



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

SEP 25 2014

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ralph Ramon, Production Manager  
The Andersons Albion Ethanol, LLC  
26250 B Drive North  
Albion, Michigan 49224

Dear Mr. Ramon:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves *The Andersons Albion Ethanol, LLC (Andersons)* CAA Docket No. CAA-05-2014-0054. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 25 2014.

Pursuant to paragraph 26 of the CAFO, Andersons must pay \$75,040 civil penalty within 30 days of the date CAFO was filed, SEP 25 2014. Your electronic funds transfer must display the case name The Andersons Albion Ethanol LLC, the docket number CAA-05-2014-0054

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

Sincerely,

A handwritten signature in cursive script that reads "Sarah Marshall".

Sarah Marshall, Chief  
Air Enforcement and Compliance Enforcement Branch

Enclosure

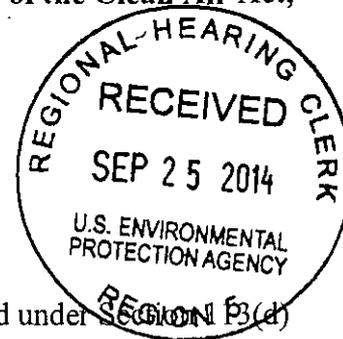
cc: Tom Hess, Enforcement Unit Chief  
Air Quality Division  
Michigan Department of Environmental Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket No. CAA-05-2014-0054  
)  
The Andersons Albion Ethanol, LLC )  
Albion, Michigan ) 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 The Andersons Albion Ethanol, LLC (Andersons or Respondent), a limited liability company doing business in Michigan.
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. Andersons 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. Andersons admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Andersons 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. On May 6, 1980, 45 Fed. Reg. 29790, the EPA approved R336.1201 (Permits to Install) and R336.1208 (Permits to Operate) as part of the federally enforceable Michigan State Implementation Plan (SIP) and the rules became effective on that same date.

10. The federally enforceable Michigan SIP at R336.1201 provides, in relevant part that: “[a] person shall not install, construct, reconstruct, relocate, or alter any process, fuel-burning equipment, or control equipment pertaining thereto, which may be a source of an air contaminant, until a permit is issued . . . This shall be known as a permit to install and shall cover construction, reconstruction, relocation, and alteration of equipment where such is involved.”

11. The federally enforceable Michigan SIP at R336.1208 provides, in relevant part that: “[t]he permit to operate continues in effect as long as the equipment performs in accordance with the conditions upon which the permit is issued.”

12. 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.

13. 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.

14. 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**

15. Andersons owns and operates a fuel grade ethanol dry mill production facility at 26250 B Drive North, Albion, Michigan 49224 (the Facility).

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

17. The Facility includes five fermenters identified as EU-FERMENTER 1 thru 5; a Beerwell identified as EU-BEERWELL; and the Flexible Oxidation Group (FGOXID) containing rectifier column, side stripper, Beer Column, Yeast Tank, two natural gas-fired dried distillers grains with soluble dryers (identified as Dryer 1 and Dryer 2). The emissions from the fermenters and beerwell are controlled by Fermentation CO<sub>2</sub> Scrubber C-40 and Purge Scrubber C-120. All FGOXID emissions units vent into the thermal oxidizer and waste heat recovery boiler (TO&WHRB) unit C-10 and exhaust to a common stack.

18. The Facility has a synthetic minor permit with a potential to emit 92 tons per year of nitrogen oxide (NO<sub>x</sub>).

19. On August 30, 2005, the Michigan Department of Environmental Quality (MDEQ) issued Andersons a Permit to Install (PTI) #120-05 with conditions. PTI #120-05 has been updated and is currently titled PTI # 120-05E.

20. Andersons' PTI 120-05E establishes the following permit conditions:

- (a) The RTO & HRSG Emission Unit (FGOXID Emission Limit I.4) shall not emit more than 21.20 pounds of nitrogen oxides (NO<sub>x</sub>) per hour;
- (b) The Fermenters Emission Unit (FGFERM Emission Limit I.2) shall not emit more than 1.30 pound of Acetaldehyde per hour.

