

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
Central Iowa Renewable Energy, LLC)
415 N. Locust Street) Docket No. CAA-07-2009-0008
Goldfield, Iowa 50542)
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Central Iowa Renewable Energy, LLC (CORN) (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d).
2. EPA has reason to believe that Respondent has violated the Iowa Air Pollution Control Rule 22.3(3) (Conditions of approval), approved as part of the Iowa State Implementation Plan (SIP) pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, by exceeding the limits for PM and total hazardous air pollutants (HAPs) imposed by Iowa Permit No. 05-A-125-S1, permit condition 10a. In addition, Respondent exceeded silt loading limits for dust emissions from traffic at its facility in violation of permit condition 15 of Permit 05-A-108-S1. Furthermore, pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), EPA is issuing this Consent Agreement and Final Order (CAFO) assessing penalties for these violations.
3. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the first alleged date of violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for an administrative action.

Parties

4. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director, Air and Waste Management Division, EPA, Region 7.

5. The Respondent is Central Iowa Renewable Energy, LLC (CORN). The Respondent operates an ethanol manufacturing facility located in Goldfield, Iowa.

Statutory and Regulatory Background

Iowa State Implementation Plan

6. The State of Iowa promulgated the Iowa Air Pollution Control Rules which were adopted as part of the Iowa State Implementation Plan (SIP). The Iowa SIP is codified within Title 567 of the Iowa Administrative Code (IAC).

7. EPA approved the Iowa SIP pursuant to Section 110 of the CAA, 42 U.S.C. § 7410. 37 Fed. Reg. 10842 (May 31, 1972).

8. The Iowa SIP provides for the issuance of permits limiting emissions of criteria pollutants and hazardous air pollutants (HAPs). 567 IAC §22.1.

9. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Sections 110 and 112. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997 through March 15, 2004 and \$32,500 per day for each violation that occurs after March 15, 2004.

Violations

10. EPA hereby states and alleges that Respondent has violated the CAA and federal regulations, promulgated pursuant to the CAA, and the Iowa SIP as follows:

General Allegations

11. Respondent is the owner and/or operator of an ethanol manufacturing facility located in Goldfield, Iowa, which began operations in December, 2005.

12. Respondent is, and at all times referred to herein, was a "person" as defined at 42 U.S.C. § 7602(e).

13. Respondent's construction of its ethanol production facility constitutes "initiation of construction" of "new equipment" and the facility is a "stationary source" within the meaning of 567 IAC § 20.2.

14. On February 14, 2005, pursuant to 567 IAC § 22.3, the Iowa Department of Natural Resources (IDNR) issued permit No. 05-A-125, which established emission limits for CORN's coal-fired bubbling fluid bed combustor boiler. A supplemental permit, No. 05-A-125-S1, was issued on December 12, 2005.

15. Permit condition 10a of permit No. 05-A-125-S1 established emission limits of 9.82 lbs./hour for PM and emission limits of 1.37 lbs./hour for total HAPs. Permit condition 12 required testing to demonstrate compliance with these permit limits.

16. On February 14, 2005, pursuant to 567 IAC § 22.3, IDNR issued permit No. 05-A-108 (Dust Emissions From Traffic), which established silt loading limits for the facility and also required silt loading testing. A supplemental permit, No. 05-A-108-S1, was issued on December 12, 2005.

17. Permit condition 14 of permit No. 05-A-108-S1 established silt loading limits of $0.4g/m^2$ for haul roads at the facility. Permit condition 15 required monitoring to demonstrate compliance with this limit.

18. On July 31, 2007, EPA issued CORN a Notice and Finding of Violation pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), which provided notice of the following:

Count 1

19. On August 24, 2006, CORN submitted testing reports for the emissions from the coal-fired bubbling fluid bed combustor boiler, designated as Emission Point (EP) S10, for testing conducted in June and August, 2006. The report showed that PM was measured at 23.59 lbs/hour and total HAPs were measured at 3.11 lbs/hour.

20. In July, 2007, CORN again performed tests on EP S10. At that time, PM emissions were measured at 24.35 lbs/hour.

21. In August, 2008, CORN again performed tests at EP S10. At that time, PM emissions were measured at 27.70 lbs/hour.

22. The PM emissions described in paragraphs 19 through 21 above exceed the applicable permit limit for PM. The total HAPs emissions described in paragraph 19 above exceed the

applicable permit limit for total HAPs. All of the emissions described in paragraphs 19 through 21 therefore represent violations of 567 IAC § 22.3(3), the Iowa SIP, and Section 110 of the CAA, 42 U.S.C. § 7410.

