054**

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 [August 28, 2015], this day in the following manner to the addressees:

Copy by certified mail return-receipt requested:

David R. Gloer
General Manager
POET Biorefining - Caro
1551 Empire Drive
Caro, Michigan 48723

Copy by e-mail to Complainant:

Tom Williams
Williams.Tom@epa.gov

Copy by e-mail to Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: August 28, 2015

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

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 4796