21. On April 24, 2012, EPA issued a Request for Information to Andersons under Section 114 of the CAA, 42 U.S.C. § 7414. On June 5, 2012, Andersons responded to EPA's Request for Information.

22. On September 24, 2012, EPA issued a Notice of Violation to Andersons.

#### Violations

23. Andersons exceeded the emission limit specified in PTI #120-05E, Emission Limit I.4, FG-OXID, NO<sub>x</sub> emissions limit of 21.20 pounds per hour, in violation of Section 110 of the Act, 42 U.S.C. § 7410, and the Michigan SIP at Michigan Administrative Code R336.1201 and R336.1208.

24. Andersons exceeded the emission limit specified in PTI #120-05E, Emission Limit I.2, EU-FERM, Fermentation Scrubber C-40 Acetaldehyde emissions limit of 1.30 pounds per hour, in violation of Section 110 of the Act, 42 U.S.C. § 7410, and the Michigan SIP at Michigan Administrative Code R336.1201 and R336.1208.

#### Civil Penalty

25. 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 and prompt return to

compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$75,040.

26. Within 30 days after the effective date of this CAFO, Respondent must pay a \$75,040 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, and the docket number of this CAFO.

27. Andersons must send a notice of payment that states its 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

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

29. If Andersons 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.

30. 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**

31. This CAFO resolves only Andersons' liability for federal civil penalties for the violations alleged in this CAFO.

32. 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.

33. 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 31 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

34. Andersons certifies that it is complying fully with PTI #120-05E, issued under Section 110 of the Act, 42 U.S.C. 7410, and the Michigan SIP at Michigan Administrative Code R336.1201 and R336.1208.

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

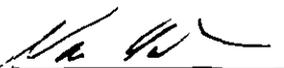
36. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

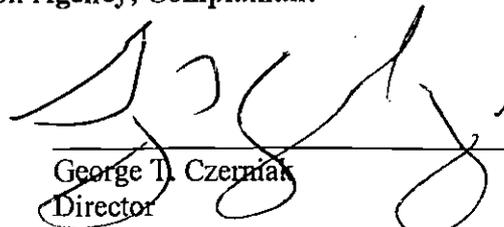
38. This CAFO constitutes the entire agreement between the parties.

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

**The Andersons Albion Ethanol, LLC, Respondent**

 V.P. The  
Date 9/5/17 Andersons, Inc., Ralph Ramon, Production Manager  
manager The Andersons Albion Ethanol, LLC

**United States Environmental Protection Agency, Complainant**

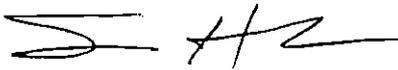
9/18/17  
Date  
  
George T. Czerniak  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: The Andersons Albion Ethanol, LLC**  
**Docket No. CAA-05-2014-0054**

**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.

9-22-2014  
Date

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

**Consent Agreement and Final Order**  
**In the Matter of: The Andersons Albion Ethanol, LLC**  
**Docket No. CAA-05-2014-0054**

**Certificate of Service**

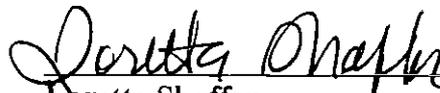
I certify that I filed two originals of the Consent Agreement and Final Order (CAFO), docket number CAA 05 2014 0054 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed one original to the Respondent by first-class, postage prepaid, certified mail, return receipt requested, addressed as follows:

Ralph Ramon, Production Manager  
The Andersons Albion Ethanol, LLC  
26250 B Drive North  
Albion, Michigan 49224

I also certify that I mailed a copy of the CAFO by first-class mail to:

Tom Hess, Enforcement Unit Chief  
Air Quality Division  
Michigan Department of Environmental Quality

On the 25 day of Sept 2014.

  
Doretta Shaffer  
Program Technician  
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER(S):

70091680000076762403