Count 2

23. Silt loading test results from the second quarter of 2006, the fourth quarter of 2006 and the first quarter of 2007 showed that silt loading at the facility was measured at 2.24g/ m² in the second quarter of 2006, 0.79 g/ m² in the fourth quarter of 2006, and 0.48 g/ m² in the first quarter of 2007.

24. The emissions described in paragraph 23 above exceed the applicable permit limits for silt loading, and therefore represents violations of 567 IAC § 22.3(3), the Iowa SIP, and Section 110 of the CAA, 42 U.S.C. § 7410.

CONSENT AGREEMENT

25. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

26. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

27. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

28. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.

29. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

30. This CAFO addresses all civil administrative claims for the CAA violations identified above, existing through the effective date this CAFO. EPA reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

31. Respondent certifies by signing this CAFO that, to the best of its knowledge, Respondent's facility is presently in compliance with the CAA, 42 U.S.C. § 7401 *et. seq.* and all regulations promulgated thereunder.

32. The effect of settlement described in paragraph 30 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 31 above.

33. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of one hundred sixty-seven thousand six hundred dollars (\$167,600.00) as set forth in paragraph 1 of the Final Order.

34. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

35. Nothing in this CAFO shall be construed as a release from any other action under any law and/or regulation administered by EPA. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

36. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

37. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

38. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in paragraph 33, above.

39. This CAFO shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

40. This Final Order portion of this CAFO shall apply to and be binding upon Respondent, and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent

with respect to matters included herein comply with the terms of this CAFO.

FINAL ORDER

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of one hundred sixty-seven thousand six hundred dollars (\$167,600) within thirty (30) days of entry of this Final Order. Payment shall be made: a) on-line at www.pay.gov by entering 'SFO 1.1' into the 'Find Public Forms' search field, and completing the EPA Miscellaneous Payment Form, or b) by cashier's or certified check which shall reference Docket Number CAA-07-2009-0008, and made payable to "United States Treasury" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

2. A copy of the check shall simultaneously be sent to the following:

Belinda Holmes
Office of Regional Counsel
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101

and to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

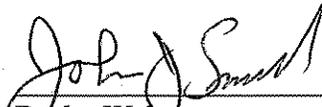
4. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

In the Matter of Central Iowa Renewable Energy, LLC
Docket No. CAA-07-2009-0008

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/15/09

By: 
Becky Weber
for Director
Air and Waste Management Division

Date: Apr. 15, 2009

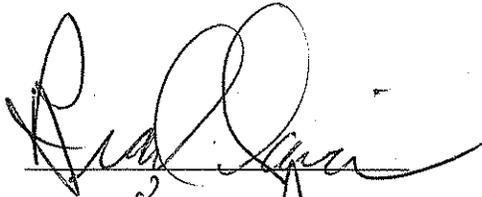
By: 
Belinda Holmes
Senior Counsel

In the Matter of Central Iowa Renewable Energy, LLC
Docket No. CAA-07-2009-0008

RESPONDENT:

Central Iowa Renewable Energy, LLC

Date: 4/2/09

By: 

Printed Name: BRAD DAVIS

Title: GEN. MGR

In the Matter of Central Iowa Renewable Energy, LLC
Docket No. CAA-07-2009-0008

IT IS SO ORDERED. This Order shall become effective immediately.

Date:

April 16, 2009

Karina Borromeo

Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

IN THE MATTER OF Mason Chemical Company, Respondent
Docket No. FIFRA-07-2009-0015

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Belinda Holmes
Senior Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

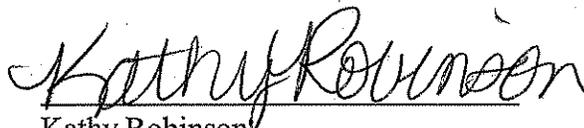
Copy by Certified Mail Return Receipt to:

James L. Pray, Esq.
Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C.
666 Grand Avenue, Suite 2000
Ruan Center
Des Moines IA 50309-2510

and

Brad Davis, General Manager
Central Iowa Renewable Energy, LLC
415 N. Locust Street
Goldfield, Iowa 50542

Dated: 4/16/09


Kathy Robinson
Hearing Clerk, Region 7